

LEGALISING ONLINE SPORTS BETTING IN INDIA: A GAMBLE UNTO ITSELF?

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ABSTRACT

The Supreme Court of India in April 2017, has agreed to decide upon the legality of introducing Pan-India sports betting and online betting sites. However, this conflicts with the stance of several states which consider gambling to be illegal within their jurisdictions. Moreover, the statutes of these states have failed to keep up with technological improvements and do not govern online gambling. Hundreds of Indians continue to use online betting sites clandestinely and invest around thousands of crores of rupees in the business, creating a parallel underground economy. The article discusses the dearth of regulatory framework regarding this sector and propose reforms that will help usher in legalisation of online betting in India.

INTRODUCTION

According to Black's Law Dictionary gambling is a game which consists of three components:

consideration, an element of chance and a reward¹. It involves winning or losing an (usually) extravagant amounts of money based on some fortuitous event². These games were played in India since the time of Mahabharata and Ramayana, with stakes as high as losing kingdoms or small pittances in sporting animal fights. With the advent of the Victorian British Rule, horse betting was also introduced in India. Their continued prevalence in the modern India society can be found in advertisements for online rummy on social media or the 2013 IPL match-fixing scandal. However, there is a dismal lack of clarity governing both gambling and online gambling in India. Mostly, gambling occurs on the black market, leading India to lose a revenue of approximately USD 60 million (amount greater than 2% of our GDP)³.

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¹ H.C. BLACK, BLACK'S LAW DICTIONARY (6th ed. 1994).

² OXFORD DICTIONARIES, OXFORD ENGLISH DICTIONARY (7th ed. 2012).

³ Sandeep Unnithan, *Playboys of the Eastern World*, INDIA TODAY, (Oct. 22, 2011), <http://indiatoday.intoday.in/story/indian-gamblers-diwali->

Moreover, it is rumoured that the money is used to fund terrorist or other criminal activities⁴. The potential for a regulatory regime to curb such social evil calls for a policy analysis of the gambling and betting laws in India.

THE HISTORY OF GAMBLING LAWS

In 1867, the British enacted the Public Gambling Act [hereinafter **PGA**] in India. The enactment was a result of the then growing wariness of the British Parliament towards betting and gambling. While India (barring Sikkim and Goa) has maintained the orthodox approach against legalising gambling, the United Kingdom itself has amended its laws to reflect the modern economy by licensing gambling premises⁵. Further, UK provides a detailed regulatory framework which covers not only gambling but also online gambling⁶. The dynamism of India's legislation, however, is a far cry from that of UK's laws.

Post-independence, *Entry 34, List II of the Seventh Schedule*⁷ empowered the state governments to govern gambling and betting. Regardless, not all states have made use of the constitutional power to either regulate gambling or explicitly ban it. Further, only a few states with specific legislation provide clarity on the definition of gambling itself. It is therefore unsurprising that technological developments such as online gambling are required to operate within a grey area of law.

*The analysis of India's online gambling laws becomes imperative in light of recent policy considerations by the Ministry of Youth Affairs and Sports*⁸. The Ministry is contemplating furthering the recommendation by former Chief Justice of India [**CJI**] R.M. Lodha that online betting for cricket should be legalised pan-India⁹. The recommendation, which will take approximately two years to implement, is intended as a double-edged sword in remedying the lack of funding in sports and avoiding corruption (match fixing). However, with inadequate laws governing gambling itself, the

2011-macau-asia-china-asia-hottest-casinos/1/157060.html.

⁴ Correspondent, *Gambling Rackets Finance Terror Activities*, THE PIONEER, (Feb. 15, 2016), <http://www.dailypioneer.com/STATE-EDITIONS/dehradun/gambling-rackets-finance-terror-activities.html>.

⁵ United Kingdom Gambling Act, 2005.

⁶ *Id.*

⁷ CONSTITUTION OF INDIA, 1950.

⁸ Amitav Ranjan & Mihir Vasavda, *Sports Ministry lays ground for making online betting legal*, THE INDIAN EXPRESS, (July 16, 2017), <http://indianexpress.com/article/sports/sports-ministry-lays-ground-for-making-online-betting-legal-4752604/>.

