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Legalization of Betting in Sports in India

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ABSTRACT

The sports betting industry has grown rapidly over the last few decades and is now a multibillion-dollar industry. Sports betting is illegal in India under the current legal framework. The Public Gambling Act, 1867 is the primary piece of legislation that severely restricts gambling by excluding certain categories. It is contradictory in that it allows gambling in horse racing but prohibits it in other sports. Because it is a colonial law, it is also ignorant of online gambling. The current framework is incapable of elucidating an issue that is rapidly escalating. Sports betting is unavoidable, and legalising gambling appears to be the only solution to this enormous problem. Several committees, including the Mudgal Committee and the Lodha Committee, have taken a strong stance in favour of legalising sports betting. Regulating sports betting will provide financial benefits to the government, assist in job creation, and reduce the threat posed by black markets.

The law was based on the premise that it is a game determined entirely or partially by chance, but gambling in sports involves the application of skill and knowledge by the individuals involved in the activity. The research paper addresses a significant contemporary issue that is horrifying in nature and attempts to propose a solution to it. The authors will assess the current situation of sports betting in India, provide arguments for its legalisation, and compare it to the international scenario in this research paper. To reach a firm conclusion, the authors relied on books, law journals, credible internet sources, and credible reports and articles.

I. INTRODUCTION

The term gambling can be defined as “to play a game for money or property or to bet on an uncertain outcome”.² Gambling was always regarded as one of the most pleasurable and popular form of recreation and it continues to have a place in Indian culture. Gambling is mentioned in ancient Indian scriptures such as the Mahabharata, where kings were willing to risk their kingdoms, wealth, and even family members.³ Card games, dice games, lotteries, electronic games such as slots, and wagering on sporting events are all common forms of gambling.

¹ Author is a student, India.

² MERRIAM WEBSTER, available at <<https://www.merriam-webster.com/dictionary/gambling>>.

³ Mukul Mudgal, LAW AND SPORTS IN INDIA, (LEXIS NEXIS, 2011) pp. 165.

In sports, “betting” refers to the act or practise of placing a wager on the outcome of sporting events.⁴ Today, betting generates a lot of interest in sports and turns it into a lucrative, albeit illegal, business worth millions of dollars. Betting is done on the outcomes of various sports such as cricket, hockey, football, horse racing, and badminton, with cricket betting being the most popular in India.⁵ Gambling was popular in India during the 18th century, when cricket exploded across the country, but the “Public Gambling Act, 1867” restricted the operation and visitation of a ‘Gambling House’.⁶ It is the central legislation in India that governs all forms of gambling, whereas many states have their own state legislation. It outlaws all forms of sports gambling, with the exception of horse racing.

Bookmaking is illegal in India, but that hasn’t stopped a thriving industry worth more than €250 million per year from operating outside the reach of national and international authorities.⁷ Crime and corruption associated with sports betting have been on the rise as a result of the emergence of such a massive industry. While societal attitudes toward gambling have shifted over the last century, with gambling now considered a legitimate form of recreation, Indian laws have not kept up.⁸

II. CURRENT STATUS OF GAMBLING IN INDIA

The Public Gambling Act of 1867 prohibits gambling or sports betting under the current legal framework.⁹ According to Section 2(b) of the act, gambling includes wagering or betting but does not include a lottery.¹⁰ Article 372(1) of the Indian Constitution states that notwithstanding the repeal by this Constitution of the enactments referred to in Article 395, but subject to the other provisions of this Constitution or the law enforced in the territory of India immediately before the commencement of this Constitution shall continue in force there in altered, repealed, or amended by a competent legislature or other competent authority.¹¹ Under Entry 62 State List of the seventh schedule of the Constitution, a state legislature has the authority to enact laws concerning taxes and gambling.¹² The primary goal of gambling

⁴ *Ibid.*

⁵ *Ibid.*, pp. 166.

