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**LEGAL FRAMEWORK:
GAMBLING AND SPORTS BETTING
INCLUDING IN CRICKET IN INDIA**

July 2018

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भारत का विधि आयोग
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05 July 2018

Dear Shri Ravi Shankar Prasad Ji,

I have great pleasure in forwarding herewith the Two Hundred and Seventy Sixth Report of the Law Commission of India, titled "**Legal Framework: Gambling and Sports Betting including in Cricket in India**".

In the case of *Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.*, (2016) 8 SCC 535, the Supreme Court asked the Law Commission of India to study the possibility of legalizing betting in India, *inter-alia*, observing thus:

... the recommendation made by the Committee that betting should be legalized by law, involves the enactment of a Law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.

During the course of its study, the Commission realised that there is a close association of gambling with betting and both are intertwined. Further it is a known fact that there is a black world of gambling in the country and the Commission felt that something urgently needs to be done to find a way out to curb or put an end to such unlawful activities. Therefore, though not a subject under reference, the Commission decided to take up the study of gambling along with betting and issued a public appeal on 30 May 2017, to elicit the views of stakeholders. The Commission received several responses which were analysed and the same is attached with the Report.

The opinion of one of the Members slightly varies from the majority view on the Report, and hence, on his request, a separate note from him is annexed to the Report.

The Commission gratefully acknowledges the commendable contribution made by Ms. Anumeha Mishra, Shri Setu Gupta and Ms. Shikha Dhandharia, former Consultants; Ms. Vasundhara Bakhru and Shri Samarth Luthra from the Amity Law School; and M/s. Pathak & Associates, for their commendable assistance in preparing the Report.

Yours sincerely,

With warmest regards,

B. Chauhan

[Dr. Justice B S Chauhan]

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**LEGAL FRAMEWORK: GAMBLING AND
SPORTS BETTING INCLUDING IN CRICKET
IN INDIA**

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Chapter I

Background

1.1 Cricket is the most popular game in India today, and the game has a glorious history in the country. However, the current decade has also witnessed controversies relating to Indian Premier League (IPL) matches, along with its glory. In 2013, there arose the case of spot-fixing and betting by three players of a team in IPL. In a separate case, the Mumbai Police arrested a player, an official and a relative of an office bearer of BCCI for betting and having links with bookies. A two-member committee of the Board of Cricket Control of India (BCCI) had reported it to be a case of no evidence. The Supreme Court appointed Mr. Justice Mukul Mudgal, the retired Chief Justice of Punjab and Haryana High Court to enquire into the allegations.

A. Mudgal Committee

1.2 The Mudgal Committee found that a large number of people associated with IPL had indulged in hedging bets (Team against Team) and match fixing. The matches had been played in contravention of the IPL Operational Rules which brought about a stigma to the game. The Committee reported that the investigative agencies lack the tools to track the bookies, the wager amount and detect sporting fraud *sans* intelligence from sources such as phone tapping. In light of these problems, the investigative agencies stated before the Mudgal Committee that, “legalising sports betting would reduce the element of black money and the influence of the underworld besides helping them in detection and focusing their investigation”.

1.3 In light of these observations, the Committee made the following recommendations:

- The present measures undertaken by BCCI in combating sporting fraud are ineffective and insufficient. The IPL governing body should be independent of BCCI.
- Agents of the players should be registered and should not be allowed to travel with the players.
- Employment of players in franchise group companies should be avoided. Players should not have stakes in agencies involved in the game of cricket. There is a need for stringent and effective control on players' agents.
- Separate law, investigating sic investigative agency and courts to deal with betting and match-fixing charges should be designed.
- The Law to govern such activities must be stern akin to anti- terror and anti-drug laws.
- Post-match parties where players have access to undesirable elements should be banned.
- BCCI should maintain and circulate among players, a list of undesirable elements.
- Senior players with unimpeachable record like Sachin Tendulkar, Rahul Dravid, Anil Kumble, and so on should caution and advise the younger players against pitfalls of indulging in malpractices like betting and match fixing/spot fixing. Such interactions with legends of the sport might be the most effective and deterrent means of preventing future wrongdoing.
- Most investigative agencies lament the fact that they lack proper tools for detecting sports frauds, know the names of the bookies and the betting amount. They can only use sources of intelligence such as phone tapping to detect fraud, which again has its own issues of privacy. These agencies have stated that legalising betting would reduce the involvement of black money, and the influence of underworld. Additionally, it would help them in detection of fraud and keep their investigation focused¹.

¹Mukul Mudgal, *Law and Sports in India: Development Issues and Challenges* 226 (LexisNexis, 2016).

B. Lodha Committee

1.4 While disposing of Civil Appeal in the case of *Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.*², the Supreme Court constituted a Committee under the Chairmanship of former Chief Justice, Mr. Justice R M Lodha to examine and make suitable recommendations for reforms in practices and procedures and necessary amendments in the Memorandum of Association and Rules & Regulations of the Board of Cricket Control in India. In its Report, the Committee distinguished between match/spot fixing - which compromises the integrity of the game by attempting to change the course of the match, with betting. It emphasised the need for separate treatment, i.e. punishing match fixing and regulating betting.

1.5 The Lodha Committee recommended the legalisation of betting (with strong safeguards), except for those covered by the BCCI and IPL regulations. It also recommended that match/spot-fixing be made a criminal offence. The Committee opined that a regulatory framework would enable the government in differentiating betting from match fixing. It recommended that following safeguards be provided in the legislation regulating betting:³

- (i) 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.
- (ii) The Players, Administrators and others closely associated with the sport would be required to furnish the

² (2014) 7 SCC 383

³ Report of the Supreme Court Committee on Reforms in Cricket at 61-62 (December, 2015).

- details of their income and assets for the sake of transparency.
- (iii) Licence would have to be issued to those placing the bets as well, with age and identification details recorded.
 - (iv) Strict penal sanctions would have to be imposed on those transgressing the licence and other requirements.

C. Reference to the Commission

1.6 In July 2017, the Supreme Court, while considering the Lodha Committee Report, in *Board of Cricket Control in India v. Cricket Association of Bihar & Ors.*⁴, made a reference to the Law Commission to examine the issue of legalising betting in India, observing:

.....the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a Law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary...

1.7 The Oxford dictionary defines the term ‘betting’ as “the action of gambling money on the outcome of a race, game, or other unpredictable event”. In other words, betting is a more sophisticated ‘word-substitute’ coined for the activity of gambling, since gambling *per se* carries with it a social stigma, which is known to bring along other social and moral vices. Nonetheless, understanding the intertwining connection of betting with gambling, the Commission decided to also consider gambling in the ambit of its study for this report. Though the issue of legalizing gambling was not referred to the Commission

⁴ (2016) 8 SCC 535

by the Supreme Court, the Commission decided to study it, because, in the opinion of the Commission, betting and gambling are two sides of the same coin. Therefore, given the interconnectedness of betting and gambling, in the present report, various aspects of legalising both betting and gambling are considered.

1.8 On 30 May 2017, the Commission issued a public appeal eliciting the views and suggestions from all stakeholders, and placed it on the website of the Commission (A copy of the Appeal is appended to the Annexure). While doing so, the Commission explained the need for considering gambling along with betting. The relevant part of the Appeal is reproduced below:

While considering the issue, the Commission discerned that gambling is also a subject which is very closely associated with betting. While considering legalisation of betting, leaving aside gambling may render the whole exercise futile. Therefore, the Commission would like to study the issue of legalising betting as well as gambling in the country.

CHAPTER II

History of Betting and Gambling

2.1 Betting and gambling have always been a part of human civilisation. Gambling is perhaps as old as mankind and has been globally practised in different forms such as gaming, betting, races, wagering, etc. The attitude of society towards betting and gambling has varied across time and geography. Despite being frowned upon from a moral and religious perspective, laws have failed to desist people from indulging in this activity because of its perennial allurements. This activity is looked upon as a means of winning huge with small investments and as a ubiquitous pastime. It is widely practised as entertainment by the rich. Its notorious companionship with most other human vices is well known. It generally has disastrous consequences for the families of gamblers who belong to vulnerable class of the society. Betting and gambling are susceptible to a risk of self-inflicted damage. This has made gambling a formidable problem for law and morals⁵.

2.2 This activity involves a lot of risk as the results of the betted event are uncertain. Betting involves transaction of money or any property and this arrangement may be arrived face to face, or through virtual means. The revolution of Internet technology has opened new dimensions of betting and gambling, and has created a global market for it. Due to this, the manner of playing games has undergone a drastic change in recent years. Therefore, laws on betting and gambling are required to be examined so as to ensure that consumers are adequately protected from its ill effects.

⁵M.B. Majumdar, *Commentary on the Bombay Prevention and Gambling Act, 1887* (Sweden Maxwell).

A. Betting and Gambling in Ancient India

2.3 Several instances of betting and gambling are found in Indian history and mythology. References of these activities are found in both the epics, **Ramyaana** and **Mahabharata**. Yudhishtir, the eldest son of Pandu had a penchant for gambling. One of the most gripping scenes in the Mahabharata shows him losing not only his whole kingdom, but also his brothers and wife in the 'Game of Dice'.

2.4 The mythological story of Nala and Damayanti, depicts that gambling existed in ancient India. In fact, laws were framed in ancient India to regulate it⁶. Like Yagnavalkya⁷, the Narada-Smriti⁸ and Kautilya⁹, all advocated that gambling should exist under the control of the State.

2.5 These activities also find mention in ancient texts like the **Rig Veda** and the **Atharva Veda**, both written around 1500 B.C.

अन्ये जायां परि मृशन्त्यस्य यस्यागृध व्देदने वाज्यक्षः ।

पिता माता भ्रातर एनमाहुर्न जानीमो नयता बद्धमेतम् ॥

(Rg 10.34.4)

अक्षैर्मा दीव्यः कृषिमित्कृषस्व वित्ते रमस्व बहु मन्यमानः ।

तत्र गावः कित्तव तत्र जाया तन्मे वि चष्टे सवितायमर्यः ॥

(Rg 10.34.13)

This verse of **Rig Veda** means that:

⁶ Mukul Mudgal, *Law and Sports in India: Development Issues and Challenges* 226 (LexisNexis, 2016).

⁷ 2nd Ed. Ancient Indian History and Civilization by Sailendra Nath Sen, New age International Publishers page 69; See Also *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699.

⁸ 2nd Ed. Ancient Indian History and Civilization by Sailendra Nath Sen, New age International Publishers page 69.

⁹ 2nd Ed. Ancient Indian History and Civilization by Sailendra Nath Sen, New age International Publishers page 138; See Also *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699.

The gambler's wife is left forlorn and wretched: the mother mourns the son who wanders homeless.

In constant fear, in debt, and seeking money, he goes by night to the home of others [probably to steal]. Play not with dice, [but] cultivate your corn-land. Enjoy the gain, and deem that wealth sufficient.

There are your cattle, there your wife, O gambler: So this good Savitur himself has told me.

2.6 In Hymn XXXVIII of ***Atharv Veda***, reference is found to “a charm for success in gambling” and summoning the *Apsaras* to obtain the stake and gain the victory with skill.

2.7 ***Yagnyavalkya Smriti*** deals with the issue differently. It states:

सुराकामदूतकृतदण्डशुल्कावशिष्टकम् ।

वृथादानं तथैवेह पुत्रो दद्वान् न पैतृकम् ॥ याज्ञस्मृ. व्यवहाराध्यायः ४७ ॥

This verse means that:

The son should not pay the paternal debt which was contracted for the purposes of spirituous liquor, lust or gambling, or which is due as the balance of an unpaid (i.e., remaining portion of) fine or toll, as also a gift without any consideration.

2.8 Translation of the verses 935 to 939 *Katyayana Smriti* reads:

If gambling cannot be stopped in the kingdom, it shall be regulated. Gambling should be allowed to be carried on openly in the gambling hall (the hall licensed for the purpose).The gambling hall should be provided with an ornamental arch to indicate that it is a gambling hall, so that respectable men may not mistake the nature of the place. **The King should impose tax on gambling and make it a source of income. Gambling could be carried on openly after payment of tax to the King**¹⁰. (emphasis added)

2.9 *Manu Smriti*, in this respect states:

द्यूतं समाह्वयं चैव राजा राष्ट्रन्निवारयेत् ।

राजान्तकरणावेतौ द्वौ दोषौ पृथिवीक्षीताम् ॥
(मनुस्मृ. 9.221)

प्रकाशमेतत्तास्कर्यं यद्देवनसमाह्वयौ ।

तयोर्नित्यं प्रतिघाते नृपतिर्यत्रवान् भवेत् ॥
(मनुस्मृ. 9.222)

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द्यूतमेतत्पुरा कल्पे दृष्टं वैरकरं महत् ।

तस्माद् द्यूतं न सेवेत हास्यार्थमपि बुद्धिमान् ॥
(मनुस्मृ. 9.227)

¹⁰ See *Reeja v. State Of Kerala*, 2004 (3) KLT 599.

प्रच्छन्नं वा प्रकाशं वा तन्निषेवेत यो नरः ।

तस्य दण्डविकल्पः स्याद्यथेष्टं नृपतेस्तथा ॥
(मनुस्मृ. 9.228)

These verses mean:

Gambling and betting let the king exclude from his realm; those two vices cause the destruction of the kingdoms of princes (221).

Gambling and betting amount to open theft; the king shall always exert himself in suppressing both (of them) (222).

XX XX XX XX XX

In a former Kalpa this (vice of) gambling has been seen to cause great enmity; a wise man, therefore, should not practise it even for amusement (227).

On every man who addicts himself to that (vice) either secretly or openly, the king may inflict punishment according to his discretion (228).

2.10 According to **Manu**, such activities are prohibited as they destroy truth, honesty and wealth. These are means of self-destruction and enmity.

2.11 **Brihaspati**, dealing with gambling in chapter XXVI, verse 199, recognises that though gambling had been proscribed by Manu, other law-givers allowed it when conducted under the State-control providing the King, a share from every stake¹¹.

¹¹ As cited in *State of Bombay v. RMD Chamarbaugwala*, AIR 1957 SC 699.

2.12 **Narad Smriti** describes gambling as a lawful amusement, when carried out in, public gaming houses.

2.13 **Chanakya**¹² suggested severe penalty for violation of gambling regulations as he considered all gamblers to be cheats¹³. Kautilya's Arthshastra reads:

जितद्रव्यादध्यक्षः पञ्कं शतमाददीत,

काकणसक्षारलाशलाकावक्रयमुदकभूमिकर्मक्रयं च ।

(12) द्रव्याणामाधानं विक्रयं च कुर्यात् । (13) अक्षभूमिहस्तदोषाणां चाप्रतिषेधते द्विगुणे दण्डः । तेन समाह्वयो व्याख्यातः अन्यत्र विद्याशिल्पसमाह्वयादिति । (14)

These verses mean that:

The Superintendents of gambling house shall, therefore, be honest and supply dice at the rate of a *kākani* of hire per pair. Substitution by tricks of hand or dice other than thus supplied shall be punished with a fine of 12 *panas*. A false player shall not only be punished first with the amercement and fines leviable for theft and deceit, but will also be subjected to forfeit the stakes he has won. The Superintendent shall take not only 5 per cent of the stakes won by every winner, and the hire payable for supplying dice and other accessories of dice play, but also the

¹²Chanakya is an Indian Philosopher, economist, jurist he is traditionally identified as *Kautilya* who authored ancient Indian treatise the *Arthashastra*.

¹³Kautilya, "The Arthshashtra", edited and translated by L.N. Rangrajan 61 (Penguin Books India, 1992).

fee chargeable for supplying water and accommodation, besides the charge for licence. He can at the same time carry on the transactions of sale or mortgage of things. If he does not forbid tricks of hand and other deceitful practices, he shall be punished with twice the amount of the fine (levied from the deceitful gamblers.). The same rules shall apply to betting and challenging except those in learning and art.

