

## LEGALIZATION OF SPORTS BETTING IN INDIA

Written by **Aditya Agrawal\*** & **Dhruvo Das\*\***

\* 2nd Year BALLB Student, School of Law, CHRIST (Deemed to be University)

\*\* 2nd Year BALLB Student, School of Law, CHRIST (Deemed to be University)

---

### **Abstract**

The Sports betting industry has grown rapidly over the past few decades and is a market, worth millions. Betting in sports is illegal in India under the existing legislative framework. The Public Gambling Act, 1867 is the paramount legislation that heavily restricts gambling excluding selective categories. It is paradoxical in nature as it sanctions gambling in horse racing but impedes the same in other sports. Since it is a colonial legislation it is ignorant about online betting as well. The current framework fails to elucidate an issue that is alarmingly ascending. Betting in sports is bound to exist and legalization of gambling seems like the solitary solution to this prodigious problem. Various committees such as the Mudgal Committee and Lodha committee have laid down a strong stance for the legalization of betting in sports. Regulating betting in sports will provide financial gains to the government, assist in providing employment and will also reduce the menace posed by the black markets.

The law was based on the premise that it is a game determined entirely or in part by lot or mere luck but gambling in sport involves application of skill and knowledge by the individuals involved in the activity. The research paper deals with a significant contemporary issue which is appalling in nature and strives to propose a solution to the same. Through the course of this research paper, the authors will be assessing the current situation of sports betting in India, providing arguments for its legalization and comparing it with the international scenario. The authors have used books, law journals, credible internet sources and reliable reports and articles to arrive at a strong conclusion.

## Introduction

The term gambling can be defined as “to play a game for money or property or to bet on an uncertain outcome”<sup>1</sup>. Gambling has always been considered as one of the most pleasurable and popular pastime activities and still holds its place in the Indian culture. The act of gambling has been mentioned in the ancient Indian scriptures such as Mahabharata, where the kings were willing to risk their kingdoms, wealth and even their family members. Common type of gambling practices includes card games, dice games, lotteries, electronic games such as slots and gambling on sporting events.

“Betting” in sports is the act or practice of making a wager on the outcome of sports events.<sup>2</sup> Today betting generates a great interest in sports and turns it into a business venture, albeit illicit, worth millions.<sup>3</sup> Betting is practiced in outcomes of different types of sports such as cricket, hockey, football, horse racing and badminton with betting in cricket being the most widely practiced in India. Gambling seen its heyday in India during the 18<sup>th</sup> century when cricket exploded across the country, but the “Public Gambling Act of 1867” restricted the operation and visit of a “Gambling House”. It is the central legislation governing all forms of gambling in India whereas many states have their own state legislations. It prohibits all forms of gambling in sports with horse racing being the sole exception.

Bookmaking is illegal in India but that has not prevented a thriving industry estimated to be worth more than €250 million a year operating beyond the reach of national and international authorities.<sup>4</sup> Due to emergence of such a huge industry, crime and corruption related to sports betting has been on a rapid rise. While societal attitudes towards gambling have changed in the last century with gambling seen as legitimate form of recreation, Indian laws have not kept pace with time.<sup>5</sup>

## Current status of gambling in India

---

<sup>1</sup> MERRIAM WEBSTER, <https://www.merriam-webster.com/dictionary/gambling>.

<sup>2</sup> MUKUL MUDGAL, LAW AND SPORTS IN INDIA 165 (Lexis Nexis,2011).

<sup>3</sup> Id. at 165.

<sup>4</sup> Paul Kelso, *Government presses India to legalize gambling and stop spread of ‘cancer’; inside sports*, THE DAILY TELEGRAPH (London), September 8, 2010

<sup>5</sup> Jaydev Mody et al., *Should gambling be legalized*, THE HINDU (March 30, 2018, 01:20 AM), <https://www.thehindu.com/opinion/op-ed/should-gambling-be-legalised/article23385128.ece>.

Under the current legislative setup, gambling or betting in sports is prohibited by the Public Gambling Act of 1867. Section 2(b) of the act states that “gambling includes wagering or betting but doesn’t include a lottery”<sup>6</sup>. The act derives its validity from Article 372(1) of The Indian constitution which states “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 or repealed or amended by a competent legislature or other competent authority”<sup>7</sup>. A state legislature is competent to make laws qua taxes and betting under entry 62 state list<sup>8</sup> of the seventh schedule of the constitution. The main purpose of the legislation regarding gambling at different levels is to suppress and regulate gambling in ‘Public Gambling’ houses.