⁶ Jaydev Mody et al., “*Should gambling be legalized*”, THE HINDU (March 30, 2018), available at <<https://www.thehindu.com/opinion/op-ed/should-gambling-be-legalised/article23385128.ece>> (Last visited: 05/05/2022).

⁷ Paul Kelso, “*Government presses India to legalize gambling and stop spread of ‘cancer’*”, THE DAILY TELEGRAPH (September 8, 2010).

⁸ Jaydev Mody et al., “*Should gambling be legalized*”, THE HINDU (March 30, 2018), available at <<https://www.thehindu.com/opinion/op-ed/should-gambling-be-legalised/article23385128.ece>> (Last visited: 05/05/2022).

⁹ The Public Gambling Act, 1867, No.3, 1867.

¹⁰ *Ibid.*

¹¹ Article 372, Clause 1, The Indian Constitution.

¹² Aditya Agrawal and Dhruvo Das, “*Legalization of sports betting in India*”, THE LAW BRIGADE (2019), available

legislation at various levels is to suppress and regulate gambling in ‘Public Gambling’ establishments.¹³

Sports betting is a multimillion-dollar black market. In addition, the FICCI estimated the illegal market to be worth nearly Rs. 10 lakh crore in 2016. Even if legalisation does not completely clean up the betting industry, requiring operators to keep electronic and paper records will be a big help.¹⁴ Despite being unregulated, the industry employs thousands of young people across the country.

III. ONLINE GAMBLING IN INDIA

There are two types of online gambling available around the world. The first is casino-style gambling, which includes games such as poker and rummy. Second, it is classified as sports betting, in which people place bets on sporting events in real time while looking at the odds of the games. Sikkim and Goa are the only states in India that allow casino gambling.¹⁵ The state of Sikkim, on the other hand, is the only one that legally allows online casino gambling.

In the second scenario, the betting process is carried out through websites based outside of India, such as 1XBet and Bet365, which allow individuals to place bets online on sports events in real time.¹⁶ Sports betting, on the other hand, is prohibited in India. Such websites are typically outside the territorial jurisdiction of Indian Law. In such a case, a person living in India would be able to place a bet on websites whose servers are hosted in countries where gambling is legal.¹⁷ One could do so by placing an online bet on such websites, as well as making and receiving payments via bank transfer, wire transfer, and other methods. However, because betting on sports other than horse racing is prohibited in India, legislation has found ways to limit online betting.

To stop online betting, the Indian government has no specific legislation but relies on the provision of Section 67 of the Information Technology Act, which commands a fine of up to Rs 1 lakh and a punishment of up to 5 years for anyone who publishes, transmits, or causes to be published in electronic mode any material containing offensive sexual material or if its effect

at <<https://thelawbrigade.com/wp-content/uploads/2019/05/Aditya-Dhruvo.pdf>> .

¹³ A Barathakur, ‘*Lotteries Revenue and social costs: A case for total ban on state sponsored gambling*’; 2 SCC 1, (2003).

¹⁴ ‘*Bet on legalising gambling: There are big gains –from revenue to bringing down crime*’, FINANCIAL EXPRESS (July 7, 2018), available at <<https://www.financialexpress.com/opinion/bet-on-legalising-gambling-there-are-big-gains-from-revenue-to-bringing-down-crime/1234567/>>.

¹⁵ ‘*Indian States That Allow Casinos*’, available at < <https://www.ritiriwaz.com/indian-states-that-allow-casinos/>>. (Last visited: 03-05-2022)

¹⁶ *Ibid.*

¹⁷ *Supra* note 4, at 181.

is such as to deprave and corrupt people who are liars.¹⁸ Because gambling and sports betting are illegal in India, it is self-evident that any website offering such services will fall under the definition of corrupt or depraved in the aforementioned provision.¹⁹