2.14 Despite prevalence of gambling, the ancient texts reflect a sceptical approach towards it, as it is considered to be a risky activity which can lead not only to self-harm but also to even self destruction.

2.15 It has always been debated whether gambling and betting is a game of skill or chance. Allusions to 'dicing being an art' are found in Mahabharata and folklore. For example, there is a story in *Jataka* tales, where a king was considered to be so skilled in the art of dicing that he could predict the result of the throw before the dice struck the board. If the result was unfavourable to him, he would catch the dice before it landed and would make his opponent repeat the throw¹⁴.

2.16 With the passage of time, the forms and ways of betting and gambling have changed. 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

¹⁴ W. Norman Brown, "The Indian Games of Pachisi, Chaupar, and Chausar" 6(2) *Expedition Magazine* (1964), available at : <http://www.penn.museum/sites/expedition/?p=729> (last visited on 01-06-2018).

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.

2.17 A five-judge Bench of the Supreme Court in *Kishan Chander & Ors. v. State of Madhya Pradesh*¹⁵, observed:

Considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult, the law to root out gambling cannot but be in the public interest. Such a law must of necessity provide for special procedure but so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed.

B. In ancient Europe:

2.18 The Greek and Roman civilisations were amongst the first to practise gambling¹⁶. Archaeological surveys suggest that gambling was prevalent even among the earliest cavemen. Cave drawings depicting gambling offer proof of the existence of gambling in pre-historic times. The discovery of dice-like objects called *Astragali* made from ankle bones of sheep or dogs dating back to 40,000 years, further adds to the archive of evidence for the existence of gambling in ancient Europe. Pairs of dice, some of them 'loaded' to fall a certain way have also been found in the ruins of Pompeii¹⁷.

2.19 From references in the writings of Homer as well as other ancient texts, it is evident that gambling activities were

¹⁵AIR 1965 SC 307.

¹⁶ Roll of a Dice, The Ball is in motion, PL 59 (September 2013).

¹⁷The History of Gambling, available at: <http://www.gypsyware.com/gamblingHistory.html> (last visited on 25-05-2018).

widespread in ancient Greece. Games contingent upon 'luck' viz. flipping of coins and dice games have always been popular among different social groups. There were designated establishments, though of ill-repute, to cater to people with a passion for gambling. In Greece, certain Gods like *Hermes* and *Pan* were associated with gambling. Even the Gods were said to have gambled; Greek mythology shows that *Zeus*, *Hades* and *Poseidon* played dice to divide the Universe amongst themselves¹⁸.

2.20 The first mention of dice is found in Greek history in Sophocles's writings dated 500 BC, though dice was first discovered in an Egyptian tomb dated 3000 BC. Even though all forms of gambling were forbidden within the Rome's boundaries and were punishable with a penalty worth four times the stake, gambling was still prevalent among ancient Romans. Consequent to the ban, enterprising citizens of Rome invented the first gambling chip, so that if they were caught they could claim to be playing for chips and not real money¹⁹.

2.21 In Italy, the earliest gambling houses akin to modern casinos began emerging in the early 17th century. For example, in 1638, the Ridotto was established in Venice to provide a controlled gambling environment during the annual carnival season. History of land based casinos in Austria dates back to 1765 when, in Baden, first legal casino in Europe had been opened. During 19th century Casinos were emerging in Europe while in the United States of America informal gambling houses were more prevalent²⁰.

¹⁸Gambling in ancient civilisations, *available at*: <http://www.ancient-origins.net/ancient-places-europe/gambling-ancient-civilizations-00931> (last visited on 25-05-2018).

¹⁹ The History of Gambling *available at*: <http://www.gambling.net/history/> (last visited on 25-05-2018).

²⁰*Ibid.*

CHAPTER III

Distinction between Wagering, Gambling and Betting

3.1 Wagering is a generic term that encompasses within its ambit, the various acts of gambling and betting. It may or may not require an opposite party. In some instances, the operator conducts the process of gambling through various schemes. It involves people predicting the occurrence or non-occurrence of an event.

3.2 **Manu** has defined Gambling as:

अप्राणिभिर्यत् क्रियते तत्लोके द्यूतमुच्यते ।

प्राणिभिः क्रियते यस्तु स विज्ञेयः समाह्वयः ॥ २२३ ॥

This verse means:

when inanimate (things) are used (for staking money on them), that is called among men gambling (dyuta), when animate beings are used (for the same purpose), one must know that to be betting (samahvaya) (223) When birds, rams, deer or other (animals) are caused to fight against one another after a wager has been laid, it is called betting (samahavya).

3.3 **Kautilya's Arthshastra** defined gambling as wagering with inanimate objects such as dice; and betting as something that involved challenges and was concerned with cock fights, animal races and similar contests²¹.

3.4 This differentiation may not be very apt in today's time because of the emergence of different forms of wagering.

²¹LN Rangarajan (ed.), *Kautilya's Arthshastra* 347 (Penguin Books India Ltd., Calcutta, 1992).

3.5 Sir William Anson has defined a wager or bet as “A promise to give money or money’s worth upon the determination or ascertainment of an uncertain event”²² or it can be said that a wager is a contract where two or more parties agree on a certain sum of money to be paid to one of them on the happening of an uncertain event²³.

3.6 The Finance Act, 1994²⁴ defined “Betting or Gambling” under Section 65-B (15) as:

means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring.

3.7 However, the Finance Act, 2017²⁵ does not define Betting or Gambling.

3.8 Cambridge English Dictionary defines gambling as “the activity of risking money on the result of something, such as a game or horse race, hoping to make money²⁶”.

3.9 According to the Oxford English Dictionary, “Betting can be defined as an action of gambling money on the outcome of a race, game, or other unpredictable event”²⁷.

²²*Gherulal Parakh v. Mahadeodas Maiya & Ors.*, AIR 1959 SC 781.

²³ What is wager available at: <https://thelawdictionary.org/wager> (last visited on 23-05-2018).

²⁴ The Finance Act, 1994.

²⁵ The Finance Act, 2017.

²⁶ Available at: <https://dictionary.cambridge.org/dictionary/english/gambling#dataset-business-english> (last visited on 25-05-2018).

²⁷ Available at: <https://en.oxforddictionaries.com/definition/betting> (last visited on 25-05-2018).

3.10 According to the Black's Law Dictionary²⁸ gambling is defined as "the act of risking something of value for a chance to win a prize".

3.11 Betting in sports, is the act of wagering on the result of the sporting event. The term "betting" is generally considered synonymous with wagering, however, it alludes to antes in connection with events in the nature of races or matches between individuals or teams²⁹.

3.12 It can be said that wagering has various forms like gambling, betting and gaming. The United Kingdom Gambling Act, 2005³⁰, has defined gambling to include, betting, gaming and participation in a lottery. On the other hand, betting is defined as the "making or accepting of a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring; or whether anything is or is not true..."³¹.

3.13 Thus, betting can simply be defined as an act of putting at stake a wagering amount (valuable or liquid cash) on the prediction of occurrence or non-occurrence of an event. It is always done against a second party who places his stake against the one placed by the first party. Neither of the parties that have put at stake their wagering amounts should have any control over the event on which the amount is wagered. On the other hand, gaming includes a game of chance or skill or a combination of both. Examples of such gaming activities would

²⁸Bryan A. Garner, Black's Law Dictionary, (8th ed. West Publishing Co.) 701, 2004.

²⁹ Sethi, *Sethi's Law relating to Gambling, Betting, Lotteries and Clubs* 47(Law Publishers(India) Pvt. Ltd., Allahabad, 3rdedn).

³⁰ It is an Act of Parliament of United Kingdom. It applies to England, Wales and Scotland and is designed to control all forms of Gambling.

³¹Section 9.

include Poker, Pool, Billiards, Fantasy Football, Internet Games, Crap, Roulette and Slot Machines.

3.14 “Lottery”, being enumerated under Entry 40 of List I of the Seventh Schedule of the Constitution of India, has been generally excluded from the ambit of “gambling”, which is a State subject under Entry 34 of List II of the Seventh Schedule. The Public Gambling Act, 1867 (as applicable to States such as Himachal Pradesh and Madhya Pradesh) as well as section 2(i) of the Delhi Public Gambling Act, 1955, suggest the same. The Goa, Daman and Diu Public Gambling Act, 1976, expressly defines the term ‘gaming’ in the following words:

‘[g]aming’ includes (a) wagering or betting and includes wagering or betting on the digits of a numerical figure arrived at by manipulation in any manner whatsoever, or on the order of the digits, or on the digits themselves or on pictorial representations, (b) any transaction by which a person in any capacity whatever employs another person in any capacity whatever or engages for another in any capacity whatever, to wager or bet with any other person, (c) the collection or soliciting of bets, receipts or distribution of winnings or prizes in money or otherwise in respect of wagering or betting or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution, but does not include a lottery.

3.15 The Supreme Court in the case of *Dr. K. R. Lakshmanan v. State of Tamil Nadu & Anr.*³², defined gambling as follows:

Gambling in a nut-shell is payment of a price for a chance to win a prize. Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined

³²AIR 1996 SC 1153.

entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance...A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated - is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even Rummy are considered to be games of skill.

3.16 The Calcutta High Court in *Bimalendu De v. Union of India*³³, referred to the definition of Gambling given in the *Black's Law Dictionary*³⁴, and defined gambling as:

Making a bet occurs when there is a chance for profit if a player is skilful and lucky...A play for value against an uncertain event in hope of gaining something of value...It involves not only chance, but a hope of gaining something beyond the amount played. Gambling consists of a consideration, an element of chance, and a reward...The elements of gambling are payment of a price for a chance to win a prize.

3.17 The Supreme Court in *M.J. Sivani & Ors. v. State of Karnataka & Ors.*³⁵ referred to two definitions of Gaming as given in the Strouds Judicial Dictionary and the Black's Law Dictionary³⁶, as given below:

(i) The Strouds Judicial Dictionary:

To play any game, whether of skill or chance for money or money's worth; and the act is not less gaming because the game played is not in itself

³³AIR 2001 Cal 30.

³⁴6th edn.at 679.

³⁵AIR 1995 SC 1770.

³⁶Bryan A. Garner & Henry C. Black, Black's Law Dictionary, (6th ed.) 679, 1990.

unlawful and whether it involved or did not involve skill.

(ii) The Black's Law Dictionary³⁷

The practice or act of gambling. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. The element of gaming are the presence of price or consideration, chance and prize or reward.

3.18 The Court also noted that section 2(7) of Mysore Police Act, 1963, defines "gaming" to mean that "*it does not include a lottery but all forms of wagering or betting in connection with any game of chance, except wagering or betting on a horse-race, when such wagering or betting takes place*". Accordingly, the Court defined 'Gaming' in the following words:

Gaming is to play any game whether of skill or chance for money or money's worth and the act is not less gaming because the game is not in itself unlawful and whether it involved or did not involve skill.

3.19 Though both Betting and Gambling are primarily wagers, there is a slight difference between the two terms. Wagering, gambling and betting are often mistaken to be synonymous. The Madras High Court in *Public Prosecutor v. Veraj Lal Sheth*³⁸, explained the distinction as follows:

The principal distinction between gaming and betting or wagering is thus immediately apparent; in gaming the stake is laid by the players upon a game, the result of which may depend to some extent upon the skill of the players, but in a bet or wager, the

³⁷Bryan A. Garner & Henry C. Black, Black's Law Dictionary, (6th ed.) 679, 1990.

³⁸ AIR 1915 Mad 164.

winning or losing of stake depends solely upon the happening of an uncertain event.

3.20 Therefore, one may conclude that wagering, includes within its ever-so-wide meaning, gambling, betting and gaming. Gambling entails the occurrence or non-occurrence of an unpredictable event. An important distinction between betting and gambling is that in gambling, the stakes or wager is placed on an event without any clue of the outcome; whereas, in betting the stakes are placed on an event, the outcome of which is based on the performance of the players, influenced by their skill.

A. Gambling and Betting- a Game of Chance or Skill?

3.21 The main test to determine whether a game amounts to gambling or not is, what dominates/preponderates, whether skill or chance. Games of chance are those where the winner is predominantly determined by luck; the result of the game is entirely uncertain and a person is unable to influence such result by his mental or physical skill. The person indulging in game of chance wins or loses by sheer luck and skill has no role to play. On the other hand, the result of a game of skill is influenced by the expertise, knowledge and training of the player. In India, games of chance fall under the category of gambling, and are generally prohibited, while games of skill, falling outside the ambit of gambling are usually exempted.

3.22 In *RMD Chamarbaugawala v. Union of India*³⁹, the Apex court relied on the 'skill test' to decide whether an activity is gambling or not. The court held that competitions which

³⁹AIR 1957 SC 628.

substantially involve skills are not gambling activities but are commercial activities, protected under Art. 19(1)(g).

3.23 Relying again on the 'skill test', the Supreme Court in *State of Andhra Pradesh v. K. Satyanarayana & Ors.*⁴⁰, held that, rummy is preponderantly a game of skill and not of chance. The Court further observed that, "it requires certain amount of skill because the fall of the cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards". The expression 'mere skill' means presence of skill of a substantial degree.

3.24 Distinguishing between the terms 'games of skill' and 'games of chance', the Supreme Court in *K.R. Lakshmanan v. State of Tamil Nadu & Anr.*⁴¹, stated:

[In a] game of skill [...] although the element of chance necessarily cannot be entirely eliminated, is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player.

3.25 In this case, the court was considering whether horse-racing was a game of skill or chance. It 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. Thus, unlike lottery, the prediction of the result of the race is an outcome of knowledge, study and observation.

⁴⁰AIR 1968 SC 825.

⁴¹AIR 1996 SC 1153.

3.26 In *Pleasantime Products v. Commissioner of Central Excise, Mumbai-I*⁴², the Supreme Court, while considering whether 'scrabble' is a puzzle or a game, held that scrabble is a game. It was also observed that, unlike puzzle where the outcome is fixed, scrabble is a game of skill as the skill of player influences the outcome.

3.27 In *M.J. Sivani* case ⁴³, the Supreme Court, while determining the issue of the legality of prohibition on video games, under Section 2 (7) of the Mysore Police Act, 1963, observed that, even if video games were considered to be games of skill, the outcome could be manipulated by tampering with the machines. Therefore, the court refused to grant protection to these games.

3.28 The Andhra Pradesh High Court in the case of *D. Krishna Kumar v. State of Andhra Pradesh*⁴⁴, held that games of skill like rummy, even when being played for stakes, are outside the ambit of the Andhra Pradesh Gaming Act, 1974. However, the Division Bench of the Madras High Court in the case of *Director, Inspector General of Police v. Mahalakshmi Cultural Association*⁴⁵, had taken a contrary view holding that a game of skill for stakes falls within the definition of gaming under section 3 of the Madras City Police Act, 1888. However, the Supreme Court *vide* order dated 18th August, 2015 allowed the poker club Mahalakshmi Cultural Association to withdraw its Special Leave Petition as the members of the club had been acquitted of all the criminal charges in this regard by the trial court. Further, in its order, the Court clearly mentioned that the

⁴²(2010) 1 SCC 265.

⁴³AIR 1995 SC 1770.

⁴⁴2003 Cr LJ 143.

⁴⁵(2012) 3 Mad LJ 561.

writ petitions before the Madras High Court stood withdrawn and therefore observations contained in the High Court order did not survive.

