

Legislative Brief

The National Anti-Doping Bill, 2021

The National Anti-Doping Bill, 2021 was introduced in Lok Sabha on December 17, 2021.

On December 29 2021, the Bill was referred to the Standing Committee on Education, Women, Children, Youth, and Sports. The Committee presented its Report on March 23, 2022.

For a PRS Summary of the Report, [see here](#).

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March 29, 2022

Highlights of the Bill

- ◆ The Bill prohibits athletes, athlete support personnel, and other persons from engaging in doping in sport. Violation of anti-doping rules may result in disqualification of results including forfeiture of medals, points and prizes, ineligibility to participate in a competition or event for a prescribed period, and financial sanctions.
- ◆ Currently, anti-doping rules are implemented by the National Anti-Doping Agency (NADA), which was established as a society. The Bill provides for constituting NADA as a statutory body headed by a Director General appointed by the central government. Functions of the Agency include planning, implementing and monitoring anti-doping activities, and investigating anti-doping rule violations.
- ◆ The National Board for Anti-Doping in Sports will be established to make recommendations to the government on anti-doping regulations and compliance with international commitments on anti-doping. The Board will oversee the activities of NADA and issue directions to it.
- ◆ The Board will constitute a National Anti-Doping Disciplinary Panel for determining consequences of anti-doping rule violations. Further, the Board will constitute a National Anti-Doping Appeal Panel to hear appeals against decisions of the Disciplinary Panel.

Key Issues and Analysis

- ◆ There are two issues related to the Director General of NADA. First, the qualifications of the Director General are not specified in the Bill and are left to be notified through Rules. Second, the central government may remove the Director General from the office on grounds of misbehavior or incapacity or “such other ground”. Leaving these provisions to the discretion of the central government may affect the independence of the Director General. This also goes against the mandate of the World Anti-Doping Agency that such bodies must be independent in their operations.
- ◆ Under the Bill, the Board has powers to remove the members of the Disciplinary Panel and Appeal Panel on grounds which will be specified by regulations and are not specified in the Bill. Further, there is no requirement to give them an opportunity of being heard. This may affect the independent functioning of these panels.

PART A: HIGHLIGHTS OF THE BILL

Context

Doping is the consumption of certain prohibited substances by athletes to enhance performance. In November, 1999 the World Anti-Doping Agency (WADA) was set up under the International Olympic Committee. Note that WADA is recognised by the UNESCO International Convention against Doping in Sport (2005).¹ WADA's primary role is to develop, harmonise, and coordinate anti-doping regulations across all sports and countries. It does so by ensuring proper implementation of the World Anti-Doping Code (WADA Code) and its standards, conducting investigations into doping incidents, conducting research on doping, and educating sportspersons and related personnel on anti-doping regulations.² WADA publishes the list of prohibited substances at least once a year and distributes it to all the signatories.³ Use of prohibited substances is exempted if needed for therapeutic use, as specified. According to WADA, in 2019, most of the doping rule violations were committed in bodybuilding (22%), followed by athletics (18%), cycling (14%), and weightlifting (13%).⁴ Amongst the National Anti-Doping Organisations operating under WADA, in 2019, the maximum number of positive samples were reported in India (225 out of 4,004 samples) followed by USA (194 out of 11,213 samples), and Russia (85 out of 9,516 samples).

WADA requires countries to have a National Anti-Doping Organisation for enforcing anti-doping rules. The anti-doping process in India is managed by the National Anti-Doping Agency (NADA). NADA was established as an autonomous body under the Societies Registration Act, 1860 in November, 2009.^{5,6} Functions of NADA include: (i) implementing anti-doping rules as per World Anti-Doping Code, (ii) regulating doping control programme, (iii) conducting dope tests, and (iv) authorising penalties in case of any violations. India does not have an anti-doping law. The Standing Committee on Sports (2021) observed that Anti-Doping Rules are not backed by a legislation and are open to a challenge in a court of law.⁷ It recommended the Department of Sports to bring in an anti-doping legislation in 2021-22.