⁹ *Id.*

call for regulating online gambling seems quite ambitious.

STRUCTURE

The article seeks to analyse the feasibility of introducing online betting across India and will do so by examining (1.) whether laws in India are receptive to gambling and (2.) online gambling? (3.) The steps to be taken by the Centre for legalising online betting. (4.) Finally, the article will determine the model policy to be adopted for such legalisation.

GAMBLING LAWS IN INDIA

Recently, in Madhya Pradesh, public concern was raised when a quarry worker committed suicide over losing five lakh rupees in illegal IPL betting¹⁰. Despite other such instances of proof of illegal betting, gambling in Madhya Pradesh is still governed by the obsolete Public Gambling Act, 1867. This Act applies to ten such other states (with minor variations) which have not enacted state specific gambling regulations¹¹. The lack of framework is

disappointing as these states appeared to have waived the opportunity to decide *first*, the games that constitute gambling and *second*, regulate online gambling (outside the purview of the central act).

While exploring the *first* point, the legislative efforts of states such as Goa¹², Sikkim¹³, West Bengal¹⁴ and Nagaland¹⁵ must not be overlooked. By providing an exhaustive or illustrative list as to which games are prohibited, these states have clarified the investment climate within their jurisdiction. Other states have followed the PGA and Supreme Court of India [SC] decisions in merely *excluding games of skill from the ambit of gambling*¹⁶. Games of skills are those which factor the experience, attention, personal attributes and adroitness of the player¹⁷. Games of chance (gambling) are games where the outcome is dependent largely

POLICY CENTRE, (Mar., 2017), <https://drive.google.com/file/d/0B6LE5s8UEIKGZXNKNGRnQk94ZEE/view>.

¹² The Goa, Daman and Diu Public Gambling Act 1976, §13A.

¹³ Sikkim Regulation of Gambling (Amendment) Act, 2005.

¹⁴ The West Bengal Gambling and Prize Competitions Act, 1957.

¹⁵ Nagaland Prohibition of Gambling and Promotion and Regularisation of Online Games of Skill Act, 2016.

¹⁶ Public Gaming Act, 1867, §12: “*Act not to apply to certain games: Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.*”

¹⁷ Dr. K.R. Lakshmanan v. State of Tamil Nadu, (1996) 2 SCC 226.

¹⁰B. V. Shiv Shankari, *Quarry worker's suicide exposes cricket betting menace*, THE TIMES OF INDIA, (May 9, 2017), <http://timesofindia.indiatimes.com/city/bengaluru/quarry-workers-suicide-exposes-cricket-betting-menace/articleshow/58582671.cms>.

¹¹ The Sports Law & Policy Centre, *Games of Skill in India: A Proposal for Reform*, THE SPORTS LAW AND

on some randomizing device such as dice or roulette wheels. As per the *State of Bombay v. Chamarbaugwalla*¹⁸, betting on games of skill does not constitute ‘gambling’. Unlike games of chance¹⁹, these games have the protection to trade and occupation under Article 19(1)(g) of the Constitution of India²⁰.

To determine games of skill, the Supreme Court adopted the ‘dominant factor’ test²¹. *Dr KR Lakshmanan v. State of Tamil Nadu* in 1996 held horse-racing to be a game of skill. The Court adjudicated that it was a game involving ‘substantial or preponderant’ (dominant) amounts of skill compared to the element of chance. In a similar fashion, the Court also legalised rummy²², bridge²³, and video games²⁴. It is important to note that lotteries and games involving arrangements of letters are governed by the *Lotteries (Regulation) Act, 1988* and *Prize Competitions Act, 1955*, respectively. The reason is that in the Constitution, lotteries are different from gambling and betting and fall under Entry 40 of List I (governed by centre’s laws). Further, games of skill where prizes are

awarded for solutions based on arrangement of letters, such as crossword puzzles, rarely involve an element of wagering and betting²⁵.