Betting in sports constitutes a black market worth millions. Also, FICCI, in 2016, estimated the illegal market’s worth to be nearly `10 lakh crore.<sup>9</sup> Even if legalization doesn't completely sanitize the betting industry, forcing operators to maintain electronic and paper trails will be a big help. Though unregulated, still the industry provides a source of living to thousands of youths across the country.

### **Online gambling in India**

Online gambling across the globe is divided into two types. First, being the casino style gambling consisting of games like poker and rummy. Second, being classified as betting in sports, where people place bets on sports events in real time taking a look at the odds of the games. In India, the only states that allow casino gambling are the Sikkim and Goa. However, the state that legally permits online casino gambling is the state of Sikkim.

In the second scenario, the betting process takes place through websites like Betfair and Bet365 that are based outside India that offers individuals to place bets online on sports events in real

---

<sup>6</sup> The Public Gambling Act, 1867, No.3,1867 (India)

<sup>7</sup> INDIA CONST. art. 372, cl. 1

<sup>8</sup> A Barathakur, ‘*Lotteries Revenue and social costs: A case for total ban on state sponsored gambling*’, 2 SCC 1, (2003).

<sup>9</sup> *Bet on legalising gambling: There are big gains – from revenue to bringing down crime*, FINANCIAL EXPRESS (July 7, 2018 3:12 AM), <https://www.financialexpress.com/opinion/bet-on-legalising-gambling-there-are-big-gains-from-revenue-to-bringing-down-crime/1234567/>

time. However, betting on sports is illegal in India. Such websites would usually fall outside the territorial jurisdiction of the Indian Law. In such a case, a person residing in India would be able to place a bet on websites, the servers of which are hosted in countries where betting is recognized by law.<sup>10</sup> One could do so by placing an online bet in such websites; making and receiving payment via the means of bank transfer, wire transfer etc. But since betting on sports other than horse racing is banned in India, the legislation has found ways to curb online betting.

In order to stop online betting, Indian government has no specific legislation but depends upon the provision of section 67 of the Information Technology Act<sup>11</sup> which commands a fine which may extend to Rs 1 lakh and a punishment which may extend to a period of 5 years for anyone who publishes or transmits or causes to be published in electronic mode any material which consists of offensive sexual material or if its effect is such as to tend to deprave and corrupt people who are likely to see, hear or read it. Since the act of gambling and betting in sports is illegal in India, it is quite evident that any website offering people such practice will come under the ambit of corrupt or deprave in the abovesaid provision.

The foreign exchange or transferring money from India to any foreign nation or bringing foreign capital into India is governed by the Foreign Exchange Management Act, 2000<sup>12</sup>. Rule 3 of Schedule Financial Exchange Management Act, 2000<sup>13</sup> prohibits the remittance for purchase of lottery tickets, banned magazines, football pools, sweepstakes etc. The rule prohibits any transfer relating to gambling and the provision has left it open to cover other forms of betting. Therefore, any individual would not be able to pay on these websites for the purpose. In another scenario where if any resident tries to participate in online gambling through these websites by opening an foreign currency account in countries where the act of betting in sports is legalized will attract the section 3 of The Foreign Exchange Management Regulations (Foreign currency amounts), 2000 which<sup>14</sup> prohibits any Indian resident from opening or holding or maintaining a foreign currency account without a special permission from the RBI.

---

<sup>10</sup> *Supra* note 3, at 181.

<sup>11</sup> Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India).

<sup>12</sup> Foreign Exchange Management Act, 2000, No 20, Acts of Parliament, 2000 (India).

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

## Why Should Betting in Sports be legalized?

### 1. *Bound to exist in some form or other*

The fact that betting has become a wide spread industry in India cannot be denied. An argument as to why sports betting need regulation in India or anywhere else in the world is because of the impact it has on the society. Sports betting becomes an easy source of earning money.<sup>15</sup> India is a vast country with a huge chunk of population living in poverty. The lack of amenities and money attracts people to indulge in the act of betting as they see it as an opportunity to earn quick money. It's a widely accepted opinion that betting cannot be stopped as a whole and it is bound to exist in some form or another.