Key Features

- **Prohibition of doping:** The Bill prohibits athletes, athlete support personnel and other persons from engaging in doping in sport. Support personnel includes the coach, trainer, manager, team staff, medical personnel, and other persons working with or treating or assisting an athlete. These persons must ensure that there is no violation of the following rules: (i) presence of prohibited substances or their markers in an athlete's body, (ii) use, attempted use or possession of prohibited substances or methods, (iii) refusing to submit a sample, (iv) trafficking or attempted trafficking in prohibited substances or methods, and (v) aiding or covering up such violations. If any athlete requires a prohibited substance or method due to a medical condition, they may apply to the National Anti-Doping Agency for a therapeutic use exemption.
- **Consequences of violations:** Anti-doping rule violation by an individual athlete or athlete support personnel may result in: (i) disqualification of results including forfeiture of medals, points, and prizes, (ii) ineligibility to participate in a competition or event for a prescribed period, (iii) financial sanctions, and (iv) other consequences as may be prescribed. Consequences for team sports will be specified by regulations. Consequences for a violation will be determined by the National Anti-Doping Disciplinary Panel after a hearing.
- **National Anti-Doping Agency:** Currently, anti-doping rules are implemented by the National Anti-Doping Agency, which was established as a society. The Bill provides for constituting this National Anti-Doping Agency as a statutory body. It will be headed by a Director General appointed by the central government. Functions of the Agency include: (i) planning, implementing, and monitoring anti-doping activities, (ii) investigating anti-doping rule violations, and (iii) promoting anti-doping research.
- **Data related to athletes and doping:** The Agency will also have the power to collect certain personal data of athletes such as: (a) sex or gender, (ii) medical history, and (iii) whereabouts information of athletes (for out of competition testing and collection of samples). The Agency will prescribe the procedure for collection, usage, processing, and disclosure of such personal data. It will publicly disclose certain information such as the name of the athlete, the anti-doping rule violated, and the consequences imposed.
- **National Board for Anti-Doping in Sports:** The Bill establishes a National Board for Anti-Doping in Sports to make recommendations to the government on anti-doping regulation and compliance with international commitments on anti-doping. The Board will oversee the activities of the Agency and issue directions to it. The Board will consist of a Chairperson and two members appointed by the central government.
- **Disciplinary and Appeal Panels:** The Board will constitute a National Anti-Doping Disciplinary Panel for determining consequences of anti-doping rule violations. This Panel will consist of a Chairperson and four Vice-Chairpersons (all legal experts), and ten members (medical practitioners and retired eminent athletes).
- The Board will also constitute a National Anti-Doping Appeal Panel to hear appeals against: (i) refusal to grant therapeutic use exemption, (ii) imposition of consequences for anti-doping rule violation, or (iii) any other decision as prescribed. The Appeal Panel will consist of: (i) a Chairperson (a retired High Court judge),

(ii) a Vice-Chairperson (a legal expert), and (iii) four members (medical practitioners and retired eminent athletes). Appeals against the decision of the Appeal Panel will lie with the Court of Arbitration for Sport (an international body with headquarters in Lausanne, Switzerland, that settles sport related disputes).

- **Dope Testing Laboratories:** The existing National Dope Testing Laboratory will be deemed to be the principal dope testing laboratory. The central government may establish more National Dope Testing Laboratories.

PART B: KEY ISSUES AND ANALYSIS

Independence of NADA and the hearing and appellate panels

Independence of Director General of NADA

According to WADA, National Anti-Doping Organisations operate in public interest and could be subject to stringent national regulations.⁸ They may also experience external pressure from their governments and national sports bodies which could compromise their decisions in conducting testing on the appropriate athletes, reviewing doping rule violations, and enforcing penalties against persons found in violation of the WADA Code.⁸ In order to ensure an effective and credible anti-doping system, such organisations must be independent in their ability to make operational decisions.⁸ The provisions of the Bill may not fully ensure that NADA is independent of the central government.

Bill: Clauses 14(3), 15(1) and 15(8)

Under the Bill, NADA will be headed by a Director General who will be appointed by the central government. The qualifications and experience of the Director General will be prescribed by the central government. That is, the qualifications of the Director General are not specified in the Bill, and are left to be notified through Rules. Also, the central government may remove the Director General from the office on grounds of misbehavior or incapacity or “*such other ground*”. The last category neither has been specified in the Bill nor do they have to be prescribed through Rules, thereby giving wide discretion to the central government to remove the Director General. Both these provisions may adversely affect the independent functioning of the Director General.