The aforementioned principles, however, apply for the states that have banned gambling. Goa and Sikkim are two states where gambling is still prevalent. Goa, has granted licenses to opening slot machines in five-star hotels and casinos in off-shore vessels²⁶. Sikkim grants licenses for some gambling premises, thereby legalising gambling to a great extent²⁷. Assam²⁸, Orissa²⁹ and Telangana³⁰ on the other hand have completed banned not only games of chance but also mixed games of skill and chance such as poker and rummy. As per the *MJ Sivani* case the state is only permitted to restrict occupations if they are against public interest or participate in immoral practices³¹. Further, in the *Lakshmanan* case, the court held that the banning of games if

¹⁸ AIR. 1957 SC 699.

¹⁹ *Id.*

²⁰ LAKSHMANAN CASE, *supra* note 17.

²¹ SPORTS LAW AND POLICY CENTRE, *supra* note 11, p. 6.

²² *State of Andhra Pradesh v. K. Satyanarayana*, (1968) SCR (2) 387.

²³ *Id.*

²⁴ *M. J. Sivani v. State of Karnataka*, (1995) (3) SCR 329.

²⁵ Ganesh Prasad & Sharad Moudgal, India: Gambling 2017, INTERNATIONAL COMPARATIVE LEGAL GUIDES, (Dec. 2, 2016), <https://iclg.com/practice-areas/gambling/gambling-2017/india>.

²⁶ GOA ACT, *supra* note 12.

²⁷ Sikkim Act, *supra* note 13.

²⁸ Assam Game and Betting Act, 1970

²⁹ Orissa Prevention of Gaming Act, 1955.

³⁰ Ganesh Prasad and Mukund Thirumalai Srikanth, *India: Salient Features Of The Telangana State Gambling (Amendment) Ordinance, 2017*, MONDAQ, (July 3, 2017) <http://www.mondaq.com/india/x/607360/Gaming/Salient+Features+Of+The+Telangana+State+Gaming+Amendm+ent+Ordinance+2017>.

³¹ *M. J. SIVANI CASE*, *supra* note 25.

skill itself cannot be allowed. Therefore, such banning of mixed games might be contentious as games of skill are permissible occupations to which fundamental rights are applicable³². Nevertheless, it is surprising that former CJI R.M. Lodha suggested legalising online sports betting in a country where most of the states have either banned games of chance or mixed games of skill and chance. *It would be difficult to introduce sports betting in a country where regardless of the passage of time, the legislature has construed it to be a vice.*

ONLINE GAMBLING LAWS

There are however, *arguments in favour of legalising* online gambling. *First*, preventing the issue of match-fixing which has plagued the Board of Control for Cricket in India [BCCI] and Indian Premier League [IPL]³³. The second-phase of the Lodha Committee had suggested that regulating betting will filter out the unethical participation of the sports persons

³² Jay Sayta, *Portions of Assam and Orissa Gaming Acts Might be Unconstitutional, Games of Skill Should be Permitted Across India*, GLAWS (Apr. 29, 2011), <https://glaws.in/2012/04/29/portions-of-assam-and-odisha-gaming-acts-might-be-unconstitutional-games-of-skill-should-be-permitted-across-india/>.

³³ Desh Gaurav Sekhri, *Lodha Committee's recommendation of legalising cricket betting in cricket is welcome*, THE ECONOMIC TIMES, (Jan. 5, 2016), <http://blogs.economictimes.indiatimes.com/et-commentary/lodha-committees-recommendation-of-legalising-betting-in-cricket-is-welcome/>.

in betting³⁴. *Second*, the presence of sports betting websites will lead to consolidation of betting avenues and will draw the crowd to the online scheme, making monitoring easier. The authorities can ensure that all rules are followed and cheating is caught, paving the way for transparent and fair games³⁵. *Third*, it will bring into circulation great amounts of black money. The Federation of Indian Chambers of Commerce & Industry [FICCI] had been urging the government to legalise betting as it estimates that the government will receive 12,000- 19,000 crore rupees of revenue through the 3,00,000 crore rupees illegal sports betting market³⁶. *Fourth*, people already access betting sites through Virtual Private Networks [VPNs]³⁷. The 2015 Foreign Direct Investment [FDI] policy³⁸ and External Commercial Borrowing

³⁴ ET Bureau, *Lodha wants cricket betting legalised, but who will bell the cat?*, THE ECONOMIC TIMES, (Jan. 5, 2016), <http://economictimes.indiatimes.com/news/sports/lodha-wants-cricket-betting-legalised-but-who-will-bell-the-cat/articleshow/50446279.cms>.