3.29 In the case of *M/s Gaussian Networks Private Limited v. Monica Lakhanpal and State of NCT*⁴⁶, an application was filed under Order XXXVI Rule 1 of Civil Procedure Code, 1908 before a District Court in Delhi, seeking the Court's opinion whether participants be allowed to play a game of skill for stakes with the intention of making profit. It was held that playing skill-based games for money in the virtual space, renders them illegal. The degree of skill that is involved in playing these games in physical form cannot under any circumstances be equated with games played online. The Court held that since there was a possibility for manipulation of outcomes by cheating and collusion in online gambling, it can be assumed that the degree of chance would also increase. The court echoed the observations made by the Supreme Court in the *M.J. Sivani* case⁴⁷. On April 21, 2016 while the matter was still *sub judice*, Gaussian sought permission to withdraw both the Civil Revision Application and the original Order XXXVI Application, on the ground that in light of the decisions in *State of Andhra Pradesh v. K. Satyanarayana & Ors.*⁴⁸ and *K.R. Lakshmanan v. State of Tamil Nadu*⁴⁹, the position of law on the exemption for 'games of skill' is already clear. Further, with the enactment of the Nagaland Act the position of online games of skill stands clarified. In light of the District Court Order, the right of Gaussian to offer online games of skill would have been limited even under the Nagaland Act. The request to withdraw the

⁴⁶Order of the Delhi District Courts dated November 19, 2012 in Suit No. 32 of 2012.

⁴⁷AIR 1995 SC 1770.

⁴⁸AIR 1968 SC 825.

⁴⁹AIR 1996 SC 1153.

petitions was acceded to by the Delhi High Court, consequently the observations of the District Court did not survive⁵⁰.

B. Examining Foreign decisions

3.30 It is found that, in the Canadian case of *Rex v. Fortier*⁵¹, the distinction between game of chance and game of skill was set out by the Court stating that, “[A] game of chance and a game of skill are distinguished on the characteristics of the dominating element that ultimately determines the result of the game.”

3.31 In *Philip D. Murphy, Governor of New Jersey v. National Collegiate Athletic Association etc.* (case no. 16-476 and 16-477) decided by the Supreme Court of the United States on 14.05.2018, the Professional and Amateur Sports Protection Act 1992 (PASPA) was under scrutiny, as to whether it is in conflict with the Constitution of the United States of America or not. The provisions of the Act provided that neither the States nor the non-state actors can indulge in the activities surrounding the sports gambling, such as sponsorship, promotion, advertisement and licensing the same.

3.32 The Supreme Court of the United States, with a ratio of 6:3. Declared the Act unconstitutional. It opined that the scheme of the Act is “anti-commandeering” in nature, the Congress could not directly control the States, rather regulate the action of the individual, directly. Therefore, prohibiting the States from regularising the sports gambling was unconstitutional.

⁵⁰ *M/s Gaussian Network Pvt. Ltd. v. Monica Lakhanpal & Anr.*, Order dated April 21, 2016 in CRP No. 119 of 2012, Delhi High Court.

⁵¹ 13 Q.B. 308.

3.33 While dealing with various constitutional and legal issues, the Court took note of both sides' arguments, left the policy making to the Congress. In case the Congress does not wish to do so, the States are at liberty to regulate the sports gambling.

3.34 In the case of *State v. Gupton*,⁵² the Supreme Court of North Carolina held that any athletic game or sport is not a game of chance. In the United States, the 'dominant factor test' is applied by many States to determine whether or not a particular game is a 'game of skill' or 'game of chance'. For instance, poker is considered to be a game of skill because more skilful players will always win over the less skilled or novice players.

3.35 In a study carried out by the Computer Scientist Roman Yampolskiy, it is concluded that Poker is a game that requires a specific set of skills and some of those skills include:⁵³

1. The ability to precisely calculate probability of a needed card coming on a turn;
2. The skill to read opponents' behaviour and body language; and
3. The competence to apply strategic concepts such as "semi-bluffing and playing for implied odds."

3.36 The Court of Justice of the European Union in the case of *The English Bridge Union Limited v. Commissioner for Her Majesty's Revenue and Customs*⁵⁴, while deciding whether 'duplicate bridge' would constitute a "sport" within the meaning

⁵² 30 N.C. 271, as cited in Mukul Mudgal, *supra* note 2 at 234.

⁵³ Roman Yampolskiy, "Game Skill Measure for Mixed Games" 1:3 *WASET* 308-310 (2007).

⁵⁴ ECLI:EU:C:2017:814

of an exemption provision under the Council Directive on Value Added Tax⁵⁵, opined that even though an activity promotes physical and mental health, it is not, in itself, sufficient to conclude that such activity would be covered within the term “sport” in the said provision; and even if it were so, activities of pure rest and relaxation are not included within the purview of ‘sports’. The Court further noted that the concept of ‘sport’ appearing in the said provision is limited to activities satisfying the ordinary meaning of the term ‘sport’, characterised by a “not negligible physical element”, and does not cover all activities that may, in one way or another, be associated with that concept of ‘sports’.

3.37 Analysis of the aforementioned decisions brings out two principles. Firstly, prize competitions and contests, where the winner is determined by draw of lots are in the nature of gambling and cannot be extended protection under Article 19(1)(g) of the Constitution of India. Secondly, games where preponderance of skill dominates cannot be considered gambling and are protected under the Constitution.

⁵⁵ Article 132(1)(m), Title IX “Exemptions”, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax. (OJ 2006 L 347).

CHAPTER IV

Constitution of India and Betting

4.1 During the Constituent Assembly Debates on 02 September 1949⁵⁶, 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.

4.2 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.

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.

4.3 According to Constitutional experts, the Constitution provides for a quasi-federal structure, entailing that it is federal in form but unitary in spirit⁵⁷. 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.

4.4 The power of the State governments to make laws on gambling can be traced to Entry 34 List II of the Seventh Schedule of the Constitution. Thus, the States have exclusive power to make laws on this subject including power to prohibit

⁵⁷KC Wheare, *Modern Constitutions* 51 (Oxford University Press, London, 1962).

or regulate gambling etc. in their respective territorial jurisdiction. In *H. Anraj v. State of Maharashtra*⁵⁸, the Supreme Court observed:

.....there is no dispute before us that the expression "Betting and gambling" includes and has always been understood to have included the conduct of lotteries. Quite obviously, the subject 'Lotteries organised by the Government of India or the Government of a State' has been taken out from the legislative field comprised by the expression "Betting and gambling" and is reserved to be dealt with by Parliament. Since the subject 'Lotteries organised by the Government of India or the Government of a State' has been made a subject within the exclusive legislative competence of Parliament, it must follow, in view of Art. 246(1) and (3), that no legislature of a State can make a law touching lotteries organised by the Government of India or the Government of a State... This, as we said, is but recognition of the prevailing situation under the Constitution. The Constitutional position cannot be altered by an act of the State legislature.

4.5 The ideals and objectives envisioned by the framers of the Constitution are embodied in Directive Principles of State Policy. They provide a blueprint for the States to formulate new laws while keeping in mind the spirit of good governance. Article 38 of Constitution of India provides that the State shall secure social order for promoting welfare of its people by securing justice, social, economic and political. Article 39 of the Constitution directs the State to provide adequate means of livelihood to every citizen and to make sure that the economic system does not lead to unfair accumulation of wealth, rather the ownership and control of the resources of the community

⁵⁸AIR 1984 SC 781.

are so distributed as best to sub serve every class of society. It is also expected that the State oversees that children and youth are protected against exploitation, both moral and material.

A. Morality and Betting

4.6 India has been culturally opposed to gambling even though it existed in Indian society since ancient times. The textual references also suggest that these activities have never been approved by the society.

4.7 The Government generally prohibits such activities to prevent societal harm. The governmental policy may, not necessarily be in tune with existing social values. Despite being illegal, there are a few activities that the public at large, continues to indulge in. Illegal activities can be divided into two categories (A) activities, which definitely cause damage to the society *viz.* trade in contraband substances, and (B) activities like gambling and betting, which cause damage to the individuals but whose social impact varies⁵⁹.

4.8 Whether the State has the right to regulate private morals, is a question that has often underpinned gambling prohibition laws. J.S. Mill discussed the extent to which State should be allowed to restrict liberty of individuals and highlighted the conflict between liberty of individuals to carry trade of their choosing and be involved in desired activities and the effect of such choice on the society at large. While he was indecisive on the justifiability of prohibiting activities like

⁵⁹Nirod Kumar Palai, Sarojini Mishra, *et.al.*, “Gambling v, State: A Study of Problems and Prospects of Gambling Industry in India under Globalization Regime” *XIV International Economic History Congress, Helsinki* (2006).

gambling, he implicitly recognised the need for regulation of those activities that may cause harm to others. He remarked:

A person should be free to do as he likes in his own concerns; but he ought not to be free to do as he likes in acting for another, under the pretext that the affairs of another are his own affairs. The State, while it respects the liberty of each in what specially regards himself, is bound to maintain a vigilant control over his exercise of any power which it allows him to possess over other⁶⁰.

4.9 Those who argue in favour of legalising gambling, give primacy to individual autonomy and minimum State interference. Those who disfavour it, argue that immorality is a justifiable ground for restricting individual liberty, as such restrictions help in maintaining societal order. Arguments made in favour of regulating gambling, call for dissociating morality from gambling. It is believed that the connection between the two is merely derivative and associative and therefore, by freeing the concept of gambling from unwelcome moral negativity, it becomes easier to regulate it as an activity⁶¹.

4.10 In the case of *Guru Prasad Biswas & Anr. v. State of West Bengal & Ors.*⁶², the Calcutta High Court remarked that betting and gambling activities affect a person's morality and therefore infringe the right to life guaranteed under Article 21 of the Constitution.

⁶⁰J.S. Mill, *On Liberty and Utilitarianism* (Bantam Classic, New York, 2008).

⁶¹Harsimran Kalra, Abhishek Mukherjee, *et.al.*, "Twisted Willow, Gambling, Sport and Cricket in India" *Hindu Centre of Politics and Public Policy* (2013) available at:http://www.thehinducentre.com/multimedia/archive/01478/Issue_Brief_1478229a.pdf (last visited 31-05-2018).

⁶²(1998) 2 Cal LT 215.

4.11 In *Gherulal Parakh v. Mahadeodas Maiya & Ors.*⁶³, the Supreme Court observed:

The word 'immoral' is a very comprehensive word. Ordinarily it takes in every aspect of personal conduct deviating from the standard norms of life. It may also be said that what is repugnant to good conscience is immoral. Its varying content depends upon time, place and the stage of civilisation of a particular society. In short, no universal standard can be laid down and any law based on such fluid concept defeats its own purpose.

4.12 The notion of morality involved in gambling can be distinguished from that in sports-betting. Sports are 'games of skill' where tentative parameters like physical skills, effort, strategy and tactics, essential purpose, etc. are also taken into consideration. Gambling necessarily entails the determination of a result based on eventualities beyond human control. In sports, however, determination of results are primarily based on skill rather than chance. If in an event, substantial amount of skill is required to place the bets, the argument of immorality of the activity does not survive.

4.13 Ideally, Constitutional morality should be the touchstone for justifying State intervention. Offending public morality cannot be a ground for determining the legality of an action. In 2002, the Haryana Assembly passed two Bills, namely the Public Gambling (Haryana Amendment) Bill of 2002, which was an essential aspect of the second Bill, i.e. the Haryana Casino (Licensing and Control) Bill of 2002 that called for allowing Casino projects in Haryana. The Governor of Haryana had reserved the Amendment Bill for the consideration of the

⁶³AIR 1959 SC 781.

President under Article 200 of the Constitution of India. The Amendment Bill sought to add section 19 to the Public Gambling Act, 1867 applicable to the State of Haryana with the purpose and objective to allow casino projects as an instrument of infrastructural growth, attract global investment, promote tourism and create employment opportunities. The proposed section 19 read as:

“19. Authorised Gambling.- Nothing in this Acts shall apply to any gambling activity carried on under the authority and subject to the licence granted in accordance with any law for the time being in force.”

The Amendment Bill was reserved on the following grounds, viz.:

1. “The Bills received strident criticism from different sections of society”
2. Increase in “various criminal activities such as drug running, prostitution and extortion by organised crime syndicates”.
3. Difference of “socio-cultural mores and value and traditions” from the State of Goa, “whose liberation from the Portuguese rule is a comparatively recent historical development and has left that State with a unique cultural legacy”
4. “Casinos are essentially a gambling activity for which Foreign Direct Investment is barred” and “foreign investment and foreign technology collaboration in any form are reportedly prohibited in the lottery business, gambling and betting sector.”.
5. The Bills would “attract the doctrine of ‘occupied field’ as they occupy the same field as The Public Gambling Act, 1867 and relate to the subject matter the Act of 1867 and are repugnant to its spirit as they seek to legitimise and license gambling Activities in Casinos whereas the Act of 1867 represses public gambling.”.
6. It would have “ramifications beyond the State of Haryana affecting the socio-political fabric of the entire nation as Haryana’s physical proximity to the National Capital Territory of Delhi raises among other issues, the spectre of security concerns”.

4.14 In 2005, the President of India withheld the assent from the Public Gambling (Haryana Amendment) Bill of 2002. In

withholding the assent therefrom, the President was guided by the recommendations of various Ministries of the Central Government, which are summarised as follows:

1. The Ministry of Home Affairs (Judicial Cell) conveyed 'no comments' on the proposal.
2. The Ministry of Law and Justice (Legislative Department) conveyed 'no comments' on the proposal.
3. The Ministry of Commerce and Industry, Department of Industrial Policy and Promotion conveyed that both, Foreign Investment and Foreign Technology Collaboration, in any form, are completely prohibited in the lottery business, gambling and betting sector.
4. The Ministry of Home Affairs (Centre-State Division) stated that "in view of the **national policy of discouraging gambling in all forms** they are opposed to the Public Gambling (Haryana) Amendment Bill, 2002 as it seeks to defeat the very purpose of the Original Act viz. The Public Gambling Act, 1867". They further argued "that casinos, gambling and betting sector etc. might encourage organised crimes".
5. The Ministry of Home Affairs (Judicial and Political Pensions Section), in view of the strong objection of the Department of Industrial Policy and Promotion and the Centre-State Division of the Ministry of Home Affairs, proposed that the assent of the President be withheld from the Bill.
6. The Ministry of Tourism & Culture (Department of Tourism), on the other hand, supported the proposal from the point of view of tourism development in the country.

4.15 It is noted that Ministry of Home Affairs, Government of India, while recommending to the President to withhold his assent from this Bill, distinguished the purpose and object of the Bill with the Goa, Daman and Diu Public Gambling Act, 1976, the only State enactment that allows casinos. The Ministry stated that the Goa Act of 1976 was assented by the President because it was enacted to provide for punishment for public gambling and keeping of common gaming houses

whereas Haryana Amendment Bill was to authorise any public gambling activity, provided a licence is obtained. However, the object and purpose of the Public Gambling Act, 1867 as stated by the Governor in his reference is “to provide for the punishment of public gambling and the keeping of common gaming-houses”, which is identical to that of the Goa Act, thus, rendering the distinction vague.

4.16 Further, as rightly stated by the Ministry of Home Affairs, the Goa, Daman and Diu Public Gambling Act, 1976⁶⁴ was accorded assent by the President, because, at the time of enactment, this Act did not permit games of chance/casinos to operate in Goa, Daman and Diu. It was later with the enactment of the Amendment Act of 1992; provisions were made for permitting licensed casinos/games of chance to operate through the region⁶⁵. However, the assent of the President was not taken while bringing the Amendment Act 1992.

4.17 While the main argument in favour of regulating the betting and gambling is revenue generation through taxation on its proceeds, the question remains whether one can choose revenue over morality. In this regard, it is pertinent to note that in the State of Bihar the revenue collection from liquor increased from Rs.500 crore in 2005 to Rs.4,000 crores (approx.) in 2014-2015. Yet, taking note of the immorality associated with the consumption of liquor and its ill-effects on Society, the State of Bihar put a State-wide ban on the sale, consumption and production of liquor in 2015⁶⁶. Other States such as Gujarat, Nagaland, Manipur and Lakshadweep too,

⁶⁴Notification No. LD/Bill/6/76, Official Gazette, Government of Goa, Daman and Diu, Series I No. 20 dated 12-08-1976.

