

Gambling and Betting in India

Audrija Parasar

Student, Department of Law, Christ University, Bengaluru, India

Abstract—The following paper on Gambling and Betting in India shows how these illegal betting has destroyed the lives of many poor people in a country where almost half of the population is below poverty line. It also shows the lacunae in the Law Commission Report, 276 regularizing gambling in India and have suggested reforms as to how it can be properly maintained and regularized. It is generally seen that even after gambling been an illegal sport in the whole of India except for the states of Goa, Sikkim and Daman, how it is being so widely practiced in India, especially in the fields of sports. Therefore, this paper suggests regulations and brings up the lacunae in the laws governing gambling and betting in India.

Index Terms— gambling, regulations, lacunae

I. INTRODUCTION: GAMBLING AND BETTING IN ANCIENT INDIA

Several instances of gambling and betting can be seen in the Indian history and mythology. It is seen in the infamous epics Ramayana and Mahabharata. It can be, for instance, seen that Yudhishthira, the eldest son of the Pandu, had an itch for gambling. He was in fact seen losing his kingdom, his wife and his brothers in the ‘game of dice’. The craze for gambling in ancient India can also be seen in the hymn of Rig Veda and Atharva Veda. The Narada Smriti suggests that gambling is an amusing sport which should not be criminalised. Contrary to all these famous epics and vedas, Chanakya suggested that gambling is a criminal activity and hence it should be regularised and those who violated the provisions of the regulation should be penalised. Despite all these, there has always been a confusion as to how it could be regularised, as it can cause harm to not one-self but also others and lead to destruction of one’s life.

Over time, the rules, regulations and techniques of Gambling and betting has a considerable change. Today, people gamble and bet over phone, SMSs, Skype etc. Easy access to internet betting sites, having a global presence has made regulation of betting a serious challenge. Telecommunication technology and global bank transfers have linked betting hosts into networks. But despite these developments, ‘skill’ or ‘chance’ is still a decisive factor in determining the legality of gambling and betting in India.

The Supreme Court in the case of Kishan Chander and others v. State of Madhya Pradesh quoted that despite gambling being an evil sport and destroying the lives of many, it cannot, however, be completely banned and criminalized because it is a profitable business to many. Therefore, a law must be made

which is arbitrary to the legal framework.

Gambling has existed in India since times immemorial. With technological innovation and evolution of the internet as well as telecom, online gaming in India has become an extremely popular mode of entertainment in an as yet nascent market. Online games and lotteries are new entrants to the otherwise offline industry of gambling, betting and wagering in physical gaming houses that have been strictly regulated in India. The Public Gambling Act, 1867 is a central legislation that prohibits all games of chance except lotteries and games of skill. Entry 34 in List II in Seventh Schedule of the Constitution of India gives powers to States to make their own betting laws and gambling laws and policy within their territories. Such power includes the power to legislate on lotteries other than State Lotteries. Only the Central Government is allowed to legislate on lotteries organized by the Government of India or by a State Government. At present, various forms of gambling and betting, including setting up of casinos, are legal in Goa, Daman and Sikkim. Most of the legislation pertaining to lotteries and gambling were enacted at a time when the online medium was almost non-existent and online gambling was not envisaged. There exists a lacuna that leaves room for ambiguous interpretations and, therefore, presents both opportunities as well as legal risks for online gaming and lottery companies. Two latest Supreme Court judgements- the Mahalakshmi lottery Case and Kerala Case were expected to provide clarity on the issue of the legality of online gaming and lotteries.

Gambling has been held by the Supreme Court in the case of Dr. K.R. Lakshmanan vs State of Tamil Nadu (Lakshmanan Case) as wagering or betting on games of chance, excluding games of skill such as horse betting.