³⁵ Jay Satya, *Time ripe for Gambling Law Reforms-Is the government listening?*, GLAWS, (Sept. 13, 2013), <https://glaws.in/2013/09/13/time-ripe-for-gambling-law-reforms-is-the-government-listening/>.

³⁶ *Id.*

³⁷ V Ramu Sarma, *Ban on online gambling is no child's play*, THE HANS INDIA, (Jun. 19, 2017) <http://www.thehansindia.com/posts/index/Opinion/2017-06-19/Ban-on-online-gambling-is-no-childs-play/307317>.

³⁸ Government of India, Ministry of Commerce & Industry, Department of Industrial Policy & Promotion SIA (FC Division), Press Note No. 5 (2002 Series), available at <http://dipp.nic.in/sites/default/files/pn55.pdf>.

[ECB] Rules³⁹ prevent foreign investment in gambling, taking loans and transactions with foreign entities for rewards. However, gambling companies such as Bet365 which hold a license under UK laws, still operate within India⁴⁰. Since its servers are not located here, the Cyber Police has its hands tied and is unable to do anything. Legal betting will only help normalise such websites. *Fifth*, sports betting is conceptually like the aspect of horse betting, as both are betting on games of skill⁴¹. Then, as per legal precedence, sports betting should be permitted in India.

Its *disadvantages* are *first*, it is a state subject and most states have banned gambling. In fact, Goa and Sikkim which do allow gambling, have considered barring locals from participating in these games (Goa made amendments which were not enforced, Sikkim proposes to amend its legislation⁴²). The legislative intention is that

³⁹ FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) (THIRD AMENDMENT) REGULATIONS, 2012, Notification No. FEMA. 229/ 2012- RB, s. 3., *available at*

<https://www.rbi.org.in/scripts/NotificationUser.aspx?Id=7711&Mode=0>.

⁴⁰ Sports Betting, *Indian Gambling Laws*, SPORTSBETTING.NET.IN, <http://sportsbetting.net.in/gambling-laws/> (last accessed July 31, 2017).

⁴¹ SPORTS LAW AND POLICY CENTRE, *supra* note 11, p. 16.

⁴² Jay Sayta, *Feature: Senior Sikkim Opposition Leader Navraj Gurung Discusses His Party's Stand on Casinos*,

gambling is a vice and should not be accessible to the locals, its mere function is to serve as a tourist attraction. *Second*, taxation and licenses for gambling are usually high, which might lead people to circumvent these legalised websites⁴³. *Third*, is the most trite of arguments that match fixing cannot be rooted out merely by legalising gambling. Nevertheless, it is easy to conclude that the advantages outweigh the disadvantages. Before the authors discuss the procedure required to enact such legislation, the current governance of online gambling will be discussed.

Unfortunately, most laws governing gambling are restricted to brick and mortar premises. Central enactments that govern online gambling are the *Information Technology (Intermediary Rules), 2011* which place a responsibility of due diligence on the intermediary to inform users that no promotion or advertisements pertaining to gambling are permitted to be displayed on their websites (does not apply to state of Sikkim

Online Gaming and Lotteries, GLAWS, (Aug. 8, 2015), <https://glaws.in/2015/08/08/feature-senior-sikkim-opposition-leader-navraj-gurung-discusses-his-partys-stand-on-casinos-online-gaming-and-lotteries/>.

⁴³ Jay Sayta, *GST Council Announces 28% Tax on Casinos and Betting; 18% Tax Likely on Skill Games; Lottery Tax yet to be Announced*, GLAWS, (May 20, 2017), <https://glaws.in/2017/05/20/gst-council-announces-28-tax-casinos-betting-18-tax-likely-skill-games-lottery-tax-yet-announced/>.

or any state which wishes to legalise it⁴⁴). As already mentioned, there are FDI policies⁴⁵ and ECB Rules⁴⁶ that prevent the operation of foreign gambling websites in India.