⁶⁵ Notification No. 7-6-92/LA, Official Gazette, Government of Goa, Daman and Diu, Series I No. 25 dated 17-09-1992.

⁶⁶ Ravish Tiwari, Santosh Singh, “*Why Nitish says no to liquor*”, Indian Express, New Delhi, 31/05/2018.

guided by the unwritten principles and notions of morality prevalent in their States and taking into consideration the ill-effects of consumption of liquor in an uncontrolled manner, have prohibited the sale of liquor to protect the vulnerable sections of the society, in spite of huge revenue losses.

4.18 'Immorality', *per se*, cannot be a ground to challenge the Constitutional validity of an enactment as morality is a subjective concept. If, however, some form of morality is reflected in any provision of the Constitution, for example, if an enactment compromises the dignity of an individual, it may be challenged as being violative of Article 21 of the Constitution. Additionally, if a custom or usage has been deemed 'immoral' by a particular demographic it may be challenged by them as such. It should also be noted that morality and criminality are not co-extensive⁶⁷. Morality is a ground for imposing reasonable restrictions on individual's freedom⁶⁸. It is said that the law remains in a state of flux while defining morality, for it is required that the law must continually evolve to accommodate the needs of changing time.

B. Legal perspective of Gambling and Betting

4.19 There are chances that people in a bid to earn a quick buck through gambling might resort to unlawful means. A comprehensive analysis of the socio-economic circumstances in light of the Constitutional guidelines is thereby essential before framing a legislation(s) for regulating gambling.

⁶⁷*S. Khushboo v. Kanniammal*, AIR 2010 SC 3196.

⁶⁸*Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte & Ors.*, AIR 1996 SC 1113; See also, *Bobby Art International, etc. v. Om Pal Singh Hoon & Ors.*, AIR 1996 SC 1846; and *Shri Raghunathrao Ganpatrao v. Union of India*, AIR 1993 SC 1267.

4.20 There are two kinds of wrongful conduct, *malum in se*, i.e., conduct that is inherently wrongful and *malum in prohibitum*, i.e., conduct that is wrong because it is prohibited. Those arguing in favour of regulating Betting and Gambling, believe it to be an inherently immoral activity since it disrupts the work ethic, leads to crime and is addictive⁶⁹. Since betting & gambling may lead to exploitation of the vulnerable class, it is believed to be against the principles of morality.

4.21 The Apex Court has while taking note of the negative impact of gambling in *State of Bombay v. RMD Chamarbaugwala*⁷⁰ said:

....which encourages a spirit of reckless propensity for making easy gain by luck or chance, which leads to the loss of the hard-earned money of the undiscerning and improvident common man and thereby lowers his standard of living and drives him into a chronic state of indebtedness and eventually disrupts the peace and happiness of his humble home.....

4.22 Indiscriminate gambling and betting activities create a platform for individuals to be involved in immoral, corrupt and socially pernicious activities. According to the Rangarajan Committee Report, persons having monthly per capita consumption expenditure below Rs.972 (Rs.32 per person per day) in rural areas and Rs.1,407 (Rs.47 per person per day) in urban areas in 2011-12 are considered to be below the poverty line. According to this threshold, it was estimated by the Rangarajan Committee in 2014 that 30.9% of the rural

⁶⁹ K. Rand and S. Righty, "Moral Policymaking and Indian Gaming: Negotiating a Different Terrain" available at:

<https://www.bc.edu/content/dam/files/centers/boisi/pdf/f07/gamblingpapers/Rand-Light.pdf> (last visited on 02-06-2018)

⁷⁰AIR 1957 SC 699.

population and 26.4% of the urban population in India was below the poverty line in 2011-12⁷¹.

4.23 This makes the problem grave in light of the fact that one third of the population in India lives below the poverty line.

1) Doctrine of *res extra commercium*

4.24 The doctrine of *res extra commercium* seeks to exclude certain activities from the ambit of freedom of trade and profession guaranteed under Articles 19(1)(g) and 301 of the Constitution of India. In *State of Bombay v. RMD Chamarbaghwal*⁷², the Apex Court observed that:

“We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient countries’ trade commerce or intercourse to be declared as free under Article 301... the real purpose of Articles 19(1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and essence are *extra commercium* though the external forms, formalities and instruments of trade maybe employed and they are not protected either by Article 19(1)(g) or Article 301 of the Constitution.”

4.25 The Court remarked that though these activities employ external forms, formalities and instruments of trade, they could not be considered commerce. It is pertinent to note that this distinction between activities that were protected under Article 19(1)(g) of the Constitution and those that were not, was made on the basis of whether the said activity involved substantial element of skill or chance. While the former have been afforded constitutional protection, the latter have been termed illegal.

⁷¹ Planning Commission, Report of the Expert Group to Review the Methodology for Measurement of Poverty (June, 2014).

⁷²AIR 1957 SC 699.

4.26 However, the Supreme Court while referring to its earlier decision of *State of Bombay v. R.M.D. Chamarbaugwala*⁷³ in *R.M.D. Chamarbaugwala v. Union Of India*⁷⁴ observed that “trade commerce protected by Article 19(1)(g) and Article 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but *res extra commercium*, and that it does not fall within the purview of these Articles”.

4.27 A similar view was taken in *M/s. B.R. Enterprises v. State of U.P. & Ors.*⁷⁵, observing that gambling is not a ‘trade’ within the meaning of Article 19(1)(g) or 301 of the Constitution, and is therefore not constitutionally protected. This is because gambling is inherently based on chance with minimum to no involvement of skill, while trade is predominantly skill-based. Interestingly, the Supreme Court also held lottery to be a form of gambling due to the overriding factor of chance and said that merely because lottery is run by State, it will not change its character as *res extra commercium*.

4.28 Further in *K.R. Lakshmanan (Dr.) v. State of Tamil Nadu*⁷⁶, the Apex Court, once again, while relying on the two *Chamarbaugwala* judgments held that gambling was not trade and as such was not protected by Article 19(1)(g) of the Constitution.

4.29 It is clear that the courts in India while relying on *State of Bombay v. R.M.D. Chamarbaugwala* continue to hold that gambling does not fall within the ambit of trade, commerce etc. and therefore, does not enjoy the protection of Articles 19(1)(g)

⁷³ Supra

⁷⁴ AIR 1957 SC 628.

⁷⁵ AIR 1999 SC 1867.

⁷⁶ AIR 1956 SC 1153.

and /or 301. Accordingly, one can conclude that the two *Chamarbaugwala* cases⁷⁷ lay down the prevailing law on this aspect of the subject. While analysing the decisions of the Supreme Court of India in the two *Chamarbaugwala* cases with reference to the doctrine of “*res extra commercium*”, Mr. Arvind Datar⁷⁸, tracing back the origin of the doctrine to Roman Law has commented to the effect:

1. The *res extra commercium* doctrine traces its conceptual roots to Roman law. *Res in commercio*, in Roman law, were things capable of ownership and hence, the subject of property rights, while *res extra commercium* were things incapable of ownership.
2. The Supreme Courts used this expression for the first time in *State of Bombay v. R.M.D. Chamarbaugwala*, (Supra). This case was concerned with the constitutional validity of the Bombay Lotteries and Prize Competition Control and Tax Act., 1948.
3. The incorrect usage of this expression, on the other hand, can be attributed to the judgment of the Supreme Court in *R.M.D. Chamarbaugwala v. Union of India*(Supra), a case decided on the same day as *State of Bombay v. R.M.D. Chamarbaugwala*(Supra).
4. The Court, unfortunately interpreted the first judgment as holding that gambling was not trade but *res extra commercium*, when the said judgment had actually laid down that “*gambling activities from their very nature and in essence are extra-commercium*”.
5. This expression has been wrongly used in the last sixty years by the Indian Courts. No activity can be called “*res extra commercium*”. It is either permitted or not. Even if gambling is harmful to society, there is nothing that prohibits the State Government from allowing gambling casinos to function.
6. The erroneous view that Art. 19(1)(g) does not apply to noxious substances unduly widens the

⁷⁷ AIR 1957 SC 699; AIR 1957 SC 628.

⁷⁸Arvind Datar, "Privilege, Police Power and Res Extra Commercium - Glaring Conceptual Errors", *National Law School of India Review*, Vol. 21, No.1, 2009, p.145.

power of the State in two important respects. *First*, it is possible for the State to affect detrimentally the trade in such substances by the use of mere executive power. (*Khoday Distilleries Ltd. v. State of Karnataka*, (1995) 1 SCC 574.) *Second*, it is also possible for the State to impose reasonable restrictions on those employed in distilleries or in lottery agencies since they have no right to be there.

4.30 Further, the law laid down in the two Charmbaugwala cases falls vulnerable under the Prevention of Money Laundering (Amendment) Act, 2013, a special enactment. Section 2 (1)(sa) now defines “a person carrying on a designated business or profession” to include “a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino”. Therefore, under the aegis of the Prevention of Money Laundering Act, 2002 gambling and casino activities, having deemed to be designated businesses/professions ought to enjoy protection under Articles 19(1)(g) and 301.

2) Immorality or opposed to public policy

4.31 Section 23 of the Indian Contract Act, 1872⁷⁹, stipulates that consideration or object of an agreement would be lawful unless regarded as immoral, or opposed to public policy, by the Court.

(i) What is public policy?

4.32 Public policy is a Common Law Doctrine, that is invoked whenever an action affects/offends the public interests or where harmful result of permitting the contract in terms of injury to

⁷⁹ The Indian Contract Act, 1872.

the public at large, is evident⁸⁰. Thus, Public policy varies from generation to generation and even within the generation, and therefore it does not remain static⁸¹. Social circumstances and societal needs change with time and so changes the public policy of a society⁸².

4.33 The Apex Court in *Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr.*⁸³, while considering the scope of the essentials of Section 23 opined:

the Indian Contract Act does not define the expression "public policy" or "opposed to public policy". From the very nature of things, the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definition.....Public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or the public interest has varied from time to time.

4.34 Thus, there lies a distinction between public policy and policy of law⁸⁴; and they are not co-extensive.

4.35 The Supreme Court in the case of *Gherulal Parakh v. Mahadeodas Maiya & Ors.*⁸⁵ while examining the scope of Section 23 held:

The word 'immoral' is very comprehensive word. Ordinarily it takes in every aspect of personal conduct deviating from the standard norms of life It may also be

⁸⁰*Union of India v. Gopal Chandra Misra*, AIR 1978 SC 694; See also, *Firm of Pratapchand Nopaji v. Firm of Kotrike Venkata Setty & Sons*, AIR 1975 SC 1223.

⁸¹*ONGC v. Saw Pipes*, AIR .2003 SC 2629.

⁸²*Murlidhar Agrawal v. State of Uttar Pradesh*, AIR 1974 SC 1924; See also, *Board of Control of Cricket in India v. Cricket Association Of Bihar* (2015) 3 SCC 251.

⁸³AIR 1986 SC 1571.

⁸⁴*Murlidhar Agrawal* (Supra Note 82); and *CBI v. Ashok Kumar Aggarwal* (2013) 15 SCC 222. See also *Egerton v. Earl of Brownlow* (1853)4 HLC 484.

⁸⁵AIR 1959 SC 781.

said that what is repugnant to good conscience is immoral. Its varying content depends upon time, place and the stage of civilization of a particular society. In short, no universal standard can be laid down and any law based on such fluid concept defeats its own purpose. The provisions of Section 23 of the Contract Act indicate the legislative intention to give it a restricted meaning. Its juxtaposition with an equally illusive concept, public policy, indicates that it is used in a restricted sense; otherwise there would be overlapping of the two concepts. In its wide sense what is immoral may be against public policy covers political, social and economic ground of objection. Decided cases and authoritative text-books writers, therefore, confined it, with every justification, only to sexual immorality. The other limitation imposed on the word by the statute, namely, "courts consider immoral" brings out the idea that it is also a branch of the common law like the doctrine of public policy, and, therefore, should be confined to the principles recognized and settled by Courts. Precedents confine the said concept only to sexual immorality and no case has been brought to our notice where it has been applied to any head other than sexual immorality. In the circumstances, we cannot involve a new head so as to bring in wagers within its fold.

4.36 The Courts in India have been unwilling to extend the scope of "immorality" under section 23 of the Contract Act. However, in *Union of India v. M/s N.K. Garg & Co.*⁸⁶, the Delhi High Court held that any agreement by which a party is deprived of interest (any legitimate claim) would be rendered void for being immoral and violative of public policy. The Delhi High Court in *North Delhi Municipal Corporation v. Prem Chand Gupta*⁸⁷, examined the third part of section 23 of the Contract Act to determine as to whether the clause of the contract between the parties that prohibited the payment of interest can be said to be immoral or against the public policy. The Court observed:

⁸⁶O.M.P. No.327/2002decided on November 2, 2015.

⁸⁷ RFA Nos. 623 and 628/2017 decided on July 17, 2017available at:

<http://lobis.nic.in/dhir/dhc/VJM/judgement/18-07-2017/VJM17072017RFA6232017.pdf> (last visited on 02-06-2018).

Therefore, in today's date and age to say that moneys can be retained for years and years and decades is clearly immoral and has to be held against public policy otherwise there will be gross injustice to the existence of the commercial world which cannot survive without payment of moneys in time.

4.37 Therefore, it can be seen that though gambling and betting might be considered morally questionable, the framers of the Constitution were cognizant of the fact that it would be nearly impossible to completely prohibit these activities. This difficulty has increased manifold with the advent of Internet Technology. Thus the decision to put gambling and betting under the State List, empowering the States to regulate these activities as per the socio economic conditions of that particular State has proven to be a right decision.

3) Wagering Agreements

4.38 Those who argue in favour of betting and gambling being regulated contend that under Section 30 of the Indian Contract Act, 1872⁸⁸ a wager is void and unenforceable, but at the same time it is not forbidden by law and hence, cannot be termed illegal⁸⁹. The section provides that wagering agreements are void. In the case of *Carlill v. Carbolic Smoke Ball Co.*⁹⁰, a wagering agreement was defined as:

one by which two persons, professing to hold opposite views touching the issue of a future uncertain event, mutually agree that, dependent upon the determination of that event, one shall win from the other, and that other shall pay or hand over to him, a sum of money or other stake; neither

⁸⁸ The Indian Contract Act, 1872.

⁸⁹ *Gherulal Parakh v. Mahadeodas Maiya & Ors.*, AIR 1959 SC 781.

⁹⁰ [1892] 2 Q.B. 484.

of the contracting parties having any other interest in that contract than the sum of stake he will so win or lose, there being no other real consideration for the making of such a contract by either of the parties.

4.39 The object behind this provision is to deter people from indulging in games of chance to make a quick buck. Instead, they could devote their time and efforts on endeavors that are more productive for themselves, their families as well as the society⁹¹.

4.40 Section 30 of the Indian Contract Act in its current form is detrimental to the players and consumers of the Gaming Industry. A legal casino or online gaming operator could refuse to pay the winnings citing the provisions of Section 30 and unenforceability of the gambling transaction to its favour. Further, the section does not distinguish between wagers on games of chance versus wagers on games of skill.

4.41 This section can be equated with Section 18 of the Gambling Act, 1845⁹² of the United Kingdom. Thus, when posed with the question of enforceability of contracts relating to gambling and betting activities, the United Kingdom dealt with the issue by enacting the Gambling Act, 2005 (hereinafter UK Gambling Act). The UK Gambling Act repealed certain provisions of a number of statutes, dating back to the eighteenth and nineteenth centuries, which prevented contracts relating to gambling from being enforceable. The UK Gambling Act by way of Section 334 repealed Section 18 of the Gambling Act, 1845, which read as:

⁹¹*Subhash Kumar Manwani v. State of Madhya Pradesh*, AIR 2000 MP 109.