### 2. *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'.<sup>16</sup> 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 Fortier*<sup>17</sup> 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'. Whereas, a 'game of skill' is one in which nothing is left to chance and in which superior knowledge and attention or superior strength, ability and practice, gain victory. The Supreme Court of India in the case of *Dr KR Lakshmanan v State of Tamil Nadu*<sup>18</sup> recognized that horse foot racing, boat racing, football and baseball are games of skill. The law is paradoxical in nature as it allows gambling in horse racing but prohibits the same in other sports. The judgements of the Supreme Court in the case of *State of Bombay v RMD Chamarbaugwala*<sup>19</sup> and in the case of *State of AP v K Satyanarayana*<sup>20</sup> clearly lays down that:

---

<sup>15</sup> *Supra* note 10, at 167.

<sup>16</sup> *Supra* note 7.

<sup>17</sup> *Rex v Fortier*, 13 Que K.B, 308.

<sup>18</sup> *D.R. K.R. Lakshmanan v. State of Tamil Nadu & Anr.*, (1996) 2 SCC 226 (India).

<sup>19</sup> *The State of Bombay vs R. M. D. Chamarbaugwala*, (1957) 1 SCR 874 (India).

<sup>20</sup> *State of A.P v. K. Satyanarayana*, (1968) 2 SCR 387 (India).

- (1) The competitions where success depends on substantial degree of skill are not ‘gambling.’
- (2) Despite there being an element of chance, if a game is preponderantly a game of skill, it would nevertheless be a game of ‘mere skill’.

Courts have constantly held in their various judgements that all sports come under the ambit of ‘game of skill’ and not under ‘game of chance’. Horse Racing is legal as it is a ‘game of skill’. It was observed that the outcome in a horse race depends on several factors like form, fitness and inherent capacity of the animal, the ability of the jockey, the weight carried and the distance of the race, which are all objective facts capable of being assessed by persons placing the bets.<sup>21</sup> Similarly in other sports the knowledge of the individual placing the bet to assess the pitch conditions, weather conditions, team composition, current form is extremely crucial. Hence according to this reasoning gambling in all sports should be legalized.

### ***3. Fantasy Sports: Similar to betting***

The Fantasy Sport industry has seen a rapid rise in the past decade. There are a number of Fantasy sport platforms in the form of applications and websites such as the Dream11. Fantasy sport games are the ones which require the user to draft a team from all the players participating in a particular match in a sport on a given day. After creation of the team the user is required to enter a contest hosted in these platforms by paying a certain amount of fee. There are a lot of such contests varying on the grounds of number of participants and the winning amounts. Different contests have different entry fees and winnings. Usually the users have to draft their teams before the commencement of the match. Once the match starts, each player playing in the match gets points based on his performance. The total score of the user is determined by the total of the points that the players in his drafted team score. The users are ranked on the basis of total scores of their team. The top ranked teams are entitled to the winning amount.

The fantasy sports industry has been fighting a legal battle of its own. In the case *Humphrey vs. Viacom*<sup>22</sup>, the plaintiff argued that the fees incurred to enter these contests are a form of wager or bet as the points acquired by the players are largely dependent on chance taking in

---

<sup>21</sup> *Supra* note 18.

<sup>22</sup> *Humphrey v. Viacom*, 2007 BL 38423, (DNJ 2007).

account the potential players injuries and other factors merely dependent on chance. The court dismissed the petition stating that an individual selecting a virtual team has to apply a lot of analytical skill and knowledge in order to decide the players.

In India, Nagaland introduced the Nagaland Prohibition of Gambling and Promotion of Online Games of Skill Act, 2005<sup>23</sup> which includes fantasy sports under the ambit of 'game of skill'. In 2017, the High Court of Punjab and Haryana held that Dream 11 is a game predominantly based on skill.<sup>24</sup> The High Court dismissed the petition drawing a parallel with the R. Lakshman<sup>25</sup> judgement. It also held that fantasy sports require the application of a substantial degree of analytical skill, judgement and discretion by the individual involved in it. The court accepted the arguments stated by the respondent Dream 11.com that fantasy sports require the ability of the individual to assess match conditions (Size of the stadium, team combination, player statistics, keeping a track of players recent performances).

Fantasy sports have been widely acknowledged as requiring participants to exercise their knowledge of players, performance history and statistics, and exercise skill in drafting and trading players to succeed.<sup>26</sup> Betting is very similar to fantasy sports as it requires the similar set of analytical sporting skills. One important factor that differentiates betting from fantasy sports is that it takes place in real time unlike fantasy sports where the team is created by the individual before the game. Additionally, betting requires superior of analytical skills than fantasy sports as it requires the individual to analyse the real time match situations and place his bets accordingly. The law is paradoxical in nature as it legalizes fantasy sport games but not betting in sports.