Game of Chance or Game of Skill

In State of Andhra Pradesh Vs. Satyanarayana (Supreme Court judgement on rummy), the game of rummy was held by the Supreme Court to be a game of skill on the ground that unlike ‘three cards’ games of ‘flush’, ‘brag’, etc., which are games of pure chance, rummy primarily involves the preponderance of skill because the fall of cards needs to be memorized and considerable skill is required in holding and discarding cards for building up rummy. In all games entailing shuffling and dealing out of cards, there is an element of chance because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. A game could be either a game of chance,

game of skill or entail both. In Lakshmanan case, the Supreme Court, referring to the cases of State of Bombay v. R. M. D. Chamarbaugwala and Satyanarayana case, noted that competitions, where success depends on the substantial degree of skill, are not 'gambling' and irrespective of any element of chance, a game would be a game of 'mere skill' if it is primarily a game of skill. Although the element of chance cannot be ruled out, success in a game of skill depends principally upon the superior knowledge, training, attention, experience and adroitness of the player and 'therefore, the expression 'mere skill' would mean the substantial degree or preponderance of skill. Therefore, the question is rummy legal in India has its answer in negative.

A. *Lacunae in the Law Commission Report Regularising Gambling and Betting in India*

The Law Commission is yet to find relevance of how to strike a balance between the monetary benefits and the social impact of betting if it were to be legalised at a time when legitimising betting in sports has gained traction in the country. The commission has not yet laid its statement on the findings on the issue of legalising betting in sports. The commission has been tasked by the Supreme Court to look into the issue of sports betting legalisation based on Justice Lodha Committee report. The commission was asked by the top court to examine two crucial aspects. Firstly, whether betting should be legalised and if it is, then what should be the framework of the central legislation to be enacted by the Parliament.

B. *Constitution of India and Betting*

During the Constituent Assembly Debates on 02 September 1949, a motion was taken up to add Entry 45, (present entry 34) dealing with betting and gambling, under List II of the Seventh Schedule. The move was strongly opposed by Prof. Shibban Lal Saksena, Shri Lakshminarayan Sahu and Sardar Hukam Singh. Prof. Saxena felt that gambling was a crime and that gambling and betting should be banned. Shri Sahu opposed the move by observing that we were guided by the lofty ideals of Mahatma Gandhi and that the lessons learnt from the Mahabharat were not to be forgotten. He felt that even taxation on such items did not appear proper. The Members of the Constituent Assembly were of the view that Constituent Assembly must prohibit betting and gambling. However, Dr. Ambedkar had a different view. He explained that not mentioning betting and gambling would not mean that there will not be any betting and gambling in the country at all. He apprehended that if this entry was omitted, there would be absolutely no control over betting and gambling activities at all. He felt that if Entry 45 under List II were to be there, it would either be used for the purpose of permitting betting and gambling or for the purpose of prohibiting them. If the entry didn't exist, the provincial governments would be absolutely helpless in these matters. Another consequence that Dr. Ambedkar pointed out was that in the absence of the proposed Entry 45 of List II, 'betting and gambling' would automatically

find a place in List I under Entry 91. He was of the opinion that if there is a strong objection to adding Entry 45 under List II, 56 Constituent Assembly Debates, Official Report, Vol IX, Sixth Reprint, Reprinted by Lok Sabha Secretariat, New Delhi, 2014. 29 then there must be an Article in the Constitution itself explicitly declaring betting and gambling as an offence. He explained that the entry would act as a preventive measure and the States would have full power to prohibit gambling. Hence the Entry on 'betting and gambling' was included in the State list to empower the States to make laws either to prohibit betting or gambling or to regulate it, according to the socio-economic requirements of the State. This stance provided the scope to accommodate different notions of morality prevailing in various States. According to Constitutional experts, the Constitution provides for a quasi-federal structure, entailing that it is federal in form but unitary in spirit. The Legislative powers are distributed between the Centre and the States under Article 246 of the Constitution of India, on various subject matters enumerated in three legislative lists of the Seventh Schedule. According to Entry 40 of List I, the Parliament has the power to legislate on 'Lotteries organized by the Government of India as well as the Government of any State'. Article 249 of the Constitution empowers the Parliament to legislate with respect to a matter in the State List in the National Interest while Article 252 empowers the Parliament to legislate for two or more States on request made by such States. Thus, in the event that, the Parliament legislates on the subject of gambling and betting, such a law will not stand vitiated on the ground of lack of competence or that it infringes the legislative powers of the States.