⁹²*Gherulal Parakh v. Mahadeodas Maiya & Ors.*, AIR 1959 SC 781.

18. Wagers not recoverable at Law.-All contracts or agreements, whether by parole or in writing, by way of gaming or wagering, shall be null and void; and no suit shall be brought or maintained in any court of law and equity for recovering any sum of money or valuable thing alleged to be won upon any wager, or which shall have been deposited in the hands of any person to abide the event on which any wager shall have been made: Provided always, that this enactment shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or towards any plate, prize, or sum of money to be awarded to the winner or winners of any lawful game, sport, pastime, or exercise.

4.42 Section 334 of the UK Gambling Act, 2005 did not give retrospective effect to the repealing. Furthermore, Section 335 thereof provides that the fact that a contract relates to gambling shall not affect negatively to its enforcement. However, it does not, override any other provisions of law that prevents enforcement on the ground of unlawfulness that means any ground for a void contract applicable to any other kind of contract.

4.43 Section 336 of the 2005 Act, further allows the Gaming Commission to declare void certain bets (even when made through a licensed operator) on grounds of unfairness, and all contracts or arrangements in relation to such bets.

4.44 It is most important to note that even though, Section 30 of the Indian Contract Act and Section 18 of the Gambling Act of 1845 (UK) prevented the *enforcement* of agreements relating to gambling or betting, it has not prevented parties from entering into such agreements.

CHAPTER V

Statutory Provisions

5.1 Whilst 'betting and gambling' and taxation thereof are State subjects, as enumerated under Entries 34 and 62 of List II (State List) of the Seventh Schedule of the Constitution of India, there still exist certain Central Legislations, affecting the subject. The Indian Penal Code, 1860 (IPC), the Indian Contract Act, 1872 (Contract Act), the Foreign Exchange Management Act, 1999, and the Prevention of Money Laundering Act, 2002 (PMLA) are some examples. A brief description of these laws is as under:

A. Central Laws

1. The Lotteries (Regulation) Act, 1998

5.2 "Lotteries", falling under Entry 40 of List I of the Seventh Schedule of the Constitution of India is a Central Subject and is therefore governed by the Lotteries (Regulation) Act, 1998, a Central enactment. Accordingly, "lotteries" have been generally excluded from the scope of 'betting and gambling'.

5.3 The Act of 1998 lays down the conditions subject to which lotteries may be organised by State Governments, *viz.* the place of the draw should be located in the concerned State, and *vide* section 4, sale proceeds to go to the State treasury, etc. At the same time, section 5 of the Act, 1998 gives to the State Governments, the prerogative to run lotteries, within their geographical territories, while prohibiting the sale of their lottery tickets in any other State.

2. Indian Penal Code, 1860

5.4 Sub-section (1) of section 292 of the Indian Penal Code provides for a "matter" to be obscene if:

[I]t is lascivious or appeals to the prurient interest or if its effect, or (where it comprises two or more distinct items) the effect of any one of its items, is, if taken as a whole, such as to tend to deprave and corrupt persons, who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

5.5 Sub-section (2) supplements Sub-section (1) of Section 292 by laying down a list of instances as also the penalties of offences covered under this provision. Section 294 strikes at punishing anyone who “to the annoyance of others does any obscene act in a public place or sings, recites or utters any obscene song, ballad or words, in or near any public place”.

5.6 These provisions of the IPC may be attracted if any obscene matter is used for the purpose of advertising ‘Betting and Gambling’ activities.

3. The Indian Contract Act, 1872 (Contract Act)

5.7 Section 23 of the Contract Act, states that “the consideration or object of an agreement is lawful, unless – it is forbidden by law; or is of such a nature that, if permitted it would defeat the provisions of any law”. This opens the gateway for Section 30 to come into operation which states that an agreement by way of wager is “void and unenforceable, but at the same time it is not forbidden by law and hence, cannot be termed illegal”⁹³. In such a situation, no suit can be brought to enforce any winnings accruing out of winning a bet or gamble. However, this provision makes an exemption for betting on horse-racing, making them legally permissible under the Contract Act.

⁹³*Gherulal Parakh v. Mahadeodas Maiya & Ors.*, AIR 1959 SC 781

4. Prize Competitions Act, 1955

5.8 Prize Competitions in India are treated as a separate category from the general proscription on gambling. Accordingly they are governed by the Act, 1955. Section 2(d) of the Act defines the term “Prize Competition” as:

any competition (whether called a cross- word prize competition, a missing- word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation, of letters, words, or figures.

5.9 Section 4 of the Act provides that maximum prize that may be offered in a prize competition cannot exceed Rs.1,000, with the upper-limit of entries not exceeding 2,000 persons. Further, it lays down the condition that a licence must be obtained before offering a prize competition and provides for a detailed mechanism for grant and revocation of such licences. The Act also provides that any person violating these provisions shall be liable for penal consequences.

5.10 The Prize Competition Act, 1955 has, in fact, been enacted by the Parliament Of India in exercise of its powers under Article 252(1) on being authorised to legislate on prize competitions by the States of Andhra, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Bharat, Patiala and East Punjab States Union, Saurashtra and all the erstwhile Part C States.

5.11 The P.C. Jain Committee, 2014 which was constituted by the Prime Minister’s office to identify the Central Acts which are no longer relevant or needed or required, recommended that the

Prize Competition Act, 1955 be repealed as most States have their own State Legislations to deal with 'Betting and Gambling'. Further, some of the States mentioned in section 1(2) of the Act no longer exist.

5. Foreign Exchange Management Act, 1999

5.12 Remittances of Income from lottery winnings, racing/riding, sweepstakes etc. are prohibited under the Act, 1999 read with Rule 3 and Schedule 1 of the Foreign Exchange Management (Current Account Transaction) Rules, 2000.

5.13 The Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017⁹⁴ and the Consolidated Foreign Direct Investment (FDI) Policy, 2017⁹⁵ issued by the Government of India, *vide* clause 5.1(a) prohibit both, "Foreign Direct Investment" and "investment by a person resident outside India" in entities conducting "lottery Business including Government/private lottery, online lotteries etc." and "Gambling and Betting including casinos etc." by clause 5.1(b). The Consolidated FDI Policy and the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 are reflective of the National Policy of India in matters pertaining to foreign direct investment and investment by a person resident outside India. Similarly, collaborations in foreign technology in any form whatsoever, for the purposes of gambling and betting activities is also prohibited under clause 5.1.

⁹⁴Notification No. FEMA 20(R)/ 2017-RB, Reg. 15, 07-11-2017, *available at*: https://rbi.org.in/scripts/BS_FemaNotifications.aspx?Id=11161 (last visited on 31-05-2018).

⁹⁵D/o IPP F. No. 5(1)/2017-FC-1, 28-8-2017, *available at*: http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf (last visited on 31-05-2018).

6. Payment and Settlement Systems Act, 2007

5.14 The Reserve Bank of India is the sole authority in India to regulate all forms of electronic payment under the Act, 2007.

5.15 Section 4(2) thereof provides that any payment system or clearing house with majority of the equity held by a foreign bank requires prior authorisation of the RBI to operate in India.

5.16 Under section 17 of the Act, 2007, the Reserve Bank of India has been given the right to draft policies, in accordance with this Act, on demand for almost everything involving payment processing in India, which are to be compulsorily complied with as provided in section 19 of the Act.

5.17 In the past, RBI has exercised the powers under this Act to achieve its objective, by going after PayPal India ⁹⁶ , Neteller and Entro Pay ⁹⁷. If the RBI were to similarly decide to go after gambling processors, the legal framework and authority, as it already exists, would, in fact, make it possible to curb the functioning of these gambling processors.

7. The Prevention of Money Laundering Act, 2002

5.18 The Act, 2002 came into force with effect from 1st July, 2005, governs the law relating to anti-money laundering in India. All entities offering games to be played for cash or its equivalent, whether online or offline, are required to adhere to

⁹⁶ "India Says Paypal Not Authorized For Money Transfer" available at <https://www.reuters.com/article/urnidgns002570f3005978d8002576c7004772a9/india-says-paypal-not-authorized-for-money-transfer-idUS16299391020100211/> (last viewed on 30-05-2018).

⁹⁷ "Paypal Banking" available at: <https://sportsbetting.net.in/banking/paypal/> (last viewed on 30-05-2018).

the provisions of the Act and The Prevention of Money Laundering (Maintenance of Records) Rules, 2005⁹⁸. Section 12 of the Act requires “reporting entities”, as defined in Section 2(1)(wa) to include “a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino” to maintain records of transactions and documents showing the identity of their clients in accordance with the 2005 Rules. These rules prescribe the nature as well as value of the transactions for which such records are to be maintained.

5.19 After the Prevention of Money Laundering (Amendment) Act, 2013 Section 2(1)(sa) reads that “a person carrying on designated business or profession” shall include “a person carrying on activities for playing games of chance for cash or kind, and includes such activities associated with casino”. Thus, offering games of chance or activities associated with casino, after the amendment of 2013 constitute a “designated business or profession” under the Act.

8. The Young Person’s (Harmful Publications) Act, 1956

5.20 The Act, 1956 prohibits the dissemination of certain types of publications harmful to young persons. Section 2(a) of the Act defines “harmful publication” to mean any book, magazine etc. “which as a whole tend to corrupt a young person”⁹⁹.

⁹⁸ The Prevention Of Money-Laundering (The Manner Of Forwarding A Copy Of The Order Of Provisional Attachment Of Property Along With The Material, And Copy Of The Reasons Along With The Material In Respect Of Survey, To The Adjudicating Authority And Its Period Of Retention) Rules, 2005, brought to force by Section 73 (1)(b) & (2) of The Prevention of Money Laundering Act, 2002, *available at*: http://www.enforcementdirectorate.gov.in/pmla_rules.pdf (last visited at 26-05-2018).

⁹⁹ Section 2(c) defines ‘young person’ to mean a person under the age of twenty-years.

5.21 Section 3 of the Act further provides for penal consequences in case of sale etc. of such 'harmful publication'. Accordingly, any literature related to gambling and betting activities, that may adversely influence "young persons", would attract the relevant provisions of this Act.

9. The Indecent Representation of Women (Prohibition) Act, 1986

5.22 In India, many games and gaming websites display content, portraying animated human caricatures depicting women in a manner which is offensive/indecent. It must be noted that, any indecent or derogatory depiction of women, as defined in section 2(c), is prohibited under Section 3 of the Indecent Representation of Women (Prohibition) Act, 1986, which would also cover within its ambit, the above mentioned offensive/indecent content displayed on online gambling/gaming platforms.

10. The Information Technology Act, 2000 (IT Act)

5.23 Publishing and transmitting material "which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it", in electronic form is prohibited and a violation thereof is punishable under section 67 of the IT Act. Further, section 67A strikes at any material which "contains sexually explicit act or conduct", penalising the same.

5.24 Section 69A further strengthens the Central Government by conferring upon it the power to direct its agencies or

intermediaries to block access to infringing websites. In doing so, the IT Act is supported by the Information Technology (Intermediary Guidelines) Rules, 2011¹⁰⁰.

11. Information Technology (Intermediaries Guidelines) Rules, 2011 (Intermediaries Rules)

5.25 The Intermediaries Rules, which have been framed under Section 87(2)(zg) read with Section 79(2) the Information Technology Act, 2000. Rule 3(2)(b) thereof requires ‘intermediaries’ like internet service providers, network service providers, search engines, telecom operators etc. not to host or transmit any content which *inter alia* relates to or encourages gambling. Further, Rule 3(4) requires intermediaries to remove content relating to or encouraging gambling within thirty-six hours, either “upon receiving actual knowledge or on being notified to do so by the appropriate government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act...”

12. Telecom Commercial Communications Customer Preference Regulations, 2010

5.26 The Telecom Commercial Communications Customer Preference Regulations, 2010 have been issued by The Telecom Regulatory Authority of India, with the objective of prohibiting “Unsolicited Commercial Communications”. These regulations have been framed in response to various complaints made against spam calls and SMSs. Therefore, any sort of unsolicited commercial communication pertaining to gambling or betting will attract the prohibition contained in these Regulations.

¹⁰⁰Notification No. G.S.R. 314(E), 11-04-2011.

13. The Cable Television Network Rules, 1994

5.27 The Cable Television Network Rules, 1994¹⁰¹ prohibit the advertisement of gambling activities. However, as set out in rule 7 the advertisement of games of skills, such as horse racing, rummy and bridge, is not prohibited.

14. Income Tax Act, 1961

5.28 The current taxation regime in India covers the gaming industry, both directly as well as indirectly, in terms of imposition of tax and the revenue generated from taxation of legalised and regulated gambling contributes towards India's GDP. The "tax on winnings from lotteries, crossword puzzle, races, card games, betting [etc.]" is levied under Section 115BB of the Income Tax Act, 1961.

5.29 This position is augmented by section 194B, which provides for Tax Deduction at Source (TDS) in cases of winnings from lotteries, crossword puzzles, card games or any other games and horse races.

15. The Consumer Protection Act, 1986

5.30 Section 2(1)(r) of the Act, 1986 defines the term "unfair trade practice" to mean a trade practice which, for the purpose of promoting the sale, use or supply of any goods or services, adopts any unfair method or unfair or deceptive practice. Section 2 (1)(r)(3)(b) includes the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest in the ambit of unfair trade practices.

¹⁰¹ Notification No. G.S.R 729 (E), 1944.

5.31 Accordingly, if a ‘contest’, ‘lottery’ or ‘game of chance or skill’ is employed for the purpose of promoting betting and gambling activities, such ‘means of promotion’, and not the concerned betting or gambling activities themselves, would be understood to fall within the meaning of an unfair trade practice, and would accordingly, attracts sections 6 and 14 of the Act. For instance, the same may be in the nature of a lucky draw to win free credits at a casino, etc.

16. Central Goods and Services Tax Act, 2017

5.32 Unlike the previous indirect tax regime, the new Act, 2017, has put in an integrated unitary system in place, i.e. Integrated Goods and Services Tax (IGST), Central Goods and Services Tax (CGST) and State Goods and Services Tax (SGST) or Union Territory Goods and Services Tax (UTGST), depending upon the “location of the supplier” and the “place of supply of services”.

5.33 “Actionable claims in the form of chance to win in betting, gambling, or horse racing in race club”, being in the nature of services are also taxable under the new GST system, thereby ensuring that both, the States as well as the Centre earn revenue from the same¹⁰².

B. The Public Gambling Act, 1867: Whether a Central Enactment

5.34 The Act 1867 is derived from the British Gaming Act, 1845 and the Betting Act, 1853. The Acts of 1845 and 1853 made wagering contracts unenforceable while repealing the

¹⁰²<https://cbec-gst.gov.in/gst-goods-services-rates.html> (last visited on 26-05-2018).

Unlawful Games Act 1541¹⁰³. The Act of 1867 was primarily enacted with the purpose of punishing public gambling and the keeping of common gaming-houses.

5.35 The Constitution of India confers upon the States the power to make laws on “Betting and Gambling”, for they are enumerated in Entry 34 of List II of the Seventh Schedule. Such being the constitutional arrangement, there cannot be a Central Legislation on the subject unless the Parliament legislates by exercising its power under Articles 249 or 250, as the case may be, or by exercising power conferred by Article 252 of the Constitution. In fact, the Act 1867, enacted by the erstwhile British rulers was applicable only to the North-West Provinces, the Presidencies of Fort William, the Punjab, Oudh, the Central Provinces and British Burma.

5.36 The Government of India Act, 1935 listed all matters pertaining to betting and gambling under Entry 36 of the List II (Provincial Legislative List). Accordingly, under sub section 3 of section 100, the Provincial legislatures alone were authorised to enact laws pertaining to betting and gambling. In addition to this, the Provincial legislatures had legislative competence under Entry 50 of List II of Act 1935 to enact laws pertaining to taxation on betting and gambling.

