



EXPLORING THE LEGALIZATION OF BETTING AND GAMES OF CHANCERY IN INDIA

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Abstract: This research paper explores the legal landscape surrounding betting and games of chance in India, with a focus on the ongoing debate over legalization. It traces the legislative journey from the Public Gambling Act of 1867 to state-specific laws, revealing different approaches adopted by states. The paper examines the legal dichotomy between games of chance and skill, including the Supreme Court's ruling on horse racing as a game of skill. It also addresses the grey area surrounding sports betting, advocating for legislative amendments or Supreme Court intervention to align existing laws with evolving social patterns. This research aims to provide nuanced insights into the ongoing discourse on the legalization of betting and games of chance in India.

Introduction

Gambling can be defined as “to play a game for money or property or to bet on an uncertain outcome.”ⁱ Gambling and sports betting have shared a substantive relationship with Indian culture since ancient times. The Rig Veda is believed to have documented gambling's earliest descriptions, portraying it as a prevalent choice among the masses for quick monetary gains to satisfy worldly needs. Initially encouraged during colonial India for its economic benefits, gambling soon faced prohibition due to its adverse consequences, such as bankruptcy and criminal delinquency.

The Public Gambling Act of India, enacted in 1867, aimed to regulate and restrict gambling practices, though without sufficient punitive measures. This legislation sought to curb most forms of gambling, including sports gambling, while allowing and regulating certain forms, such as lotteries and festive gambling. The Act separated games into two categories—those based purely on chance and those that require skill. Only the latter were allowed in specific contexts like horse racing and online skill games such as rummy and poker.

Betting and gambling came under the jurisdiction of the State list with the introduction of the Constitution, giving states the freedom to create their laws on the matter. While a few states have developed their regulations for betting and gambling, others still follow the 1867 central legislation. 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. Gambling was prevalent in India during the 18th century when cricket exploded across the country, but the “Public Gambling Act of 1867” restricted the operation and visitation of a ‘Gambling House.’ⁱⁱ Presently, both online and offline sports betting, excluding games of skill remain illegal across India.

The proliferation of gambling has reached an unprecedented level in recent years, primarily due to advanced technology and widespread internet availability. The growth has been highlighted by well-known scandals involving large amounts of money, such as the 2016 ICC and 2013 IPL betting scandals. In 2016, the Supreme Court tasked the LCI with investigating workable solutions for illegal betting.

LCI's report highlighted the necessity of effective regulation as a realistic response, considering that complete prevention is impossible. Additionally, a Private Member Bill proposed by Mr Shashi Tharoor in 2018 advocated for legalising sports betting under strict surveillance. The bill aimed to establish regulations to control illegal betting, generate government revenue, and support sports infrastructure. Proposed measures aim to uphold integrity and discourage wrongdoing by implementing age restrictions, limiting betting fees, and criminalising sports fraud.

Despite these developments, the legal framework surrounding gambling in India remains outdated and inadequate in addressing contemporary challenges. The thriving illegal industry, valued at over €250 million annually, underscores the urgency for comprehensive regulatory reform to mitigate crime and corruption associated with sports betting. As attitudes towards gambling change, it becomes increasingly necessary for Indian laws to adapt and create a system that protects consumers while enforcing regulations.

This research comprehensively analyses the legal intricacies of betting and games of chance in India, paying particular attention to the current debate on their legalisation. By examining historical roots and constitutional frameworks, the study uncovers the legislative evolution from the Public Gambling Act of 1867 to state-specific laws, highlighting the diverse approaches taken by different states.

The advent of online gambling, exemplified by Sikkim's pioneering legislation—the Sikkim Online Gaming (Regulation) Act, 2008—is central to this exploration. The study scrutinises potential clashes between state laws and central legislation, such as the Information Technology Act 2000, unravelling legal challenges in the virtual realm.

The legal distinction between games of chance and skill is highlighted, with a thorough discussion of the Public Gambling Act of 1867 and critical judicial decisions. The recent Bombay High Court verdict, which declared Rummy and Bridge skill-based games under the Bombay Prevention of Gambling Act of 1887, adds a crucial element to the analysis. Recognising the present framework's shortcomings in dealing with the rising issue of sports betting, the study advocates gambling legalisation. Citing committee recommendations for sports betting legalisation, the document emphasises possible financial gains, employment development, and reduced risks from underground markets.