On the state level, only Sikkim⁴⁷, Nagaland⁴⁸ and Telangana⁴⁹ have shown the foresight to govern online gambling. While Sikkim has permitted the same, Nagaland has explicitly banned online gambling and only permitted online games of skills to be licensed in its state. Telangana on the other hand has banned even online mixed games of chance and skill such as rummy and poker. The legal principle of '*functional equivalence*' applies to those states which have not enacted any laws on online gambling. Functional equivalence applies the general legal framework that exists offline to the online equivalent⁵⁰.

Sikkim is the first (and only) State with an online gambling statute : The Sikkim Online

Gaming (Regulation) Act, 2008 [**Sikkim Act**] and The Sikkim Online Gaming Rules, 2009 [**Sikkim Rules**]. The Sikkim Act only allows for an *intra-net connection* in the state, where the servers are located locally and the websites are only available within the state. This is because most other states have banned gambling and Sikkim's legalisation of online gambling will be contrary to their laws. The Rule 3 of the Sikkim Rules provide thirteen games that are permitted to be played online. Advertisements for the games are permitted if they do not depict something indecent or immoral⁵¹. For licensing, a provisional license is first taken. Following this, technological investments are made within the state. If they meet the requirements of the Rules, then with payment of full license money, they are permitted to operate. As per Rule 5(2), this license is granted for a year with renewal for future period of 1 year at the fees of one lakh rupees. In line with India's foreign investment policy, only persons, companies and limited liability corporations [LLCs] incorporated in India and held or substantially controlled in India will be allowed to grant licenses⁵². In May 2016, Kapil Dev inaugurated the first online

⁴⁴ Jay Satya, *The farce called Sikkim online gaming licenses*, GLAWS, (May 13, 2011), <https://glaws.in/2011/05/13/the-farce-called-sikkim-online-gaming-licenses/>.

⁴⁵ FDI POLICY, *supra* note 39.

⁴⁶ FEMA NOTIFICATION, *supra* note 40.

⁴⁷ SIKKIM ACT, *supra* note 13.

⁴⁸ NAGALAND ACT, *supra* note 15.

⁴⁹ TELANGANA ORDINANCE, *supra* note 31.

⁵⁰ Bert-Jaap Koops, *Should ICT Regulation by Technology Neutral*, STARTING POINTS FOR ICT REGULATION. DECONSTRUCTING PREVALENT POLICY ONE-LINERS (IT & LAW SERIES) Vol 9 (2006), 84.

⁵¹ The Sikkim Online Gaming (Regulation) Rules, 2009, Rule 8.

⁵² *Id.*, Rule 2(g).

betting centre in Gangtok, owned by Golden Gaming International Pvt Ltd⁵³.

Nagaland's Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, and Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Rules, 2016 [together **Nagaland Gaming Laws**] are equally extensive. Aside from the accepted games of skills (as per SC decisions), virtual cricket, football, chess and sudoku can be played⁵⁴. Licenses are only granted after empanelled firms (lawyers, financial experts, and information technology companies) ensure that the prerequisites are met⁵⁵. Such prerequisites include that the decision-making licensee is incorporated in India and the technology is hosted within India itself. Since, the Nagaland Gaming Laws prohibit gambling, the websites can operate in other parts of India as well (where mixed games are permitted).

⁵³Pramod Giri, *Kapil Dev inaugurates India's first online betting centre in Sikkim*, HINDUSTAN TIMES, (May 13, 2016), <http://www.hindustantimes.com/india/kapil-dev-inaugurates-india-s-first-online-betting-centre-in-gangtok/story-wlHiIKpDeBSelxMXCMScL.html>.

⁵⁴ANI, *Nagaland Governor approves Online Skill Games Bill*, BUSINESS STANDARD, (May 10, 2016) http://www.business-standard.com/article/news-ani/nagaland-governor-approves-online-skill-games-bill-116051001054_1.html.

⁵⁵ Ganesh Prasad & Sharad Moudgal, *India: Gambling 2017*, INTERNATIONAL COMPARATIVE LEGAL GUIDES, (Dec. 2, 2016), <https://iclg.com/practice-areas/gambling/gambling-2017/india>.