5.37 The Constitution of India adopted the same classification as provided for in the Government of India Act, 1935. Betting and Gambling are listed as Entry 34 of List II of the Seventh Schedule, and therefore, only the State legislatures have competence to make laws pertaining to betting and gambling.

¹⁰³ Unlawful Games Act, 1541, 33 Hen. 8 c. 9 (Eng.); Carl Rohsler (Ed.), *The Gambling Law Review*, 2 nd Edn., Gideon Robertson, Law Business Research Ltd., London, United Kingdom, 2017, p. 129.

Further, Entry 62 of the State List confers upon the State legislatures, the competence to make laws pertaining to taxation on 'betting and gambling'.

5.38 Accordingly, after 1935, with the States in India having been conferred with the exclusive power to enact laws on "betting and gambling" as also laws concerning taxation thereof, **the Public Gambling Act ceased to be a Central Legislation, such that it was no longer a law applicable to the whole of the territory of India.** In the current regime, the only manner in which it can still be held to be applicable is if it is adopted by a State(s) legislature(s) out of its own free will (emphasis added).

5.39 The following 14 States/Union Territories have passed enactments adopting the Public Gambling Act, 1867 as it is, namely:

1. Andaman Nicobar
2. Arunachal Pradesh
3. Chandigarh
4. Dadra and Nagar Haveli
5. Haryana
6. Himachal Pradesh
7. Lakshadweep
8. Punjab
9. Madhya Pradesh
10. Chhattisgarh
11. Manipur
12. Mizoram
13. Tripura
14. Uttarakhand

5.40 Other States like Andhra Pradesh¹⁰⁴, Delhi¹⁰⁵, Gujarat and Maharashtra¹⁰⁶, Jammu & Kashmir¹⁰⁷ Meghalaya¹⁰⁸ and Goa¹⁰⁹ among many others have resorted to enacting their own gambling legislations. A brief description of some of these Acts is as follows:

C. State Laws

(a) Maharashtra and Gujarat

The Bombay Prevention of Gambling Act, 1887

5.41 The Act, 1887, applies to the States of Maharashtra and by virtue of the Bombay Reorganisation Act, 1960, to Gujarat as well.

5.42 While prohibiting and penalising ‘betting or wagering’, the Act, under section 3, exempts from its ambit “wagering or betting upon a horse-race or dog race” and under section 13, “games of mere skill wherever played”.

(b) Meghalaya

The Meghalaya Prevention of Gambling Act, 1970

5.43 The Act, 1970 not only permits “games of mere skill wherever played”, but also those games and sports that it may by notification, exempt from the operation of this Act, provided it is not likely to encourage gambling or otherwise defeat the objects thereof.

5.44 The government of Meghalaya has used the power available under Section 13(2) to permit the local archery game of ‘teer’.

¹⁰⁴ The Andhra Pradesh Gambling Act, 1974.

¹⁰⁵ The Delhi Public Gambling Act, 1955.

¹⁰⁶ The Bombay Prevention of Gambling Act, 1887.

¹⁰⁷ The Jammu & Kashmir Gambling Act, 1977.

¹⁰⁸ Meghalaya Prevention of Gambling Act, 1970.

¹⁰⁹ The Goa, Daman and Diu Public Gambling Act, 1976.

Betting on it is licensed under Section 14A of the Meghalaya Amusement and Betting Tax (Amendment) Act 1982.

(c) Rajasthan

The Rajasthan Public Gaming Ordinance, 1949

5.45 The Ordinance, 1949 provides that nothing therein shall be held to apply to any game of mere skill, as distinguished from a game of chance and skill combined, unless it is carried on in common gaming house. Thus, the Rajasthan Ordinance prohibits even games of skill, only if played in a common gaming house.

(d) Goa, Daman and Diu

The Goa, Daman and Diu Public Gambling Act, 1976

5.46 The Act, 1976 aims to “provide for the punishment for public gambling and the keeping of common gaming houses in the Union territory of Goa, Daman and Diu”. However, it is one of the only two State Legislations in operation that permits casinos and other games of chance.

5.47 The Goa Legislative Assembly by amending the Act in 1992¹¹⁰ and 1996¹¹¹ added Section 13A, which allows the State Government to authorise games of “electronic amusement/slot machines in Five Star Hotels” and “such table games and gaming on board in vessels offshore as may be notified”.

¹¹⁰The Goa Public Gambling (Amendment) Act, 1992.

¹¹¹The Goa Public Gambling (Amendment) Act, 1996.

5.48 The 2012 Amendment¹¹², further widened the ambit and regulatory system by amending some of the provisions and also inserting a new range of provisions. The prominent among the new provisions so added are:

- a) Section 13C, enabling the State government to appoint a Gaming Commissioner;
- b) Section 13D, provides for powers, duties and functions of the Gambling Commissioner; and,
- c) Section 13L, excludes the jurisdiction of Civil Courts with respect to entertaining any matter arising out of any order, direction, rule issued or framed under the Act.

(e) Tamil Nadu

(i) The Tamil Nadu Gaming Act, 1930

5.49 The Act, 1930 applies to the State of Tamil Nadu, excluding the City of Madras, which is governed by the Madras Police Act, 1888 and aims to “provide for punishment for gaming and the keeping of common-gaming houses in the State of Tamil Nadu”.

5.50 Under the Act, 1930, “gaming” does not include a lottery but includes wagering or betting, which for the purposes of this definition are “deemed to comprise the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt, or distribution”¹¹³.

5.51 Further, Section 11 of the Act, 1930, exempts games of mere skill from the prohibition contained in Sections 5-10

¹¹²The Goa Public Gambling (Amendment) Act, 2012.

¹¹³*Ibid.*, Explanation to Section 3.

thereof. After the judgement in the case of *Dr. K.R. Lakshmanan*¹¹⁴, where horse-racing was considered a game of skill, betting on horse-racing is legal in the State of Tamil Nadu.

5.52 The Tamil Nadu Betting Tax Act, 1935 provides for the structure of taxation with respect to horse-races and pony-races in the State.

(ii) *The Tamil Nadu Prize Schemes (Prohibition) Act, 1979*

5.53 The Act, 1979 has been enacted to “prohibit the promotion or conduct of prize schemes in the State of Tamil Nadu”. Section 2(b) of the Act defines “prize schemes”.

5.54 Section 12 of the Act empowers the State Government, to exempt from this prohibition, prize schemes or classes thereof. If the Government is satisfied that it is necessary or expedient in the public interest so to do, they may, by notification exempt subject to such conditions as they deem fit, from the provisions of this Act.

(f) Sikkim

(a) Games of Chance

The Sikkim Casinos (Control & Tax) Act, 2002

5.55 The Act, 2002 authorises the Government of Sikkim to grant licences to businesses and individuals to operate casinos in the State. The Sikkim Regulation of Gambling (Amendment) Act, 2005, grants discretion upon the government to grant licences, authorizing gambling on certain days and making certain gambling houses legal. The Sikkim Casino Games

¹¹⁴*K.R. Lakshmanan (Dr) v. State of T.N.*, AIR 1996 SC 1153.

(Control and Tax) Rules, 2007¹¹⁵ are made under Section 18 of the Act. The Act and the Rules framed thereunder regulate games of chance played using a machine or instrument in five-star hotels. In July 2016, the Government of Sikkim, vide a notification, banned its local population from playing in casinos situated in the State.

(b) Online Gaming

The Sikkim Online Gaming (Regulation) Act, 2008

5.56 The Act, 2008 is the first Indian legislation to expressly permit and regulate online gaming.

5.57 The Sikkim Online Gaming (Regulation) Rules, 2009 are framed under section 23 of the 2008 Act. Rule 3 of these Rules, read with the Sikkim Online Gaming (Regulation) Amendment Act, 2009, provides that the following games may be operated and played under a licence obtained from the State Government:

- (i) Roulette
- (ii) Black Jack
- (iii) Pontoon
- (iv) Punto Banco
- (v) Bingo
- (vi) Casino Brag
- (vii) Poker
- (viii) Poker Dice
- (ix) Baccarat
- (x) Chemin-de-for

¹¹⁵Notification No.FIN/DSSL/2010/III(247)/818, Finance, Revenue and Expenditure Department, Government of Sikkim, March 30, 2011

- (xi) Backgammon
- (xii) Keno
- (xiii) Super Pan 9
- (xiv) sports betting on games, which involve prediction of the results of the sporting events and placing a bet on the outcome, either in part or in whole, of such sporting event, and including football, cricket, lawn tennis, chess, gold, horse-racing, etc.

5.58 The Government of Sikkim, however, restricted the offering of “online games and sports games” to the physical premises of ‘gaming parlours’ through intranet gaming terminals within the geographical boundaries of the State, by enacting the Sikkim Online Gaming (Regulation) Amendment Act, 2015.

(g) Nagaland

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015

5.59 The Act, 2015 defines “Gambling” as the act of “wagering or betting on games of chance but does not include betting or wagering on games of skill”. “Wagering” or “Betting”, has been defined in section 2(5) as “the staking of money or virtual currency, whether or not it is equivalent to a recognized currency”.

5.60 The Nagaland Act is the only legislation in India, section 2(3) thereof defines the term, “games of skill”, to “include all such games where there is preponderance of skill over chance, including where the skill relates to strategising the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analysis or

where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen”.

5.61 The Explanation to section 2(3) broadens the ambit of “games of skill” in the following words:

- i. All Games provided in Schedule A of this Act shall fall under the category of “Games of Skill”
- ii. ‘Games’ which have been declared or determined to be ‘games of skill’ by Indian or International courts or other statutes, or games where there are domestic and international competitions and tournaments, or games which can be determined to be ‘games of skill’ shall further be entitled to be included in Schedule A.
- iii. Games of skill may be (a) Card based and (b) action/ virtual sports/ adventure/ mystery and (c) calculation/ strategy/ quiz based.

5.62 Section 2(4) of the Act, 2015 states that “Games of chance”, subject to the provision of section 2(3), are defined to mean “all such games where there is preponderance of chance over skill”. Schedule A to the Act lays down a detailed list of games that are considered to be ‘games of skill’ for the purpose of the Nagaland Act. These games are as follows:

1. Chess
2. Sudoku
3. Quizzes
4. Binary Options
5. Bridge
6. Poker
7. Rummy
8. Nap
9. Spades

10. Auction
11. Solitaire
12. Virtual Golf
13. Virtual racing games, including virtual horse racing, virtual car racing, etc.
14. Virtual sports, including virtual soccer, virtual cricket, virtual archery, virtual snooker/ bridge/ pool
15. Virtual fighting
16. Virtual wrestling
17. Virtual boxing
18. Virtual combat games
19. Virtual adventure games
20. Virtual mystery and detective games
21. Virtual stock/ monopoly games
22. Virtual team selection games
23. Virtual fantasy games

5.63 The Nagaland Act seeks to have pan-India application by virtue of the Explanation to section 2(1) and section 2(2). The Explanation to section 2(1) reads as follows:

Once a licence has been obtained under this Act, wagering or betting on online 'games of skill' or making profit by providing a medium for playing 'games of skill' shall not amount to gambling so long as they are being provided to players and are being accessed by players operating from territories where 'games of skill' are exempted from the ambit of gambling.

5.64 Section 2(2) defines the term "territory" for the purpose of this Act, as "any territory in India in which "games of skill" are permitted, and are recognised as being exempted from the ambit of "gambling"".

5.65 A conjoint reading of section 2(2) and the Explanation to section 2(1), provides for a pan India application of the Nagaland Act, 2015 in matters of Online Gaming, to all those States where the games so being offered are legally permissible 'games of skill'.

5.66 Section 3 provides that as long as a licensee under it is not providing a portal to players from other territories, games that are prohibited or considered to be gambling in those territories, the same shall be considered to be a genuine business venture not amounting to gambling.

5.67 Further, Rule 3(1) of the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Gaming Rules, 2016 makes eligible for a licence, only those individuals/ companies/ firms that are not engaged in 'gambling'.

(h) Telangana

The Telengana Gaming Act, 1974

5.68 The State of Telangana, introduced the Ordinances of June ¹¹⁶ and July ¹¹⁷, 2017 with the object of expressly prohibiting gambling as a whole, both online and offline.

5.69 The Telangana Gaming (Amendment) Act, 2017, amended the Telangana Gaming Act, 1974, incorporating the changes introduced by the abovementioned Ordinances, with the object of implementing "the policy of zero tolerance against gambling which has serious impact on the financial status and well-being of the common public".

¹¹⁶The Telangana Gaming (Amendment) Ordinance, 2017.

¹¹⁷The Telangana Gaming (Second Amendment) Ordinance, 2017.

5.70 The object behind this amendment is to “completely eradicate the menace of gambling, due to its ease of access and wide solicitation, several people, the youth in particular, are being addicted to online gaming when played for stakes etc., and this addiction is affecting various sections of society including students and women, thereby causing threat to the very public order itself”.

5.71 The important changes brought about by this amendment can be summarised as follows:

- a) The term, “cyber space” has been inserted in the definition of “common gaming house” in section 2(1)(ii) and in the Explanation to Section 2(1)(ii) to cover online gaming;
- b) The Amended Explanation to section 2(2), widens the scope of proscription under this Act, and clarifies that wagering and betting now includes “any act of risking money on an uncertain event, including on a game of skill”;
- c) Now, the definition of “instruments of gaming” in section 2(4), includes within its ambit, online/ electronic instruments of gaming;
- d) section 3 of the Telangana Act, now, not only proscribes the keeping, operating or using of common gaming houses, but also the keeping, operating or using of online gaming.
- e) Now, all violations of the Act are ‘non-bailable’ and ‘cognizable’ under the Section 5.
- f) The old section 15 exempted games of mere skill from the ambit of the prohibition contained in the Act. Now, the new section 15 empowers the State Government to issue orders to remove difficulties in implementation of the Act.

5.72 It must be noted that the Ordinances of June and July and the Telangana Gaming (Amendment) Act, 2017 have been challenged as being violative of Articles 14, 19(1)(g) and 21 of the Constitution of India. The cases are currently pending

before the High Court of Judicature at Hyderabad in W.P. Nos. 20261, 20323, 20352, 21643 and 23247 of 2017¹¹⁸.

(i) Other State Acts on Gambling

5.73 Other States like Kerala, Jammu & Kashmir, Bihar, Jharkhand, etc., have enacted their own laws on 'Betting and Gambling', following, in a way, the model of the Public Gambling Act, 1867, and prohibiting gambling and keeping of common gaming houses, while making an exception for 'games of skill'.

D. Act Pending Notification

The Maharashtra Casinos (Control and Tax) Act, 1976

5.74 The Act, 1976, a revenue driven piece of legislation, has however, till date not been notified. The Statement of Objects and Reasons of its Bill was as follows:

1. Taking into account the increasing tourist traffic in the State of Maharashtra, particularly foreign tourist traffic, as also the need to raise additional revenues for the State, it is considered expedient to provide for the licensing of casinos in the State of Maharashtra, for the taxation of moneys stakes on games of betting or wagering played therein, and also to regulate the functioning of such licensed casinos under a system of adequate controls.
2. This Bill to provide for the licensing of casinos and for the taxation of moneys staked in casinos games seeks to achieve the above objectives.

5.75 This Act provides for the licensing of casinos, permitting certain types of casino games to be played therein, taxation on

¹¹⁸ As on 30-05-2018

money paid/agreed to be paid by participants in these casinos (not exceeding 25%), the punishment for contravention of the provisions of the Act, and certain other connected provisions.