The statutory provisions that governs the gambling and betting in India are:

1. The Lotteries (Regulation) Act, 1998
2. Indian Penal Code, 1860
3. The Indian Contract Act, 1872 (Contract Act)
4. Prize Competitions Act, 1955
5. Foreign Exchange Management Act, 1999
6. Payment and Settlement Systems Act, 2007
7. The Prevention of Money Laundering Act, 2002
8. The Young Person's (Harmful Publications) Act, 1956
9. The Indecent Representation of Women (Prohibition) Act, 1986.
10. The Information Technology Act, 2000 (IT Act)
11. Information Technology (Intermediaries Guidelines) Rules, 2011 (Intermediaries Rules)
12. Telecom Commercial Communications Customer Preference Regulations, 2010.
13. The Cable Television Network Rules, 1994
14. Income Tax Act, 1961
15. The Consumer Protection Act, 1986
16. Central Goods and Services Tax Act, 2017
- 17.

Despite of all these regulations, there are still a lot of lacunae in the Law Commission Report regularising Gambling in India.

Gamblers are often tempted to play for longer durations and up the ante when it appears to them that they are just about to win. This is, quite often than not, a mirage, and over time, this overly optimistic attitude manifests itself as 'loss chasing', wherein gamblers keep on playing in an effort to recover their incessantly accruing loss. 'Loss chasing' is one of the most important identifier of 'problem gambling', and closely resembles drug addiction. Problem gamblers also experience cravings and withdrawal-symptoms when deprived of gambling. Gamblers tend to over-estimate their chances of winning and often suffer from an 'illusion of control', i.e., the belief on their part that they can employ skill over an outcome which actually depends upon chance. There are no specific Central Laws governing online gambling in India. Sikkim and Nagaland are the only States that expressly permit online gambling. While the Sikkim On-line Gaming (Regulation) Act, 2008 (as it stands after the Amendment of 2015) restricts the offering and playing of "online games and sports games" to the physical premises of gaming parlours through intra-net gaming terminals within the territory of the State, the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Gaming Act, 2016 (hereinafter referred as Nagaland Act) on the other hand, seeks to provide for pan-India application of licences obtained thereunder.

C. Consequences that ensue due to unregulated gambling and betting

Some of the major problems related to illegal gambling and betting activities are the exponential growth of illegal trade and commerce, and corrupt practices such as spot-fixing and match-fixing being employed in sports, particularly cricket, the most popular sport in India. Left unregulated, this problem could further manifest and grow uncontrollably. 8.17 The data made available to the Commission by the Delhi Police reveals that in the year 2016, 1098 cases have been registered under the gambling act while in 2017, the figure stood at 1273. In 2018 (up to 5 May 2018 alone), 544 cases have been registered. A total of 2916 cases have been registered under the gambling act in a period of 28 months, i.e., 104 cases per month, on an average. The Delhi Police terms gambling as "connecting crime" that connects the gambler with other criminal activities. In order to regain the lost money or in an attempt to 'invest' more money into gambling, expecting more return, when gambling is not in a regulatory framework, an illegal gambler is bound to end up in committing other crimes like chain snatching, looting, stealing, etc. Legalising gambling and betting and for effectively regulating such activities could curb creation of more and more criminals.

D. Illegal Commerce

A total ban on gambling and betting activities would not completely eradicate the problem. Rather, it would drive it straight to the black-market²⁰⁰. This in turn would result in making it harder to monitor such illegal activities, it would also render the helpless out of the protection of the law and at the

mercy of loan-sharks and crime-lords. It would further result in crime syndicates profiting from unregulated gambling activities creating a vicious circle of proliferation of illegal activities and commerce. Needless to say, illegal betting causes substantial monetary loss to the economy, with profits escaping the purview of taxation, and also increases the circulation of black money in the market. In a nutshell, such illegal commerce so conducted, causes damage to the economy of the nation. The issue of Online Gambling has further been worsened by the rise in popularity and ease of availability of VC, a form of electronic money. Having taken the form of a parallel economy, gambling with VC, pushes even the Online Gambling market underground, and very often, out of the reach of the law enforcement authorities. The Reserve Bank of India by way of Circular dated 6th April outlawed the use of VC²⁰¹. The circular was challenged by the Internet and Mobile Association of India. The Supreme Court while entertaining the petition refused to grant any interim relief to the petitioner vide Order dated 3 July 2018²⁰². Nonetheless the size of global market dealing with VC in Gambling is evident by the recent case of the Hong Kong police, where they caught people using online portals including some instant messaging applications to gamble with the help of VC of the likes of Bitcoin. The Philippine Gaming Regulator, PAGCOR is facing a similar problem, losing millions to illegal and unregulated gambling every year.