Telangana's State Gaming Amendment Ordinance, 2017 [**Telangana Ordinance**]⁵⁶ amends the Telangana Gaming Act, 1974 and penalises all those who promote online card games (even games of skill such as rummy and poker) and online gambling. Although rummy was declared legal by the SC in the 1968 *Satyannarayana Case*, the same case also held that any operator or business owner who earned more than administrative profits would be running a 'public gaming house'⁵⁷. These public gaming houses are illegal under the PGA. Online rummy is usually played on websites that take a percentage of the award that is won from such games, making them a public gaming house as per the *Satyannarayana* judgment. However, the Andhra Pradesh High Court in *Krishna Kumar and Anr. v. State of A.P.*, did not interpret this judgment to penalise operators of games of skill which earn profit from the winnings of games of skill⁵⁸. The Court held that since games of skill are expressly not equated with gambling, it does not matter how much the operator earns from them⁵⁹.

⁵⁶ TELANGANA ORDINANCE, *supra* note 31.

⁵⁷ SATYANARAYANA CASE, *supra* note 22.

⁵⁸ Krishna Kumar and Anr. v. State of A.P., (2003) CriLJ143.

⁵⁹ Ranjana Adhikari & Smitha Krishna Prasad & Gowree Gokhale, *The Gaming Quotient of Online Rummy*, LEGAL ERA, (Oct., 2013), http://www.nishithdesai.com/fileadmin/user_upload/pdfs/

Interestingly, the matter as to the legality of online rummy had already come up before the SC in the Mahalakshmi Cultural Association case but the court had declined to hear the petition⁶⁰.

The judgment in Satyanarayana and Krishna Kumar was followed by that of the Delhi District Court in the *Gaussian Network case*⁶¹. The Court had to give its opinion as to whether an online poker site would be a legal investment in Delhi. The District Court held online poker to be a game of chance, and concluded that wagering on games of skill, where the online companies take a cut is illegal. This judgement explicitly equated an online poker site to a common gaming house. The case was appealed as the petitioners pointed that poker was commonly considered a game of skill and expressly legalized in some states. However, fear of a future adverse judgement from the High Court led them to finally withdraw their petition. They sought to avoid the negative impression that would be created in the minds of

the people if poker was banned by the High Court. It may be noted here that the company which is a party to the case, now runs an online poker site called Adda52 based in Gurugram, Haryana (where online games of skill are allowed as they remain ungoverned)⁶².

Regardless of the appropriate High Court decision in the Krishna Kumar case, the interpretation of Satyanarayana tilts towards criminalising online games of skills (as long as they charge above an administrative fee). However, this principle is highly criticised as gambling in itself is to be determined by the components of the game and not the method of the business owner or operator. A public gaming house, is one where instruments of gaming are kept for the profit of the person who owns the house⁶³. Even after applying functional equivalence, the act applies to the instruments of gaming (games of chance), not the games of skill as they are specifically excluded from the Act.

Moreover, the Gaussian Network case also implied that when the games of skill are played online, the elements of skill, such as observing

Research%20Articles/The_Gambling_Quotient_Of_Online_Rummy.pdf.

⁶⁰ Jay Sayta, *Will a 5-Judge Bench of the Supreme Court eventually decide the legality of online rummy and poker?*, GLAWS, (July 25, 2017), <https://glaws.in/2017/07/26/will-5-judge-bench-supreme-court-eventually-decide-legality-online-rummy-poker/>.

⁶¹ Gaussian Network Pvt Ltd v. Monica Lakhanpal, (2012) Suti no. 32/2012.

⁶² Jay Satya, *Adda52 poker for stakes matter adjourned to 21st April by Delhi HC*, GLAWS, (Jan 21, 2016), <https://glaws.in/2016/01/21/adda52-poker-for-stakes-matter-adjourned-to-21st-april-by-delhi-hc/>.