E. Bill pending before the Lok Sabha

The National Sports Ethics Commission Bill, 2016

5.76 This Bill was introduced as private member bill by Shri Anurag Singh Thakur, MP in the Lok Sabha in 2016 with the following objective¹¹⁹:

To provide for the constitution of a National Sports Ethics Commission to ensure ethical practices and fair play in sports including elimination of doping practices, match fixing, fraud of age and sexual harassment of women in sports and for matters connected therewith or incidental thereto.

5.77 It was introduced in pursuance to United Nations General Assembly Resolution No. 58/5, adopted on 17.11.2003, recognizing sports as a means to promote education, health and peace¹²⁰.

5.78 This Bill of 2016, till date, remains pending in the Lok Sabha.

F. Draft Bill

5.79 The Ministry of Youth and Sports Affairs, Government of India drafted a Bill titled **Prevention of Sporting Fraud Bill**,

¹¹⁹ Ibid, Object and Purpose, *available at*: <http://164.100.47.4/billtexts/lbilltexts/AsIntroduced/4408LS.pdf> (last visited on 28-05-2018).

¹²⁰ G.A. Res. 58/5, U.N. GAOR, 58th Sess., U.N. Doc. A/58/5 (Nov. 17, 2003) available at https://www.un.org/sport2005/resources/un_resolutions/engl_58_5.pdf

2013¹²¹ with the purpose to counter the fraud effecting the integrity and fair play in relation to sporting events. It criminalises sporting fraud and provides the punishment for the same.

5.80 The Bill defines sporting fraud as:

A person is said to commit the offence of sporting fraud in relation to a sporting event if he, directly or indirectly,-

- (i) manipulates sports result, irrespective of whether the outcome is actually altered or not, or makes arrangement of an irregular alteration of the field of play or the result of a sporting event including its incidental events or deliberately misapplies the rules of the sport, in order to obtain any economic or any other advantage or benefits or promise of an advantage or benefits, for himself or for any other person so as to remove or reduce all or part of the uncertainty normally associated with the results of a sporting event; or
- (ii) wilfully fails to perform to his true potential for economic or any other advantage or benefit for himself or for any other person unless such under performance can be attributed to strategic or tactical reason deployed in the interest of that sport or team; or
- (iii) being in possession of inside information as a member, discloses such information to any person before or during any sporting event with the knowledge that disclosure of such information is likely to result in financial gain or is likely to be used in relation to betting or manipulation of a sporting event; or
- (iv) omits to perform the duty imposed on him under section 4.

¹²¹ Available at:

<http://www.prsindia.org/uploads/media/draft/Draft%20Prevention%20of%20Sporting%20Fraud%20Bill%202013.pdf>. (last visited on 24th May 2018).

5.81 Section 4 of the Bill lays down the duty to inform in the following words:

Whoever gets any information as to the commission of any of the acts referred to in clauses (i) to (iii) of section 3, shall forthwith or within such time as may be prescribed, give the information regarding the same to the appropriate authority or the team management or the National Sport Federation, in writing:

Provided that the team management or National Sport Federation, as the case may be, shall inform the appropriate authority within three working days of receiving such information.

5.82 This Bill, however, still remains a draft and has not been introduced in either of the Houses of the Parliament.

CHAPTER VI

International Perspective

6.1 Countries across the globe have adopted three approaches in the matter of regulating gambling and betting activities. Some Countries, especially those which give primacy to religious morality, have taken the view that the role of government is to protect its citizens from the negative effects of such activities. The Countries that give primacy to religious morality often impose a complete ban on gambling, while others view gambling and betting as an industry to drive trade and revenue; and encourage tourism and employment. Some countries also operate between these two extremes, striking a balance and permit gambling in a controlled and regulated environment; as a result, they earn substantial revenue from the tax imposed on such activities. This revenue can be utilised for promoting sports, cultural, charitable activities or any other activity aimed at the economic growth or development¹²².

A. Gambling & Betting In Different Jurisdictions

1. United Kingdom

6.2 Initially governed by the Public Gambling Act, 1845, today, the United Kingdom's gambling and betting industry is governed by the United Kingdom Gambling Act, 2005. Section 3 thereof defines gambling, to be inclusive of "gaming", "betting" and "lottery". Section 6 of the Act explains 'gaming' as playing a game of chance for prize. It defines a 'game of chance' to include a game, which involves an element of chance and skill; or a game involving an element of chance that can be eliminated by

¹²² Regulating Sports Betting in India: FICCI available at:<http://blog.ficci.com/sports-betting-india-faq/3708/2/>(last visited on 01-06-2018).

superlative skill but does not include a sport. The Secretary of State may, by regulation, provide that a specified activity can be treated as a 'game of chance' for the purposes of this section.

6.3 Betting has been defined under Section 9 of the Act as accepting a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring or whether anything is or is not true. The actual outcome of the bet is of no significance whatsoever. This broad definition also includes betting on sports within its ambit.

6.4 The Act regulates gambling and betting practices in the country and aims to protect "children and other vulnerable persons from being harmed or exploited by gambling."¹²³. To achieve this objective, the Act covers a wide range of practices associated with betting and gambling, such as paying an individual to deliberately lose a game and to profit from a bet placed on the result of the game¹²⁴. Section 50 of the Act allows persons above the age of eighteen to take part in all gambling activities while persons above the age of 16 are allowed to play the lotteries and private or non-commercial betting and gambling.

6.5 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. The operators also have to pay a Remote Gaming Duty to finance the working of the Commission.

¹²³s. 1(c).

¹²⁴Rohani Mahyera, "Saving Cricket: A Proposal for the Legalization of Gambling in India to Regulate Corrupt Betting Practices in Cricket" 26 *Emory Intl L. Rev.* 378 (2012).

6.6 The 2005 Act allows for imposing limits on stakes, fees, winnings or prizes. Recently, the Minister for Sport and Civil Society, announced a reduction on the upper limit of stakes on Fixed Odds Betting Terminals from £100 to £2. In order to cover any negative impact on the public finances by such reduction, and to protect funding for vital public services, this change will be linked to an increase in Remote Gaming Duty, paid by online gaming operators, in the relevant Budget¹²⁵.

6.7 Betting in the sport of cricket is regulated in the United Kingdom by the England and Wales Cricket Board Rules¹²⁶ along with the 2005 Act.

6.8 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. This implies that online gambling is the largest gambling sector in Britain. Over the same period, the National Lottery generated £3.4 billion, of which £3.3 billion was generated by the high-street betting sector and £1 billion by traditional casinos. Between April 2016 and March 2017, the National Lottery contributed £1.6 billion towards social causes¹²⁷. In 2016, a total of £208 million was raised for social

¹²⁵ Available at: <https://www.theguardian.com/uk-news/2018/may/17/maximum-stake-for-fixed-odds-betting-terminals-cut-to-2> (last visited on 31-05-2018).

¹²⁶ England & Wales Cricket Board., Regulations Governing the Qualification and Registration of Cricketers *available at*:<https://www.ecb.co.uk/governance/regulations/first-class-county-regulations> (last visited on 02-06-2018) .

¹²⁷ Gambling Commission Annual Report – 2016-17, *available at*:<http://www.gamblingcommission.gov.uk/PDF/Annual-report-and-accounts-2016-2017.pdf>(last visited on 01-06-2018).

causes through large society lotteries, recording a 10.5% increase over the previous year¹²⁸.

2. South Africa

6.9 Gambling activities in South Africa were governed previously by the South Africa Gambling Act, 1965, that banned all forms of betting and gambling except on horse-racing which is considered to be a sport. It was seen that this total prohibition on gambling, sparked more illegal casinos to crop up. Therefore, it was recognised that the licensing and regulating of gambling in the country could:

- Generate significant economic benefit to the country.
- Create meaningful employment opportunities.
- Contribute towards the advancement of persons previously disadvantaged by discrimination on the basis of race.

6.10 Thus, the National Gambling Act 1996 was enacted, which stood repealed by the National Gambling Act, 2004. The primary objective of the new enactment was to include provisions with greater precision and therefore to co-ordinate activities relating to the concurrent exercise of legislative competence and to provide for the licensing and regulating of interactive gambling by the National Gambling Board.

6.11 Section 3(a) of the 2004 Act defines gambling to include “placing or accepting a bet or wager.” As per section 4(1)(a), a person “places or accepts a bet or wager when that person . . . stakes money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency.” It can be

¹²⁸Gambling Commission of UK, *Industry Statistics – April 2013 to March 2016*. Report available at: <http://www.gamblingcommission.gov.uk> (last visited on 01-06-2018).

inferred from the definition of gambling that informal bets conducted on a non-commercial basis are not illegal, contingent on the fact that the party involved is not a bookmaker, or derives a significant portion of his livelihood from gambling. Moreover, no one should be paid a fee or gain anything from the activity other than the winning on the bet itself. These types of gambling activities are legal and can be licensed. There also exist provisions for expressly allowing casinos to be set up and operated.

6.12 Online gambling is referred to in the 2004 Act as "interactive gaming". Interactive gaming is essentially the engaging in or making available of an "interactive game". An "interactive game" is defined under section 2 of the Act as:

a gambling game played or available to be played through the mechanism of an electronic agent accessed over the internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of such premises is authorised to make such a game available for play.

6.13 The National Gambling Board (NGB) established under the 2004 Act, effectively regulates gambling activities. The Board ensures observance of nationally and internationally recognised standards of compliance thereby ensuring and maintaining the reputation of the industry.

6.14 The NGB regulates gambling activities such as bingo, casinos, limited payout machines and racing & betting. Provincial licensing authorities can also issue licences under the Act. Both the national and provincial legislatures have concurrent power to make laws related to the gambling activities. By issuing licences, the NGB and provincial

authorities keep track of gambling activities as well as the individuals indulging therein.

6.15 Gross Gambling Revenue (GGR) generated in the casino industry increased by 4.5% from 2014 to 2015 and by 7.4% from 2015 to 2016. The generation of GGR increased by 4.3% from R20.9 billion in 2013 to R21.8 billion in 2014, by 9.6% to R23.9 billion in 2015 and by 9.9% to R26.3 billion in 2016. During the year of 2016 casinos accounted for the highest GGR, being 70.5% as compared to other gambling modes. The collection of taxes/levies increased by 6.6% from R2.1 billion in 2013 to R2.2 billion in 2014, by 10.7% to R2.5 billion in 2015, and by 11.9% to R2.8 billion in 2016.¹²⁹

3. United States of America

6.16 In United States, gaming laws are comparatively liberal. Gambling activities are governed by three sets of regulations, one at each level- Local, State, and Federal. While some States have detailed gaming laws that go back more than two centuries, other States are yet to address key facets of this industry.

Federal Online Gambling Laws

6.17 Multiple Federal laws were enacted to regulate gambling activities, both online and offline. These enactments together make for a comprehensive regulatory system, comprising of:

1. The Interstate Wire Act, 1961¹³⁰ (The Federal Wire Act).
2. International Travel Act of 1961¹³¹ (Travel Act).

¹²⁹ National Gambling Statistics *available at*: <http://www.ngb.org.za/SiteResources/documents/2016/Stats%20FY16%20Audited.pdf> (last visited on 23-11-2017).

¹³⁰ 18 U.S.C. 1084.

3. Interstate Transportation of Wagering Paraphernalia Act of 1961¹³² (Paraphernalia Act).
4. Illegal Gambling Business Act of 1970¹³³.
5. The Professional and Amateur Sports Protection Act, 1992¹³⁴ (PASPA).
6. The Unlawful Internet Gambling Enforcement Act, 2006¹³⁵ (UIGEA).

6.18 The Federal Wire Act penalises the act of knowingly placing bets or wagering or assisting in placing of bets or wagering “using a wire communication facility” for the transmission in interstate or foreign commerce domain.

6.19 The Act was brought in to tighten the noose around the neck of major organised crime bosses and not to deal with the legality or morality of gambling *per se*. The Wire Act as interpreted by the Department of Justice for the United States of America outlaws only transmissions relating to “sporting events or contest”¹³⁶. The Department of Justice has also interpreted the Act to outlaw all forms of online gambling. However, the Court of Appeal of the Fifth Circuit in *Thompson v. MasterCard International et al.*¹³⁷ affirmed a lower court ruling, holding that the Act struck online betting for sports only and casino games played online were legal. There still exists ambiguity regarding the application of the Act to online gambling.

¹³¹18 U.S.C. 1952.

¹³²18 U.S.C. 1953.

¹³³18 U.S.C. 1955.

¹³⁴28 U.S.C. 3701 et seq.

¹³⁵31 U.S.C. 5361 et seq.

¹³⁶ United States Department of Justice, Whether Proposals By Illinois And New York To Use The Internet And Out-Of-State Transaction Processors To Sell Lottery Tickets To In-State Adults Violate The Wire Act, Sept. 20, 2011, available at: <https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf> (last visited at 29-05-2018).

¹³⁷313 F.3d 257 (5th Cir. 2002).

6.20 The Travel Act¹³⁸ aims to punish anyone who travels in interstate or foreign commerce, uses any facility in interstate or foreign commerce, or uses the mail, with intent to distribute the proceeds of any business enterprise involving unlawful activities (including gambling) or money laundering; or to otherwise promote, manage, establish, carry on, etc. any business enterprise involving unlawful activities (**including gambling**); and thereafter distributes the proceeds from any business enterprise involving gambling or from any act indictable as money laundering, or promotes, manages, establishes, carries on, or facilitates the promotion, management, establishment, or carrying on of any business enterprise involving unlawful activities (**including unlawful gambling**) or any act indictable as money laundering.

6.21 Interstate Transportation of Wagering Paraphernalia Act, 1961 was enacted with the purpose to criminalising interstate transportation, except by common carrier, "of any record, paraphernalia, ticket, certificate, bills, slip, token, paper, writing, or other device used, or to be used, adapted, devised or designed for use in" bookmaking, wagering pools with respect to sporting events or a numbers, policy, bolita, or similar game¹³⁹. This enactment was designed to "erect a substantial barrier to the distribution of certain materials used in the conduct of various forms of illegal gambling"¹⁴⁰.

6.22 The Illegal Gambling Business Act, 1970 was enacted as a part of the Organized Crime Control Act, with the purpose of striking at syndicated gambling¹⁴¹. Many experts¹⁴² have

¹³⁸18 U.S. Code 1952; 12 U.S.C. 1752; 12 U.S.C. 1813.

¹³⁹U.S. Code.& Cong. News, 87th Cong. 1st Sess., 2635.

¹⁴⁰*Erlenbaugh v. United States*, 409 U.S. 239, 246 (1972).

¹⁴¹*United States v. Sacco*, 491 F.2d 995, 998 (9th Cir. 1974).

expressed that Section 1955, which outlaws conducting an illegal gambling business, prima facie strikes at any illegal gambling business conducted using the Internet. Violations are punishable with imprisonment and/or fine¹⁴³. Further, the Federal Government has been entrusted with the power to confiscate any money or other property used in violation of this provision¹⁴⁴.

6.23 In *Philip D. Murphy, Governor of New Jersey v. National Collegiate Athletic Association etc.*, (Case Nos. 16-476 and 16-477) decided by the Supreme Court of the United States, on 14.05.2018, the Professional and Amateur Sports Protection Act 1992 was under scrutiny, as to whether it was in conflict with the Federal Constitution or not. The Act provided that neither the States nor the private actors could indulge in the activities of sports gambling. It curtailed all the activities surrounding the sports gambling, such as sponsorship, promotion, advertisement and licensing the same.

6.24 The Supreme Court of the United States, with a ratio of 6:3, declared the Act to be unconstitutional. It opined that the scheme of the Act was 'anti-commandeering' in nature; the Congress could not directly control the States; rather it could regulate the actions of the individual, directly. Therefore, prohibiting the States from regularising sports gambling was unconstitutional.