E. Corruption in Sports

Indian sports, particularly cricket, have been most adversely affected by illegal betting and gambling activities. To increase their chances of winning the bet, people engage in corrupt practices viz. bribing individual players to perform poorly and sometimes entire teams to throw away the games. Contrary to 'match-fixing', where the end result of the game is pre-decided, 'spot-fixing' or 'sessions betting' ²⁰⁴ entails illegal activity in sports regarding a specific aspect of the game unrelated to the final result of the game. The bet is won if and when the event (for example, a batsman hitting a six within the following 'x' number of deliveries or a bowler claiming a wicket in a particular over etc.) takes place. Huge sums of money poured in these matches exacerbate this problem. The Ministry of Youth Affairs and Sports, Department of Sports enforced the "National Sports Development Code of India, 2011", which aims at preventing betting and gambling in sports. The Ministry has recently appointed a committee to draft an updated version of the Code, which is expected to be published soon News reports²⁰⁶ suggest that bets worth INR 1,300 crore (approx.) are placed on every One Day International cricket match that the Indian team plays. For example, in 2015, the Indian cricket team played 21 One Day International matches, which brings the total betting figure to INR 27,300 crore (approx.). In the year 2000, the Delhi Police unearthed a match-fixing scandal involving reputed players. The Committee, headed by former Chief Justice of India, Justice R.M. Lodha, was set up to investigate the spot-fixing incidents that took place in the IPL.

The Committee suggested that regulated betting should be permitted to curb the menace of match-fixing. According to Sir Ronnie Flanagan, Chairman, International Cricket Council, Anti-Corruption Unit, it is easier to monitor illegal betting activity in a regulated market. If a licensed entity is caught rigging games, its business would be ruined, both legally as well as in terms of customer base. There would be greater transparency when betting is done in the open markets, thereby preserving the integrity of sports by reducing the chances of rigged outcomes. In May 2018, a TV channel has revealed that corruption in sports, particularly cricket is more rampant than ever over a period of 18 months. The news agency has documented various evidences for the same, including tapes of multiple meeting with a “fixer” who is part of a crime syndicate in Mumbai. The Investigation report further points to match-fixing in various matches, specifically matches between India and England at Chennai in December 2016 and India and Australia at Ranchi in March, 2017. The documentary has the “fixer” admitting to have paid millions of dollars to bribe players in the world's top Test teams and that such a payment is often made through a middleman or cricket official. The Report and all evidences have been passed onto the global governing body for cricket, the International Cricket Council, which commented, that it was taking Al Jazeera's findings very seriously and has launched an investigation on the evidences provided.

Therefore, it is obvious that betting and corruption in sports, especially cricket, is rampant throughout the world. It has reached a point, where the State machinery is finding it difficult to completely curb it. Guided by this realisation, one possible way out would be to legalise sports betting²⁰⁹, which would go a long way in regulating and controlling the same, while also earning huge revenues by taxing it. In fact, Countries like Australia, United Kingdom, South Africa, Sri Lanka and New Zealand have taken a step in this direction, legalising and regulating betting in sports.

F. Whether These Lacunae Be Reformed. If Yes, To What Extent?

Various stakeholders have suggested the benefits of a regulated law for gambling and betting in India. Some of the advantages of regulating betting activities, pointed out, are as follows:

- i. It will generate considerable revenue;
- ii. It will generate employment;
- iii. Development of tourism as it may work as a complimentary industry;
- iv. It will protect the vulnerable sections of the society; and
- v. Prevent any kind of inconvenience at the hands of the law enforcement authorities.