The Foreign Exchange Management Act, 2000 governs the exchange of foreign currency, the transfer of funds from India to any foreign country, and the influx of foreign capital into India.²⁰ Rule 3 of the Schedule Financial Exchange Management Act of 2000 prohibits remittances for the purchase of lottery tickets, banned magazines, football pools, sweepstakes, and other similar activities.²¹ The rule prohibits any transfer involving gambling, and the provision has been left open to cover other types of betting. As a result, no one would be able to pay for the purpose on these websites. In another scenario, any resident who attempts to participate in online gambling through all of these websites by opening a foreign currency account in countries where sports betting is legal will be subject to Section 3 of the Foreign Exchange Management Regulations (Foreign currency amounts), 2000²², which restricts any Indian resident from opening, holding, or maintaining a foreign currency account without special permission from the RBI.²³

IV. WHY SHOULD BETTING IN SPORTS BE LEGALIZED?

(A) Bound to exist in some form or other

It is impossible to deny that betting has become a large-scale industry in India. The impact of sports betting on society is one argument for why it should be regulated in India or anywhere else in the globe.²⁴ Sports betting has become a popular way to make money. India is a large country with a sizable number of poor people. People are drawn to betting because they regard it as a way to make quick money despite their lack of comforts and money. Betting cannot be completely eradicated, and it will continue to exist in some form or another, according to popular belief.

(B) Game of skill and not chance

The Public Gambling Act, 1867, in section 12 states that, “Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”²⁵

¹⁸ Section 67, Information Technology Act, 2000.

¹⁹ 276th Report, Law Commission of India.

²⁰ Foreign Exchange Management Act, 2000.

²¹ *Ibid.*

²² *Ibid.*

²³ “*Legality of Online Gambling in India*”, Lexlife India (Aug 31, 2021), available at <<https://lexlife.in/2021/08/31/legality-of-online-gambling-in-india/>>.

²⁴ *Supra* note 11, at 167.

²⁵ *Supra* note 8.

Betting in sports involves knowledge, application and analytical skills of the participants. It is necessary to elucidate between a game of skill and a game of chance. In the case of *Rex v. Fortie*²⁶, the interpretation of game of chance was given. It is a game determined entirely or in part by lot or mere luck, and in which judgement, practice, skill or adroitness has honestly no office at all or are thwarted by chance.

A ‘game of skill’, on the other hand, is one in which nothing is left to chance and in which better knowledge, attention, or strength, ability, and practise win.²⁷ In the case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*²⁸, the Supreme Court of India declared that horse racing, boat racing, football, and baseball are all games of skill. The law is contradictory in that it allows betting on horse races but prohibits it in other sports. The Supreme Court has explicitly said in the cases of *State of Bombay v. RMD Chamarbaugwala*²⁹ and *State of Andhra Pradesh v. K Satyanarayana*³⁰ that “competitions where victory depends on a substantial degree of talent are not gambling.”

Even though there is a chance element, if a game is primarily a game of skill, it is still referred to be a game of ‘mere skill’. In their numerous rulings, courts have consistently held that all sports fall under the category of ‘game of skill’, not ‘game of chance’.³¹ Because horse racing is a ‘game of skill’, it is lawful. It was discovered that the outcome of a horse race is determined by various elements, including the animal’s form, fitness, and inherent aptitude, the jockey’s ability, the weight carried, and the race distance, all of which are objective facts that can be assessed by those placing bets. In other sports, the ability of the person placing the wager to analyse pitch conditions, weather conditions, squad composition, and current form is vital. As a result, gambling in all sports should be authorised, according to this logic.

(C) Fantasy Sports

In the last decade, the Fantasy Sports industry has exploded. Fantasy sports systems, such as the Dream 11, are available in the form of apps and websites. Fantasy sports games ask the user to create a squad from all of the players competing in a specific match in a sport on a specific day.³² Following the creation of the team, the user is needed to pay a fee to enter a

²⁶ 13 Que K.B. 308.

²⁷ Apurva Singh, “Laws related to betting and gambling in India: The road ahead”, IPLEADERS (May 28, 2019) available at <<https://blog.ipleaders.in/betting-gambling-laws-42823-2/>>. (Last visited: 06-05-2022)

²⁸ AIR 1996 SC 226.