#### ***4. Financial gains are huge***

Another argument in favor of legalizing gambling is in the form of financial benefits that it provides to the states. The role of gambling in revenue generation is not new, even in the time of Kautiliya, gambling was a state regulated industry with a 5 percent tax on winnings.<sup>27</sup>

---

<sup>23</sup> Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, (2016) (India).

<sup>24</sup> Sri Varun Gumber vs The Union Territory of Chandigarh & Ors., (2017), CWP No. 7559.

<sup>25</sup> *Supra* note 21.

<sup>26</sup> *Supra* note 24.

<sup>27</sup> *Supra* note 15, at 175.

Legalizing betting will not only result in curbing the black market but will also generate revenue for the government. Estimates about the size of the gambling market in India vary, with a 2010 KPMG report suggesting that it could be \$60 billion, while other, more recent, studies peg the value at a higher number. Even a conservative estimate suggests that the government could earn tens of thousands of crores as tax revenue by legalizing sports betting<sup>28</sup>. The government has clearly lost a lot of money as well-if betting was legal, licenses could be issued for a fee, there would be a GST on betting services, and winnings would be taxed.

### ***5. Eradication of black market***

According to the Law Commission Report No. 276<sup>29</sup>, a total ban of betting on sports wouldn't eradicate it but simply push it to the black market.<sup>30</sup> The report stated 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.<sup>31</sup>

The report<sup>32</sup> also talks about how the Indian sports gambling industry currently is unregulated and currently being controlled as a black market by the underworld. Most of the money made out of the betting industry is either used for notorious purposes and is taken out of the country. There is no track of the money as most of the transactions are done in cash and keeping track of such transactions is impossible. Justice Mukul Mudgal in his book<sup>33</sup> has identified the difficulty that the investigating agencies face while keeping a track of the bookies involved in sports betting and the money they make out of it. 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 investigation.<sup>34</sup>

---

<sup>28</sup> *Supra* note 5.

<sup>29</sup> Dr. Justice. B.S. Chauhan, *Legal Framework: Gambling and Sports Betting including in Cricket in India*, LAW COMMISSION OF INDIA, 5<sup>th</sup> July, 2018,

<sup>30</sup> *Supra* note 28.

<sup>31</sup> *Supra* note 29, at 106.

<sup>32</sup> *Ibid.*

<sup>33</sup> MUKUL MUDGAL, *LAW AND SPORTS IN INDIA: DEVELOPMENT ISSUES AND CHALLENGES* 226 (Lexisnexis,2016)

<sup>34</sup> *Supra* note 32, at 1.



## International Perspective

Nations over the globe have adopted three methods in the matter of controlling betting and wagering exercises. A few countries, particularly those which support religious and ethical practices, are of the view that the job of government is to shield its residents from the negative impacts of such exercises. The countries that offer supremacy to religious ethical quality frequently force a total prohibition on betting, while others see betting and wagering as an industry to drive exchange and income and support the travel industry and work. A few nations additionally work between these two limits, striking an equalization and allow betting in a controlled and managed condition accordingly, they procure significant income from the expense forced on such exercises.

### *United Kingdom*

Gambling in the United Kingdom was heavily restricted for several decades until the laws were finally 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 market in the UK is estimated to be worth £650 million which has seen a compounding annual growth rate from 2009–12 of approximately 7%. The total online gambling population in the UK is estimated at 2.1 million customers.<sup>35</sup> Gambling on football is a huge and growing global industry worth billions of pounds per year.<sup>36</sup> In the United Kingdom football also has an associated form of gambling known as football pools in which players win by correctly predicting the outcome of each week's matches.

Under Section 20 of the 2005 Act, a body corporate called the “Gambling Commission”, is constituted, which regulates gambling and betting activities through licensed operators. These operators act as betting intermediaries providing related services.<sup>37</sup> The Commission issues licenses to gambling operators, can levy fines and revoke licenses, and is tasked with

---

<sup>35</sup> Hudson James, “UK sports betting market growth & mobile betting”, *THE ORIGINAL* (12 January, 2014).

<sup>36</sup> *Football betting – The global gambling industry worth billions*, BBC SPORT (3<sup>rd</sup> October, 2013) <https://www.bbc.com/sport/football/24354124>.