Since gambling is criminalized in most states, most gambling and betting activities are controlled by organized crime syndicates. This leads to not only a loss of revenue for the government, but also leads to other effects like match-fixing,

black money and funding of other criminal activities. By driving the market for gambling underground, it is transformed into a cash cow for the mafia. The time is ripe for the government to consider a fresh strategy towards gambling laws. There is a strong argument against a complete ban on gambling: should the state really be banning something which is nothing but a private contract between two mature, consenting adults? Is that not too heavy a restriction on individual liberty and freedom of choice? Most western democracies have legalized gambling precisely because of these reasons. It is in this context that Radley Balko's arguments in *The Economist* debate on gambling are worth quoting. According to Balko, A free society where government bans activities it finds immoral or unseemly is not really a free society...The government has no business policing its citizens personal life for bad habits.

Besides, the massive amounts of government revenue and the possibility of weakening the grip of criminal elements should surely convince the government to take a fresh approach. The government may consider taking a three-pronged strategy through which it can usher in much-needed reforms in India's gambling laws.

Firstly, the central government should table a constitutional amendment to bring regulation of gambling under the Union list. This can be done by altering List II of the Seventh Schedule of the Constitution, which empowers state governments to make laws concerning gambling. This will allow a unified, pan-Indian strategy towards dealing with the problem.

Secondly, legislations that have outlived their utility should be repealed. Most gambling provisions date back to the later part of the 18th century and may no longer be acceptable in the current day and age. Punishments and provisions of the Public Gambling Act, 1867 and other similar state legislations may seem frivolous today. For example, a fine of Rs.1, 000 may not deter a bookmaker dealing in crores. Moreover, the police have neither the resources nor the will to tackle the problem of gambling. Thus, in most cases, those indulging in wagering activities are let off with a fine or worse bribe the police officials to be let off. This, plus the numerous procedural requirements makes the prosecution of any major illegal gambling operator almost impossible.

Thirdly, the government should introduce a new comprehensive Central legislation in lieu of the repealed legislations and constitutional amendments. The new legislation should encompass all forms of gambling and gambling through various modes of communication.

The lawmakers can take inspiration from UK's Gambling Act of 2005, which lays down a framework for regulating all forms of gambling activities. The Act has envisaged gambling through various modern means of communication like mobile, television and internet. The Act also lays down strict guidelines allowing gambling operators to accept wagers from adults over 18 years of age, provides guidelines for preventing gambling addiction and establishes a regulatory body overseeing all gambling operations. The abovementioned provisions will

solve most social and economic problems associated with the gambling industry. By allowing only qualified adults to participate in wagering activities, setting up a regulatory mechanism to prevent addiction and warning people as to the harmful effects of gambling; most of the concerns as to the ill-effects of gambling will be suitably addressed.

By following a licensing policy in allowing the setting up of casinos and gambling ventures, black money transaction and funding of criminal activities will be curbed. The government will be able to keep a check on the financial activities of the gambling companies. A strict vigil on the finances of these companies will also stop funding of match-fixing and other cheating in sports.

These provisions will also profit the government exchequer by way of huge taxes. These taxes can be used by the government for funding its various welfare schemes. Moreover, by changing its Foreign Direct investment (FDI) policy, it would be possible to allow gambling companies of international repute to operate from India, thus offering quality gaming services to the Indian consumers.

One can only hope that the government does not turn a blind

eye to these much needed and overdue reforms in gambling laws.

II. CONCLUSION

By now, it should be clear that although gambling and betting in India is not fully legalised in all the states, it is still being practiced to a large extent and have destroyed the lives of many poor people who are being addicted to it and are finally victimised. Therefore, this paper suggests that it should be legalised in the whole of India and there should be a proper law regularising it. Also, the Government should see to it that there should not be any illegal betting mainly in the field of sports.

REFERENCES

- [1] Law Commission of India Report 276
- [2] 1965 AIR 307 SCR (1) 765
- [3] Times of India on gambling in India
- [4] India Bet- Gambling Laws in India
- [5] Regularising betting: The Law Commission Report
- [6] Law Commission Report 276
- [7] Article: The time is ripe for gambling law reforms