²⁹ AIR 1957 SC 699.

³⁰ (1968) 2 SCR 387.

³¹ “Differential Treatment of Game of Chance v. Game of Skill In India”, Indian Law Blog (Jun 19, 2020), available at <<https://www.glc.law/blog/differential-treatment-of-game-of-chance-v-game-of-skill-in-india/>>. (Last visited: 06-05-2022)

³² *Supra* note 19.

contest offered on these platforms. There are many of these contests, with the number of competitors and prize amounts changing. The entry costs and prizes for different contests vary. Users are usually required to pick their teams prior to the start of the competition. Once the competition begins, each player receives points based on his or her performance. The sum of the points scored by the players in the user's drafted team determines the user's total score. The users are rated based on their team's total score. The winning money is awarded to the top-ranked teams.

The fantasy sports sector has been embroiled in its own legal dispute. The plaintiff in the case of *Humphrey v. Viacom*³³ asserted that the fees paid to enter these events are a type of wager or bet since the points earned by the players are primarily determined by chance, taking into consideration potential player injuries and other random circumstances. The petition was denied by the court, which stated that choosing players for a virtual team requires a great deal of analytical talent and understanding.

In India, Nagaland introduced the Nagaland Prohibition of Gambling and Promotion of Online Games of Skill Act, 2005 which includes fantasy sports under the ambit of 'game of skill'.³⁴ The High Court of Punjab and Haryana ruled in 2017 that Dream 11 is primarily a skill-based game.³⁵ The petition was dismissed by the High Court, which drew a similarity with the *R. Lakshman*³⁶ judgment. It further stated that fantasy sports need a significant amount of analytical expertise, judgement, and discretion on the part of the player. The court agreed with the respondent Dream 11's assertions that fantasy sports necessitate an individual's competence to judge match conditions (stadium size, team composition, player statistics, and keeping track of players' recent performances).³⁷

Fantasy sports are well-known for demanding users to use their knowledge of players, performance history, and statistics, as well as their talent in selecting and trading players, to succeed.³⁸ Betting is a lot like fantasy sports in that it involves a similar set of analytical sports skills. Betting differs from fantasy sports in that it takes place in real time, whereas fantasy sports require the player to construct his or her own team prior to the game. Furthermore, unlike fantasy sports, betting necessitates greater analytical skills, since it demands the user to analyse real-time match events and place his bets accordingly. The law is odd in that it allows fantasy

³³ 2007 BL 38423.

³⁴ Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, (2016).

³⁵ *Sri Varun Gumber v. The Union Territory of Chandigarh & Ors.*, (2017), CWP No. 7559.

³⁶ *Supra* note 28.

³⁷ *Supra* note 35.

³⁸ Apurva Singh, "Laws related to betting and gambling in India: The road ahead", IPLEADERS (May 28, 2019) available at <<https://blog.ipleaders.in/betting-gambling-laws-42823-2/>>. (Last visited: 06-05-2022).

sports games but not sports betting.

(D) Financial gains are huge

Another argument in favour of legalising gambling is that it offers states with financial benefits. Gambling's significance in income creation is not new; it was a state-regulated sector with a 5% tax on winnings even during Kautiliya's reign.³⁹

Legalizing gambling will not only reduce the illegal market, but it will also bring in money for the government. The gambling market in India is estimated to be around \$60 billion, according to a 2010 KPMG analysis, while other, more recent assessments place a larger value on the business.⁴⁰ Even a reasonable estimate shows that legalising sports betting might generate tens of thousands of crores in tax income for the government. The government has undoubtedly lost a significant amount of money as well if betting were legalised, licences could be given for a fee, a GST on betting services would be imposed, and profits would be taxed.