Gambling, also called betting, is wagering something valuable, commonly known as "the stakes," on an event with an uncertain outcome to win something else of value. For gambling to occur, three distinct elements must be present: consideration (an amount wagered), chance (risk), and a prize. Traditionally, gambling involves risking money or belongings with an element of randomness or chance, and the objective is to win. Emerging gambling activities such as online investment trading and fantasy sports have complicated the identification of gambling problems, particularly concerning uncontrollable urges that negatively impact individuals' lives.

Gaming law encompasses various legal areas, such as criminal, regulatory, constitutional, administrative, company, contract, and competition law. In any gaming operation, lawyers analyse legal terms such as consideration, chance, and prize to navigate the regulatory landscape. The conclusion addresses the need for legislative changes or Supreme Court action to adapt existing regulations to changing societal patterns, with suggestions from the Union Law Ministry indicating potential revisions to India's regulatory framework governing sports betting. This study contributes nuanced perspectives to the discourse on the legalisation of betting and games of chance in India, offering a comprehensive understanding of the historical, constitutional, and judicial facets shaping the contemporary landscape.

I. CURRENT STATUS OF GAMBLING IN INDIA

The Public Gambling Act of 1867 prohibits gambling or sports betting under the current legal framework.ⁱⁱⁱ According to Section 2(b) of the Act, gambling includes wagering or betting but does not include a lottery. According to Article 372(1) of the Indian Constitution, even if this Constitution repeals the enactments mentioned in Article 395, the other provisions of this Constitution, as well as the laws that were in effect in India at the time of its ratification, will still be in effect unless they are changed, repealed, or amended by a

competent legislature or other competent authority. States may pass legislation about taxes and gaming under Entry 62 State List of the Seventh Schedule of the Constitution. Suppressing and controlling gambling at “Public Gambling” institutions is the main objective of gambling laws at all levels.

The illegal sports betting market is worth millions of dollars. Furthermore, in 2016, the FICCI projected the value of the illicit market to be close to Rs. 10 lakh crores. Legalisation will not necessarily improve the betting sector entirely, but making operators maintain both paper and computer records will be quite beneficial. Thousands of young people nationwide are employed in this uncontrolled profession.

II. ONLINE GAMBLING IN INDIA

Two kinds of internet gambling are accessible globally. The first kind of gambling is casino-style gaming, which covers titles like rummy and poker. Second, it falls under sports betting, in which participants wager on live athletic events while examining the game’s odds. Sikkim and Goa are the only states in India that allow casino gambling. ^{iv}On the other hand, Sikkim is the only state that permits online casino gaming lawfully. In the latter case, bettors place their bets online in real-time on sporting events using services like 1XBet and Bet365, headquartered outside of India. 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. One could do so by placing an online bet on such websites and 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. However, it 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 is such as to deprave and corrupt people who are liars. ^vBecause 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 provision, as mentioned earlier. ^{vi}The Foreign Exchange Management Act of 2000 governs foreign currency exchange, the transfer of funds from India to any foreign country, and the influx of foreign capital into India. ^{vii} Rule 3 of the Schedule Financial Exchange Management Act of 2000 prohibits remittances for purchasing lottery tickets, banned magazines, football pools, sweepstakes, and other activities. The rule prohibits any transfer involving gambling, and the provision has been left open to cover different types of betting. Consequently, nobody would be able to pay for these kinds of websites. In an alternative scenario, Section 3 of the Foreign Exchange Management Regulations (Foreign currency amounts), 2000, which prohibits any Indian resident from opening their doors, holding, or sustaining a foreign currency account without special permission from the RBI, will apply to any resident who attempts to engage in online gambling through any of these websites by creating a foreign currency account in nations where betting on sports is legal.