<sup>37</sup> *Legal Framework: Gambling and sports betting including cricket in India*, LAW COMMISSION OF INDIA, July, 2018, at 75.

investigating and prosecuting illegal gambling. It is also responsible for advising national and local government on gambling-related issues.

Britain's Gambling Industry is one of the largest in the world and continues to increase in size. It generated a Gross Gambling Yield of £13.8 billion between October 2015 and September 2016. Online gambling generated a gross gambling yield of £4.5 billion that amounts to 33% of total gambling in Britain.<sup>38</sup> Legalization of gambling has ensured that it is now a well regulated industry and has reduced the perils posed by black markets.

### ***United States of America***

The Supreme Court struck down the 1992 federal law that effectively banned commercial sports betting in most states, opening the door to legalizing the estimated \$150 billion in illegal wagers on professional and amateur sports that Americans make every year.<sup>39</sup> The decision seems certain to result in profound changes to the nation's relationship with sports wagering. Bettors will no longer be forced into the black market to use offshore wagering operations or illicit bookies. Placing bets will be done on mobile devices, fueled and endorsed by the lawmakers and sports officials who opposed it for so long.<sup>40</sup> The 1992 law that was struck down barred state-authorized sports gambling with exceptions for Nevada, Montana, Oregon and Delaware, states that had approved some form of sports wagering before the law took effect.<sup>41</sup>

Nevada has had legitimized betting for a long time and has profited from both gaming and the travel industry related income. The influx of guests that seek the betting courtesies likewise get cash for the general economy, including food administration, hotel, and transportation. Another advantage Nevada has seen from its betting industry is in development and upkeep of offices. The airline and hotel services have been solid for a long time, and now the area is a goal for

---

<sup>38</sup> *Annual Report and Accounts*, GAMBLING COMMISSION, 2016-2017.

<sup>39</sup> Adam Liptak & Kevin Draper, *Supreme Court Ruling Favours Sports Betting*, N.Y TIMES (May 12, 2018), <https://www.nytimes.com/2018/05/14/us/politics/supreme-court-sports-betting-new-jersey.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer>.

<sup>40</sup> *Id* at 5.

<sup>41</sup> *Sports betting set to become legal across US after Supreme court decision*, THE GUARDIAN (14<sup>th</sup> May, 2018, 16:12 BST), <https://www.theguardian.com/law/2018/may/14/sports-betting-gambling-legal-supreme-court-decision>

both travel and retirement. As per these appraisals, legalised betting will contribute as much as \$5 billion to the general economy of the states. Around 152,000 jobs paying over \$7 billion in wages are anticipated.

## Conclusion

Various committees and bodies have recommended legalization of betting in sports. Former 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 and everything would be legal so there is reason to go underground”.<sup>42</sup>The Lodha committee advocated for the legalization of betting and recommended that following safeguards be provided in the legislation regulating betting:<sup>43</sup>

1. Regulatory watchdogs would be necessary to ensure that the betting houses as well as those transacting there, are strictly monitored, failing which their registrations would be susceptible to cancellation.
2. The Players, Administrators and others closely associated with the sport would be required to furnish the. It recommended that following safeguards be provided in the legislation regulating betting details of their income and assets for the sake of transparency.
3. License would have to be issued to those placing the bets as well, with age and identification details recorded.
4. Strict penal sanctions would have to be imposed on those transgressing the license and other requirements.

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 276<sup>th</sup> report.<sup>44</sup>

---

<sup>42</sup> *ICC recommends legal betting in India*, HINDUSTAN TIMES (May 21, 2011, 11:49AM), <https://www.hindustantimes.com/cricket/icc-recommends-legal-betting-in-india/story-QXXHK5T2MhYE0s1HzV>.

<sup>43</sup> Justice R.M. Lodha, *Report of The Supreme Court Committee on reforms in Cricket*, THE SUPREME COURT COMMITTEE, 18<sup>TH</sup> December, 2015.

<sup>44</sup> *Supra* note 34.

In the past few decades the sports betting industry has only grown in size. Betting in sports has become popular among the Indian society as a source recreation and also by which quick money can be earned. The Public Gambling Act, 1867 is an outdated legislation which suffers from several issues. The law is hypocritical as it legalizes betting on horse racing providing the explanation that it is a “game of skill” but prohibits betting on cricket and other sports which are “games of skill” as well. Since it is a colonial legislation, it is ignorant about online betting as well. Various courts have constantly held in their various judgements that sports like cricket, football, 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.