(E) Eradication of black market

A total prohibition on sports betting, according to the Law Commission Report No. 276, would not eliminate it, but would merely push it to the underground market.⁴¹ According to this proposal, illicit betting causes significant monetary losses to the economy since gains are not taxed, and it also encourages the circulation of black money in the market.⁴² In a word, such illegal business has a negative impact on the nation's economy.

The proposal also discusses how the Indian sports gambling sector is currently unregulated and controlled by the mafia as a black market. The majority of the money made in the betting industry is either used for illegal activities or moved out of the nation. There is no way to keep track of the money because the majority of transactions are made in cash, which makes keeping track of such transactions impossible. In his book, Justice Mukul Mudgal identifies the challenge that investigating authorities encounter in keeping track of bookmakers who engage in sports betting and the money they generate from it.⁴³ Identifying this difficulty, the Mudgal Committee report suggested legalizing sports betting would reduce the element of black money and the influence of the underworld besides helping them in detection and focusing their

³⁹ *Supra* note 16, at 175.

⁴⁰ *Supra* note 6.

⁴¹ 276th Report, Law Commission of India.

⁴² *Supra* note 30, at 106.

⁴³ Mukul Mudgal, *Law and Sports in India: Development Issues and Challenges* (LEXISNEXIS,2016).

investigation.⁴⁴

V. INTERNATIONAL PERSPECTIVE

In order to restrict betting and wagering activities, countries all over the world have used three techniques. A few countries, particularly those that support religious and ethical practises, believe that it is the government's responsibility to protect its citizens from the negative consequences of such activities. Betting and wagering are sometimes outlawed in countries that place a high value on religious ethical qualities, whilst others regard betting and wagering as a business that generates revenue and exchange, as well as supporting the travel industry and employment. A few countries also work between these two boundaries, creating a balance and allowing betting in a supervised and managed environment, generating significant revenue from the costs imposed on such activities.

(A) United Kingdom

Gambling was strictly regulated in the United Kingdom for decades until the rules were ultimately liberalised in 1960. The Gambling Act, 2005 regulates gambling and betting practices in the country and aims to protect “children and other vulnerable persons from being harmed or exploited by gambling.” The online sports betting business in the United Kingdom is projected to be worth £650 million, with a compound annual growth rate of around 7% from 2009 to 2012. The overall number of people that gamble online in the United Kingdom is estimated to be 2.1 million.⁴⁵ Football betting is a massive and rapidly rising global industry worth billions of pounds each year. Football pools are a type of gambling linked with football in the United Kingdom, where players win by correctly guessing the outcome of each week’s matches.⁴⁶

A body corporate known as the “Gaming Commission” is established under Section 20 of the 2005 Act to regulate gambling and betting operations through licenced operators. These companies function as betting intermediates, offering a variety of services. The Commission issues gaming licences, has the authority to impose fines and cancel licences, and is responsible for investigating and prosecuting illegal gambling. It also provides gambling-related advice to the federal, state, and local governments.⁴⁷

⁴⁴ *Supra* note 33, at 1.

⁴⁵ Hudson James, “UK sports betting market growth & mobile betting”, THE ORIGINAL (Jan 12, 2014).

⁴⁶ “Football betting – The global gambling industry worth billions”, BBC SPORT (October 3, 2013) available at <<https://www.bbc.com/sport/football/24354124>>. (Last visited: 06-05-2022)

⁴⁷ Legal Framework: Gambling and sports betting including cricket in India, LAW COMMISSION OF INDIA, at 75.

The gambling industry in the United Kingdom is one of the largest in the world, and it continues to grow. Between October 2015 and September 2016, it generated a Gross Gambling Yield of £13.8 billion. Online gambling brought in £4.5 billion in gross gaming revenue, accounting for 33% of overall gambling revenue in the UK. Gambling's legalisation has resulted in a well-regulated business that has decreased the dangers posed by underground markets.⁴⁸

(B) United States of America

The Supreme Court overturned a Federal rule passed in 1992 that effectively barred commercial sports betting in most states, paving the way for the legalisation of the estimated \$150 billion in illicit wagers on professional and amateur sports that Americans place each year.⁴⁹ The ruling has had a significant impact on the country's relationship with sports betting. Bettors were no longer be forced into the black market to engage illegal bookmakers or offshore wagering businesses. Betting was started to be done on mobile devices, owing to the legislators and sports officials who had long fought it.⁵⁰ The 1992 statute that was overturned outlawed state-authorized sports betting, with the exception of Nevada, Montana, Oregon, and Delaware, which had already permitted some sort of sports betting before the law went into effect.