III. WHY SHOULD BETTING IN SPORTS BE LEGALIZED?

4.1 Bound to exist in some form or other.

It is undeniable that India has witnessed significant growth in its gambling industry. One rationale for the regulation of sports betting in India, as well as in other regions globally, pertains to its societal impact. The trend of earning profits through sports betting has gained considerable traction. In India, a vast nation with a sizable portion of its population living in poverty, many individuals are enticed towards gambling as they perceive it as a swift and effortless means to generate income despite their lack of stability and resources. There exists a prevalent notion that gambling is ingrained in society and is unlikely to be eradicated, persisting in various forms over time.

4.2 It is a game of skill and not chance.

Section 12 of the Public Gambling Act of 1867 states that the provisions of the Act do not extend to games solely based on skill, regardless of the location where they are played. Sports betting necessitates individuals to employ their knowledge, application, and analytical abilities. It is essential to elucidate the distinction between games of chance and skill. The interpretation of a game of chance was provided in the

case of *Rex v. Fortie*^{viii}. Such games are defined as those primarily or partially determined by luck or chance, wherein skills such as judgment, practice, or ability play no significant role or are impeded 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, strength, ability, and practice win. In the case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*^{ix}, the Supreme Court of India Declared that horse racing, boat racing, football, and baseball are all games of skill. The law is contradictory because 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*^x and *State of Andhra Pradesh v. K Satyanarayana*^{xi} 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 as a game of 'mere skill'. In their numerous rulings, courts have consistently held that all sports fall under the 'game of skill' category, not a 'game of chance'. Because horse racing is a 'game of skill', it is lawful. It was revealed that the results of a horse race are controlled by several factors, including the animal's shape, fitness, innate aptitude, the jockey's ability, the weight carried, and the race distance, all of which are objective facts that bettors can evaluate. In other sports, the capacity of the wagerer to analyse pitch conditions, weather, team makeup, and current form is critical. As a result, this argument suggests that gambling in all sports be legalised.

4.3 Fantasy Sports

In recent years, the Fantasy Sports industry has experienced significant growth, with platforms like Dream 11 becoming increasingly popular through apps and websites. These platforms require users to create teams of real players competing in specific matches, with entry fees for contests and prizes awarded based on performance. Despite its popularity, the legal status of fantasy sports has been subject to debate, with arguments regarding the level of skill involved versus chance.

Legal disputes such as *Humphrey v. Viacom*^{xii} have questioned whether fantasy sports constitute gambling, highlighting the importance of regulatory frameworks to ensure fair play and consumer protection. In India, legislation like the Nagaland Prohibition of Gambling and Promotion of Online Games of Skill Act, 2005, has sought to classify fantasy sports as games of skill rather than chance^{xiii}, with courts emphasising the analytical and strategic elements involved.

Additionally, the rise of sports betting in India has presented opportunities and challenges, with the need for effective regulation to prevent fraud and protect participants. While fantasy sports and sports betting share similarities in their analytical requirements, distinctions exist in their real-time nature and the skill level needed. As the industry evolves, balancing revenue generation with ethical considerations and player welfare becomes crucial, ensuring that only regulated platforms operate within legal frameworks.

4.4 Financial gains are enormous.

Advocates of legalising gambling contend that it can provide significant financial advantages to states. This argument is rooted in historical precedent, as gambling has historically served as a government revenue source, including during Kautilya's reign when the state and subject regulated it to a 5% tax on winnings. The primary objectives of legalising gambling are to diminish the illegal market and to bolster government revenue.

According to a 2010 KPMG analysis, India's gambling market is estimated to be worth around \$60 billion, with more recent evaluations suggesting an even higher value. This indicates a significant potential for generating substantial tax revenue, especially if sports betting is legalised. Even a conservative estimate suggests that legalising sports betting alone could provide the government tens of thousands of crores in tax revenue. Moreover, legalising gambling would enable the government to implement regulatory measures such as licensing fees and a Goods and Services Tax (GST) on betting services. By levying taxes on gambling profits, the government could recoup a portion of the previously lost revenue due to the illicit nature of gambling activities. In essence, legalising gambling presents an enticing opportunity for states not only to combat illegal gambling but also to harness its economic potential for the betterment of society and the state's financial health.