Note that the respective Acts of some regulators such as the Securities and Exchange Board of India, Telecom Regulatory Authority of India, and the National Medical Commission of India clearly define the minimum qualifications and grounds of removal of members.^{9,10,11} Giving the power to the government to decide the qualifications through Rules and giving discretion to decide grounds of removal may affect the Director General's independent functioning and go against the mandate set by WADA.

Grounds for removal of members of the Disciplinary and Hearing Panels left to be specified in Regulations

WADA guidelines require an independent process for determining the consequences of anti-doping rule violations. These include the requirement that a member of a hearing panel pool will not be removed from his position during his term unless there is an objective and/or overriding legal reason.¹² Such legal reasons may include legal inability, involvement in doping and/or criminal activities, and violation of his duties as a member.

Bill: Clauses 11 and 12

Under the Bill, the National Board for Anti-Doping in Sports will constitute a Disciplinary Panel for determining the consequences of anti-doping rule violations. The Board will also constitute an Appeal Panel to hear appeals against decisions of the Disciplinary Panel. The Board may remove members of the Disciplinary Panel and Appeal Panel on grounds that will be specified by Regulations issued by it. These grounds of removal have not been specified in the Bill giving the Board the discretion to decide the grounds of removal through Regulations. This may affect the independent functioning of these institutions.

Note that the Bill specifies the grounds of removal (such as convicted of an offence, and abuse of position) for members of the National Board for Anti-Doping, and they are also given an opportunity of being heard in such matters. However, the Bill has not specified any requirement to give members of the Disciplinary and Appeal Panels an opportunity of being heard before removing them.

Qualifications of members of the Disciplinary and Hearing Panels may not meet standards of the WADA

Bill: Clauses 11 (2) and 12 (2)

WADA guidelines require that the members of the hearing panel should provide a collective expertise in relevant fields, such as legal (if the Chairperson does not have a legal background), science, medicine, or sport, and must have anti-doping experience.¹² However, under the Bill, none of the members of the hearing panels are required to have anti-doping experience.

Bill is not clear on which Vice Chairperson will form the hearing panel

Bill: Clauses 11(2) and 11(5)

The National Board for Anti-Doping in Sports will constitute a Disciplinary Panel for determining consequences of anti-doping rule violations. This Panel will consist of a Chairperson, four Vice-Chairpersons, and ten members. The Chairperson, and in his absence “*the Vice Chairperson*” will form the hearing panels. It is not clear which of the four Vice-Chairpersons will be responsible for forming the hearing panels in the absence of the Chairperson.

1. [International Convention Against Doping in Sport](#), United Nations Educational, Scientific, and Cultural Organization, October 19, 2005.
2. [World Anti-Doping Code, 2021](#), World Anti-Doping Agency.
3. [“The Prohibited List”](#), World Anti-Doping Agency, last accessed on February 4, 2022.
4. [World Anti-Doping Program, 2019 Anti-Doping Rule Violations \(ADRVs\) Report](#), World Anti-Doping Agency.
5. [The Societies Registration Act](#), 1860.
6. [“About us”](#), National Anti Doping Agency, Ministry of Youth Affairs and Sports, last accessed on February 4, 2022.
7. [Report No.325: Demands for Grants 2021-22 of the Ministry of Youth Affairs and Sports](#), Standing Committee on Education, Women, Children, Youth, and Sports, March, 2021.
8. [“WADA Guide Operational Independence of National Anti-Doping Organizations under the 2021 World Anti-Doping Code”](#), World Anti-Doping Agency, October 2020.
9. [Securities and Exchange Board of India Act](#), 1992.
10. [The Telecom Regulatory Authority of India Act](#), 1997.
11. [National Medical Commission Act](#), 2019.
12. [2021 Code Implementation Support Program Guidelines for the International Standard for Results Management](#), World Anti-Doping Agency.

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