For a long time, Nevada has had legalised betting and has gained from both gaming and travel-related revenue. The influx of visitors seeking betting conveniences also generates revenue for the general economy, including food service, lodging, and transportation. Another benefit of Nevada's gambling sector is the building and upkeep of offices. For a long time, the airline and hotel services have been reliable, and the area is now a popular destination for both tourism and retirement. Legalized betting, according to these estimates, contributed up to \$5 billion to the states' overall GDP. A total of 152,000 jobs worth over \$7 billion were given to the citizens.⁵¹

VI. CONCLUSION

Various committees and bodies have recommended legalization of betting in sports. Former International Cricket Council (ICC) Chief Executive, Haroon Lorgat stated that "That's been our view, if the industry was regulated you could actually work with them, monitor them better

⁴⁸ "Annual Report and Accounts", GAMBLING COMMISSION, 2016-2017.

⁴⁹ Adam Liptak and Kevin Draper, "Supreme Court Ruling Favours Sports Betting", N.Y TIMES (May 12, 2018), available at: <<https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html?action=click&module=RelatedCoverage&pgtype=Article®ion=Footer>>.

⁵⁰ *Ibid* at 5.

⁵¹ "Sports betting set to become legal across US after Supreme Court decision", THE GUARDIAN (May 14, 2018), available at <<https://www.theguardian.com/law/2018/may/14/sports-betting-gambling-legal-supreme-court-decision>>.

and everything would be legal so there is reason to go underground”.⁵² The Lodha committee advocated for the legalization of betting and recommended that following safeguards be provided in the legislation regulating betting:

Regulatory watchdogs would be required to ensure that betting houses, as well as people who deal there, are closely watched, failing which their licences might be revoked. Players, administrators, and others with a direct connection to the sport would be expected to provide the information. For the interest of openness, it was recommended that the following precautions be included in the legislation governing betting details of their income and assets. Those placing the bets would also need a licence, with their age and identification information recorded. Those who violate the licence and other conditions would be subjected to harsh penalties. Mudgal Committee has also stated in its report that legalizing betting would reduce the involvement of black money, the influence of underworld and betting related malpractices. The Law Commission of India has also suggested legalization of betting in cricket and other sports in its 276th report.

The sports betting market has only expanded in scale over the last few decades. Sports betting has become popular in India as a source of entertainment as well as a means of making quick money. The Public Gambling Act of 1867 is an out-of-date piece of legislation that has a number of flaws. The law is contradictory in that it legalises horse racing betting on the grounds that it is a “game of talent”, but it prohibits betting on cricket and other sports that are also “games of skill.” Because it is a colonial law, it is also unaware of online gambling. Various courts have constantly held in their various judgements that sports like cricket, football, and hockey involve application of knowledge and skill on the part of the individual placing the bet, like horse racing. Legalizing betting on sports would help in regulating this unorganized industry and the perils posed by black markets. The government can also benefit with financial gains in the form of taxes if the industry is legally regulated. If betting on sports is legalized in India, it would create jobs, increase the tax and business revenue and tourism. Legalization of sports betting in India is definitely the need of the hour.

⁵² “ICC recommends legal betting in India”, HINDUSTAN TIMES (May 21, 2011), available at <<https://www.hindustantimes.com/cricket/icc-recommends-legal-betting-in-india/story-QXXHK5T2MhYE0s1HzV>>. (Last visited: 06-05-2022)