4.5 Eradication of the 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.^{xiv} According to this proposal, illicit betting causes significant economic losses since gains are not taxed and encourage the circulation of black money in the market. In a word, such illegal business harms 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. Most money made in the betting industry is used for illegal activities or moved out of the nation. There is no way to keep track of the money because most transactions are made in cash, making 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. Identifying this difficulty, the Mudgal Committee report suggested that legalising sports betting would reduce the element of black money and the influence of the underworld and help them detect and focus their investigation^{xv}.

IV. WHY SHOULD BETTING NOT BE LEGALIZED?

The landscape of gambling in India has undergone a seismic shift with the advent of online platforms, offering a plethora of opportunities for enthusiasts. While the debate on the legalisation of online gambling continues, it is crucial to delve into its impact on the youth, especially considering prominent celebrities, including cricketers and Bollywood stars, endorsing these platforms.

5.1 Legalization and Celebrity Endorsements:

In recent years, there has been a growing trend toward the legalisation of online gambling in India. Several states have embraced this industry, viewing it as a potential revenue source and a means to regulate an otherwise unmonitored market. Simultaneously, celebrities, particularly cricketers and Bollywood actors, have become the face of various online gambling platforms. Their influence extends far beyond the field or silver screen, as their endorsements shape public perception and contribute to the normalisation of online gambling.

5.1 Impact on Youth:

The youth, being highly impressionable, are susceptible to the allure of celebrity-endorsed online gambling. The association of famous figures with these platforms creates an illusion of glamour and success, enticing young minds to try their luck. The seamless integration of online gambling into digital spaces exacerbates the issue, as it becomes easily accessible to a wide demographic. The absence of stringent regulations and age verification mechanisms makes it challenging to prevent minors from engaging in these activities, leading to potential addiction and financial consequences.

5.2 Psychological and Social Ramifications:

Online gambling has profound psychological implications on the youth, fostering a culture of instant gratification and risking their financial well-being. The allure of quick winnings often overshadows the reality of potential losses, leading to a cycle of dependence. Additionally, the normalisation of gambling in popular culture may contribute to the erosion of social values, as success is often equated with monetary gains rather than merit-based achievements.

5.3 Parental Concerns and Technological Challenges:

The advent of technology has further exacerbated the concerns surrounding online gambling, especially when it comes to minors. With the ubiquity of smartphones and easy internet access, even minors can engage in these activities without their parent's knowledge. The absence of strict regulatory measures and the ease with which one can create online accounts raise alarms about the misuse of parents' hard-earned money by unsuspecting minors.

V. GLOBAL PERSPECTIVES ON ONLINE GAMBLING (A COMPARISON OF EUROPEAN, ASIAN, AND AMERICAN REGULATIONS)

The online gambling landscape is diverse and complex, with countries worldwide adopting varying approaches and regulations to address this evolving industry. This portion explores the international perspective on online gambling, focusing on the contrasting laws and regulations in European, Asian, and

American countries. The international perspective on online gambling reveals a complex interplay of cultural, economic, and regulatory factors. European countries showcase a spectrum of regulatory approaches, from liberalisation to restriction, focusing on consumer protection. In Asia, diverse attitudes range from strict prohibition to cautious acceptance, reflecting regional variations. Meanwhile, the United States has experienced a paradigm shift in recent years, embracing a state-by-state approach to online gambling.

Understanding these global perspectives is essential for policymakers and industry stakeholders seeking to balance economic opportunities, consumer protection, and responsible gambling practices. The global evolution of online gambling regulations highlights the need for continuous dialogue and collaboration to tackle the challenges posed by this dynamic industry.

6.1 European Countries:

Europe stands out as a region with diverse approaches to online gambling regulation. Some countries, like the United Kingdom and Malta, have embraced a liberalised approach, establishing comprehensive regulatory frameworks that license and regulate online gambling operators. These regulations often include measures to ensure consumer protection, responsible gambling practices, and strict age verification.

In contrast, other European nations, such as Germany and the Netherlands, have historically pursued more restrictive policies. However, recent developments have seen these countries reconsider their stance, with efforts to modernise regulations and develop a more conducive environment supporting online gambling while still ensuring responsible practices.