⁶³ The Public Gambling Act, 1867, §1.

another person's body language or memorising cards is eliminated and the elements of chance dominate the game. Online poker requires a person to play the game much faster, reducing his ability to think and play with reason⁶⁴. This understanding of online games is limited as while they do not consist of the skills involved while playing them physically, it still becomes necessary to observe the opponents playing tactics through previous games with other players on the website⁶⁵. In conclusion, online games of skill are valid in those states where *Fortunately, if a bill legalising online gambling is brought into India the confusion pertaining to validity of online games of skill will no longer exist with the repeal of the PGA and other state centric acts.*

PAN-INDIA LEGALISATION OF ONLINE SPORTS BETTING

Since, both sports betting and betting in horse races are similar, it has been suggested that sports betting is in fact already legal as per the laws of India. Both involve determining the skills of the players before placing bets on them. The possibility that sports betting is already legal in India was *suggested by the head of the*

*former IPL probe committee, Justice Mukul Mudgal*⁶⁶. This was supported by the case that decided the fate of 36 cricketers in the match fixing IPL scandal, where the New Delhi Additional Sessions Judge acquitted the defendants from the charge of gambling⁶⁷. The judge factored in the aspect of both games involving betting on a game of skill and held that it was exempted from § 12 of the PGA. Now, with clarity on the issue of legalising online games of skill, online betting of sports can also be validated across India. However, these instances do not cite the concrete stance of the law on online sports betting. To formulise a policy for online sports betting in India, it is still important to determine enacting the same through a legislation.

*Chapter IX of the Lodha Committee report deals with match fixing and sports betting*⁶⁸. The committee differentiates between the two and considers the former as a criminal act which spoils the integrity of the game for the benefit of a few. The latter it describes as a general

⁶⁴ SPORTS LAW AND POLICY CENTRE, *supra* note 11, p. 16-18.

⁶⁵ *Id.*

⁶⁶ Jay Sayta, *The court order that freed Sreesanth may have also opened the gates for cricket betting*, Scroll.in, (Aug. 4, 2015), <http://scroll.in/article/745894/the-court-order-that-freed-sreesanth-may-have-also-opened-the-gates-for-cricket-betting>.

⁶⁷ *Id.*

⁶⁸ *Supreme Court Committee on Reforms in Cricket*, <https://lodhacommittee.wordpress.com/> (last visited on July 20, 2017).

malaise in society which, if regulated, could be played in a transparent and fair manner. Therefore, it reasons that online betting should be allowed in India. Oddly, the committee itself never delved into the possibility on online sports betting being legal in India and alludes to it as a social evil that will be curbed if legalised to a certain extent. The SC eventually left this matter for the Law Commission of the Government of India [LCI] to determine, as it could not be implemented by the BCCI⁶⁹.

Based on the Supreme Court order, (former) Justice Balbir Chauhan visited London, to understand its policy of gambling and betting laws. Later, he addressed a gathering of International gaming operators and lawyers and stated that the LCI would seriously consider legalising online gambling in India⁷⁰. Although Union Law Minister DV Sadananda Gowda rejected the proposal of legalising gambling⁷¹,

the Law Commission on May 30, 2017 has issued a public notice calling for recommendations on gambling and betting in India⁷². The LCI has asked for a systematic study on the existing laws for gambling and betting and procedures to legalise it. The notice says that the since online gambling operates clandestinely in India, creating an almost parallel economy with the huge amounts of black money investment, it is safer to legalise and regulate the sector.

The Supreme Court on April 28, 2017 agreed to hear the matter on legalising sports betting in India. The Public Interest Litigation [PIL] involves all States and Union Territories as defendants and will help conclusively decide the fate of online legal gambling and sports betting in India⁷³. There are several considerations before legalising online betting and gambling. For the Union to enact a law in this matter would mean that a constitutional amendment

⁶⁹ Jay Sayta, *SC says Lodha committee recommendation to legalise betting falls in the domain of legislature*, GLAWS, (July 18, 2016), <https://glaws.in/2016/07/18/sc-says-lodha-committee-recommendation-to-legalise-betting-falls-in-the-domain-of-legislature/>.

⁷⁰ *Casinos, sports betting to be legalised in India- Law panel examining the issue*, HINDUSTAN TIMES, (March 6, 2017), <http://www.hindustantimes.com/india-news/casinos-sports-betting-to-be-legalised-in-india-law-panel-examining-the-issue/story-RURXc21Q94LTQKhHJlxTO.html>.