6.1.1 United Kingdom

Gambling was strictly regulated in the United Kingdom for decades until the rules were ultimately liberalised in 1960. The Gambling Act 2005 governs gambling and betting practices in the country and aims to protect “children and other vulnerable persons from being harmed or exploited by gambling.”^{xvi} 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 who gamble online in the United Kingdom is estimated to be 2.1 million. 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. A corporate body 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.

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.

6.2 Asian Countries:

The Asian continent exhibits a broad spectrum of attitudes towards online gambling, reflecting cultural, religious, and political factors. In countries like Macau, known as the “Gambling capital of the world,” traditional casino gambling thrives, with online gambling being tightly regulated or prohibited. Conversely, countries like the Philippines and Singapore have embraced online gambling to varying extents, implementing regulatory measures to oversee the industry and generate revenue.

In other parts of Asia, particularly South Korea and China, online gambling is subject to stricter regulations due to concerns about social issues and the potential for illegal activities. The diversity in regulatory approaches across Asia reflects the intricate balance between economic opportunities and cultural considerations.

6.3 American Countries:

The United States has implemented new online gambling regulations at both federal and state levels. Historically, the U.S. had a restrictive approach, as exemplified by the Unlawful Internet Gambling Enforcement Act (UIGEA) in 2006. However, recent years have seen a shift, with individual states legalising and regulating online gambling, most notably in New Jersey, Nevada, and Delaware.

Other American countries, such as Canada, have pursued a more permissive approach, allowing online gambling within specific regulatory frameworks. In contrast, some Latin American countries, including Mexico and Argentina, have also explored opportunities for legalising and regulating online gambling to boost revenue and curb illegal activities.

In 1992, the United States Supreme Court rendered a landmark decision by invalidating a federal regulation that effectively barred most states from legalising commercial sports betting. This judicial pronouncement ushered in a significant shift, liberating the nation from the constraints imposed by a prohibition that had long relegated sports betting to illicit activities. Before this decision, Americans were compelled to engage in clandestine wagering or resort to offshore bookmakers to satisfy their betting inclinations, thereby fostering a thriving underground market amounting to an estimated \$150 billion annually for professional and amateur sporting events.

The Supreme Court's ruling reverberations were profound, reshaping the nation's perspective on sports betting. Consequently, individuals were no longer constrained by the shadows of illegality but instead found avenues for lawful engagement, including the burgeoning realm of mobile betting. Over time, legislators and sports authorities had harboured reservations about the federal statute 1992, which effectively curtailed states' autonomy in regulating sports betting activities.

Nevada is a paradigmatic example, having long embraced a legalised sports betting industry that has yielded substantial dividends in gaming revenues and ancillary economic sectors. The state benefits from a robust influx of visitors seeking wagering facilities, thereby bolstering various segments of the economy, such as hospitality services, accommodations, and transportation. Moreover, the gambling industry in Nevada catalyses infrastructural development, including establishing and upkeep of administrative and operational offices, thus further contributing to the state's economic prosperity and stability.

VI. CONCLUSION

The current legal framework surrounding betting and games of chance in India is riddled with inconsistencies. The Public Gambling Act of 1867 prohibits most forms of gambling, yet the distinction between games of skill and chance remains unclear. This ambiguity fuels a thriving black market, particularly for online gambling, which exists in a legal grey area.

Arguments for legalisation are compelling. The popularity of betting, especially in sports, is undeniable. Legalising and regulating this activity could bring it out of the shadows, curbing the influence of the black market and its associated problems, such as money laundering and criminal involvement. Additionally, legal sports betting, potentially including fantasy sports due to the skill element, could generate significant tax revenue for the government.

However, concerns regarding potential social issues cannot be disregarded. Problem gambling addiction, the allure of celebrity endorsements promoting betting, and the possible negative impact on youth all require careful consideration. Studying how other countries have addressed these issues through online gambling regulations can provide insight into India.

In conclusion, a comprehensive and balanced approach is necessary. India must weigh the benefits of legalised and regulated betting against the potential social harms. Striking a balance between generating revenue, protecting vulnerable populations, and mitigating social costs will be crucial in crafting a future for gambling in India. This future may involve legalised sports betting with robust safeguards, continued restrictions on other forms of gambling, and a strong focus on responsible gambling practices.

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