⁷¹ Raghav Ohri, *There are sufficient laws to end betting, legalisation can be debated later: DV Sadananda Gowda*, (Jan 7, 2016), THE ECONOMIC TIMES,

<http://economictimes.indiatimes.com/opinion/interviews/t-here-are-sufficient-laws-to-end-betting-legalisation-can-be-debated-later-dv-sadanandagowda/articleshow/50474889.cms>.

⁷² Report on Betting and Gambling, LAW COMMISSION OF INDIA, <http://lawcommissionofindia.nic.in/BettingandGambling.pdf>. (last visited on July 28, 2017).

⁷³ Amit Choudhary, *Supreme Court to examine legalising betting in sport*, THE TIMES OF INDIA, (Apr. 29, 2017), <http://timesofindia.indiatimes.com/sports/off-the-field/supreme-court-to-examine-legalising-betting-in-sport/articleshow/58428615.cms>.

under Article 386 will be required to shift betting from the List II of the Seventh schedule to List I. Such a move would not be uncalled for as lotteries are already governed by the Union under Entry 40 of the List I. Since most states have allowed for a dearth of adequate laws on gambling, it would be ironical for them to petition against the losing of their mandate under List II. The repealing of the obsolete state laws with the ushering in of a central enactment strikes as the best possible solution. Online gambling easily transgresses state boundaries and a central act for the same will lead to an appropriate regulatory regime. As pointed out by the President of the Supreme Court Bar Association, Dushyant Dave and Counsel for BCCI, C. Sundaram, sports betting is legalised on online channels in almost all democratic countries. A central act in India for online betting will place it at par with the other developed or developing economies around the world⁷⁴.

CONCLUSION

First, we will examine the situation in which sports betting were not considered as a game of skill but as gambling in India. Despite hesitation

⁷⁴ Jay Sayta, *Legal Eagles advocate regulating betting*, GLAWS, <https://glaws.in/2016/01/10/legal-eagles-advocate-regulating-sports-betting/> (Jan. 26, 2017).

from the law minister to enact an over-arching law for online betting, the recent Supreme Court PIL brings hope to the dreams of several Indian bettors. Even if the SC decides that a Union law cannot be enacted on a state subject matter, a constitutional amendment will bring gambling and betting under the ambit of List I. As for the constitutional amendment, there is a concern that state legislative assemblies may themselves not ratify such a measure as they do not wish for gambling to be legalised. Gambling is considered immoral by several politicians who have even criticised Sikkim and Goa for permitting it.

Therefore, in anticipating a situation where gambling is not legalised, we must look to legalising online betting as a game of skill. States need to ensure that they enact a comprehensive definition of gambling for their jurisdiction. This definition of gambling must be in line with the Supreme Court decisions that have been discussed, i.e., allowing games which involve preponderant amounts of skill. The M.J Sivani case had only permitted the States to ban games of skill if needed to protect public order or curb the propagation of immoral practices⁷⁵. Otherwise, games of skill are protected under Article 19(1)(g) of the Constitution. The games

⁷⁵ M. J. SIVANI CASE, *supra* note 25.

of skill *must be legalised in all States of India*. These measures will be applicable to the states of Assam, Odisha and Telangana whose statutes and ordinances provide otherwise. Further, it has been speculated that a five judge bench will eventually decide the validity of the Telangana Ordinance⁷⁶. When it does, online games of skill must be excluded from the purview of ‘common gaming houses’ under the PGA. Permitting such games of skill to be played physically but restricting their online application makes for a

ludicrous policy in this age of technology. An argument could be made that these websites must charge only an administrative fee from the participants. However, when these companies can build sites that circumvent Indian laws and earn greater profits from them, why would they agree to be regulated by such an unnecessarily stringent law? Thus, if these measures are followed, online sports betting sites will function even in the absence of legalised gambling.

⁷⁶ Jay Sayta, *Will a 5-judge bench of the Supreme Court eventually decide the legality of online rummy and poker?*, (July 26, 2017), GLAWS, <https://glaws.in/2017/07/26/will-5-judge-bench-supreme-court-eventually-decide-legality-online-rummy-poker/>.