¹⁴²Winner, Winner, No Chicken Dinner: An Analysis of Interactive Media Ent'mt & Gaming Ass'n v. Att'y Gen. of the U.S. and the Unjustified Consequences of the UIGEA, 31 LOYOLA OF LOS ANELES ENTERTAINMENT LAW REVIEW 55, 59 (2011); Geolocation and Federalism on the Internet: Cutting Internet Gambling's Gordian Knot, 11 COLUMBIA SCIENCE AND TECHNOLOGY LAW REVIEW, 41, 45 (2010); Gottfried, The Federal Framework for Internet Gambling, 10 RICHMOND JOURNAL OF LAW AND TECHNOLOGY 26, 53 (2004); General Accounting Office [now the Government Accountability Office], Internet Gambling: An Overview of the Issues 11 (Dec. 2002); Blackjack or Bust: Can U.S. Law Stop Internet Gambling? 16 LOYOLA OF LOS ANGELES ENTERTAINMENT LAW JOURNAL 667, 675-77 (1996).

¹⁴³18 U.S.C. 1955(a), 3571(d).

¹⁴⁴18 U.S.C. 1955(d).

6.25 While dealing with various constitutional and legal issues, the Court took note of arguments from both sides, in the following words:

The legalization of sports gambling is a controversial subject. Supporters argue **that legalization will produce revenue for the States and critically weaken illegal sports betting operations, which are often run by organized crime.** Opponents contend that legalizing sports gambling will hook the young on gambling, encourage people of modest means to squander their savings and earnings, and corrupt professional and college sports. (emphasis added)

6.26 The Supreme Court left the task of policy making to the Congress and in case the Congress did not wish to do so, the States were at liberty to regularise the sports gambling.

6.27 The Unlawful Internet Gambling Act regulates online gambling in the United States of America. The Act declares that no person engaged in business of betting or wagering may knowingly accept in connection with Unlawful Internet Gambling, credit, electronic fund transfer, cheque, draft, etc. Unlawful Internet Gambling is defined to mean “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made”¹⁴⁵.

6.28 Violations of its provisions are punishable by imprisonment and/or fine¹⁴⁶. Further, offenders may also be subject to both civil and regulatory enforcement actions¹⁴⁷.

¹⁴⁵ 31 U.S.C. 5362

¹⁴⁶31 U.S.C. 5366(a), 18 U.S.C. 3571.

6.29 This Act prohibits online betting by targeting the intermediaries such as banks and financial groups to process payments made in regard to gambling or betting. The Act explicitly excludes a few markets *viz.* certain fantasy sports bets and existing legal intrastate and inter-tribal gaming. The Act also explicitly covers lotteries¹⁴⁸. The list of activities exempted from the definition includes securities and commodities exchange activities¹⁴⁹, insurance¹⁵⁰, Internet games and promotions that do not involve betting¹⁵¹, and certain fantasy sporting activities¹⁵².

6.30 There exist other federal laws such as the Racketeer Influenced and Corrupt Organization Act, 1970¹⁵³, and Money Laundering enactments¹⁵⁴ that supplement the aforementioned enactments to form a cohesive system of regulation at the Federal level.

6.31 In short, it is a federal offence to:

Use wire communications to place or receive bets on, or to transmit gambling information relating to, sporting contests or events¹⁵⁵; Conduct a large-scale gambling business in violation of state law¹⁵⁶; Travel interstate or overseas, or to use any other facility of interstate or foreign commerce, to facilitate the operation of an illegal gambling business¹⁵⁷; Conduct a gambling business and accept payment for illegal Internet gambling

¹⁴⁷31 U.S.C. 5364, 5364.

¹⁴⁸31 U.S.C. 5362(1)(B),(C).

¹⁴⁹31 U.S.C. 5362(1)(E)(i)-(iv).

¹⁵⁰31 U.S.C. 5362(1)(E)(v)-(vii).

¹⁵¹31 U.S.C. 5362(1)(E)(viii)

¹⁵²31 U.S.C. 5362(1)(E)(ix).

¹⁵³18 U.S.C. 1961 et seq.

¹⁵⁴18 U.S.C. 1956, 1957.

¹⁵⁵18 U.S.C. 1084.

¹⁵⁶18 U.S.C. 1955.

¹⁵⁷18 U.S.C. 1952.

participation¹⁵⁸; Systematically commit these crimes in order to acquire or operate a commercial enterprise¹⁵⁹; Launder the proceeds of an illegal gambling business or to plough them back into the business¹⁶⁰; Spend or deposit more than \$10,000 of the proceeds of illegal gambling in any manner¹⁶¹; or conspire with others, or to aid and abet them, in their violation of any of these federal laws¹⁶².

6.32 At State level, there exist other enactments for regulation of gambling activities. According to the American Gaming Association, commercial casinos paid \$8.95 billion towards direct gaming taxes applied by state, county and municipal governments in 2016, which helped State and Local Governments across the country to balance their budgets and fund education programs, make investments in infrastructure and keep essential services running. Notably, 2016's \$38.96 billion revenue total represents only moneys won by commercial casino operations across the United States. Native American casinos generated a record total of \$31.2 billion in gross gaming revenues in 2016, according to the National Indian Gaming Commission. Combined, the tribal and commercial casino industries in 2016 generated a total annual gross gaming revenue in excess of \$70 billion¹⁶³.

4. Australia

6.33 Both the Federal and State Governments in Australia are involved in nearly every aspect of gambling ranging from acting as suppliers, tax collectors, police, funding and organising of help services for gamblers experiencing problems, regulators and have put into place a host of laws and regulations in terms

¹⁵⁸31 U.S.C. 5363.

¹⁵⁹18 U.S.C. 1962.

¹⁶⁰18 U.S.C. 1956.

¹⁶¹18 U.S.C. 1957.

¹⁶²18 U.S.C. 371, 2.

¹⁶³ The AGA Survey of the Casino Industry, *2017 State of the States*, available at: https://www.americangaming.org/sites/default/files/research_files/2017%20State%20of%20the%20States.pdf (last visited on 25-05-2018).

of who can gamble, where, when and what they can gamble on etc. The Federal Government determines national laws on internet gambling. State and Territory Governments oversee most aspects of gambling, while Local Governments have to deal with planning¹⁶⁴.

6.34 The Interactive Gambling Act of 2001 (IGA) protected the residents from the harmful effects of online gambling. Under the Act it was illegal to provide some interactive gambling activities, such as 'online casinos', to someone physically present in Australia. Examples include roulette, poker, craps, online 'pokies' and blackjack. Some activities were however excluded from the list and are subject to licences, an absence of licence under the Act would amount to an offence. Further, section 7A prohibited advertisements of interactive gambling on websites designed for the Australian audience.

6.35 The Interactive Gambling Act was amended in 2017 in response to the 2015 Review of the Impact of Illegal Offshore Wagering.

6.36 The 2017 Amendment Act sought to inter alia prohibit interactive gambling services ('illegal services') and regulate interactive gambling services (most of the current excluded services). Prohibit 'click to call' in-play betting services by tightening the definition of a 'telephone betting service' (a regulated interactive gambling service) to require dealings with customers to be wholly by way of spoken conversations between individuals; amend the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to enable the ACMA to notify international regulators of information relating to prohibited or regulated interactive gambling services (including the names of

¹⁶⁴ International Study of Gambling Jurisdictions, Gambling Commission Report 2010, The Department of Trade and Industry, South Africa, p.8, available at: <https://www.thedti.gov.za/news2011/Appendix.pdf> (last visited on 29-05-2018).

operators); and simplify and streamline the complaints handling and investigation process to remove mandatory requirements to refer matters to the police and enable the ACMA to handle the entire process from receipt of complaints to enforcement, similar to its complaints handling and enforcement role in relation to other legislation.

6.37 Sports betting, horse-racing and greyhound-racing are exceptions to the prohibition and can be offered by licenced authorities or operators.

6.38 “The Interactive Gambling Amendment (Lottery Betting) Bill 2018” aims at prohibiting betting on the outcome, or a contingency that may or may not happen in the course of the conduct, of a lottery (including a keno draw) is still pending in the Parliament.

6.39 In 2014-15, the government revenue from total gaming activities combined amounted to \$5,507.829 million, while the government revenue from sports-betting activities amounted to \$36.452 million. The government revenue from total gambling activities was reported to be \$5,760.217 million¹⁶⁵.

5. France

6.40 The Code de la sécurité intérieure (hereinafter CSI) (the domestic security code) section 320-1¹⁶⁶ and Law No. 2010-476 of 12 May 2010¹⁶⁷ regulate gambling and betting activities in France. The CSI is based on the principle that games of chance,

¹⁶⁵Latest edition (32nd) of the Australian Gambling Statistics *available at*: <http://www.qgso.qld.gov.au/products/reports/aus-gambling-stats/aus-gambling-stats-32nd-edn.pdf> (last visited on 01-06-2018).

¹⁶⁶ Available at:

https://www.legifrance.gouv.fr/affichCode.do;jsessionid=E279E76100934840D376F7E2861681AF.tpdjo04v_1?idSectionTA=LEGISCTA000025507989&cidTexte=LEGITEXT000025503132&dateTexte=20140912 (last visited on 29-05-2018).

¹⁶⁷available at:

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000022204510> (last visited on 29-05-2018).

betting, lotteries, gambling and casinos are prohibited unless the operator can benefit from an exception to the law, or has obtained an authorisation and approval from the French Administration. Betting is illegal in France with the exception of horse-racing, which is available through the PariMutuelUrbain (PMU)¹⁶⁸ and operators approved by Autorité de régulation des jeux en ligne (hereinafter, ARJEL a regulatory authority for online activities) for horse racing and sports betting online¹⁶⁹. Poker and other games are allowed in offline casinos and all online activities are regulated by ARJEL licensed operators. Lotteries, on the other hand, are regulated by the Française des Jeux (FDJ) in France.

6.41 Profits from such activities have contributed to financing sports, which helped football to become the nation's number one sport. As the benefits of regulated gambling were realised, the government reduced the restriction on these activities. It was only in 2001, that the FDJ and the PMU received permission to offer their services online.

6.42 All networks included, the gambling market in France generated a Gross Gaming Revenue of €9.75 billion in 2016 (against €9.53 billion in 2015). The amount of tax revenue collected on the online gambling activity (including VAT), amounted to €429 million for the year 2016¹⁷⁰.

6. Austria

6.43 Austrian law applicable to all kinds of gaming and betting activities is the Austrian Civil Code. The E-Commerce Act

¹⁶⁸ Available at: <https://www.pmu.fr> (last visited on 01-06-2018).

¹⁶⁹ Available at: <http://www.arjel.fr> (last visited on 01-06-2018).

¹⁷⁰ ARJEL, Annual Report 2016-17, *available at*: <http://www.arjel.fr/IMG/pdf/rapport-activite-2016en.pdf> (last visited on 01-06-2018).

which came into force on 1st January 2002, governs online gaming and betting.

7. Russia

6.44 Gambling was completely prohibited from 1928 to 1987 in erstwhile Union of Soviet Socialist Republics (USSR)¹⁷¹. The 1987 decree of the Council of Ministers effectively legalised gambling, with the creation of joint commercial ventures for the promotion of tourism, and the entrepreneurial hospitality sector businesses taking full advantage of this, installed 226 slot machines in hotels frequently visited by foreigners. After 2002, the Federal Sports Agency (FSA) was authorised to grant gambling licences. However, in 2006 with the Federal Law N244-FZ¹⁷² being passed, a prohibition was imposed on gambling venues with slot machines and table games everywhere in Russia (including online), except for four special gambling zones.

6.45 The Supreme Court of Russia, in 2012, mandated Internet Service Providers to block Russian users from accessing certain gambling websites¹⁷³. The Courts also held that even the act of providing access to restricted information on gambling amounted to dissemination of information¹⁷⁴.

8. Malaysia

6.46 As the official religion of Malaysia is Islam, the authorities have been adhering to the prohibition on gambling as stipulated

¹⁷¹Pavel V. Vasiliev Bo J. Bernhard, *Global Gaming Industry: A Genealogy and Media Content*

Analysis of Gaming Restrictions in Contemporary Russia, *UNLV GAMING RESEARCH & REVIEW JOURNAL VOLUME15*, 71,75(2011).

¹⁷²Available at: <https://rg.ru/2006/12/31/azart-dok.html> (last visited on 01-06-2018).

¹⁷³ Deputy State Prosecutor for the *Pskov Region v. Rostelecom* (Case No. 91-KGPR12-3)

¹⁷⁴*Ibid.*

by the teachings of Islam¹⁷⁵. First and foremost all Malay Muslims are governed by the Syariah Criminal Offences (Federal Territories) Act 1997¹⁷⁶, Section 18 thereof punishes for gambling or simply being found inside a casino (even when not actually gambling). For citizens not governed by the Syariah Criminal Act, the Malaysian Contract Act¹⁷⁷, 1950 forms an impediment. The Act stipulates that any agreement by way of wager is void with the exception of certain prizes for horse-racings¹⁷⁸. Nevertheless, there are provisions whereby legal licensing is provided either to the private companies or individuals for gambling activities.

6.47 The primary legislations that regulate gambling activities in Malaysia are:

- Betting Act, 1953 outlaws all possible forms of gambling and regulating telecommunications and other means of transmitting bets between customers and betting houses.
- Common Gaming Houses Act 1953 suppresses common gaming houses, public gaming, and public lotteries. The Act criminalises operating a gaming house. It also provides for penal consequences for a person who is caught inside a gaming house.
- Pool Betting Act 1967 provides for the issue of a licence and the establishment of a Board for the operation or promotion of pool betting and for matters incidental thereto. The Act enables the Yang di-Pertuan Agong (Head of State of the Country) to establish a Board for the governing of pool betting activities and for such other purposes stated in the Act.

¹⁷⁵ Guru Dhillon & Ng, YihMiin, The regulations and control of online betting in Malaysia, UUM JOURNAL OF LEGAL STUDIES (Volume 4, 2013,) Pg. 79, 81

¹⁷⁶ Act 559.

¹⁷⁷ (Act 136) 1950.

¹⁷⁸ S. 31, Contract Act, 1950, Malaysia.

- Lotteries Act 1952 provides for the grant of permits for the promotion of public and private lotteries for philanthropic, religious, educational, welfare and other charitable purposes, to make provision for the levy of a tax on lotteries and other matters connected therewith.
- Racing Club (Public Sweepstakes) Act 1965 allows for betting on Horse-racing in Malaysia, provided the racing club is established in Malaysia; the racing club is registered in the name of Malayan Racing Club. Sweepstakes under the Act includes any sweepstake promoted on the outcome of horse-race. Even a non-member of the Club can take part in such sweepstakes.

6.48 In 2016, the total gambling revenue of Malaysia was valued at US\$1,805.29 million¹⁷⁹.

9 Spain

6.49 Gambling was de-criminalised in Spain in 1977. The Spanish Gaming Act, 2011¹⁸⁰ regulates all forms of gambling, which are undertaken through electronic, interactive and technological medium like internet, television, mobile phones, land lines and any other interactive communication system. However, the seventeen autonomous communities of Spain are free to set their gambling policy. The default rule is that gambling is forbidden unless it is authorised by the regional government of the specific autonomous community. The Act, defines four specific types of games (lotteries, betting, raffles and contests) and one general category ('other games') that serves as a catch-all for activities that fall under the general definition of gambling but not under the definition of any of the four specific games.

¹⁷⁹Available at: <http://www.gamblingresearch.com/gambling-oligopolies-of-malaysia-limiting-competition-and-encouraging-growth-of-grey-markets/> (last visited on 01-06-2018).

¹⁸⁰*Ley 13/2011, de 27 de mayo, de regulación del Juego.*

6.50 Lottery activities in Spain are reserved for the state-owned operator Loterías y Apuestas del Estado (LAE), which has a monopoly on state-wide sports and horse betting, and the National Organisation of the Blind in Spain (ONCE), a Spanish foundation aimed at supporting people with serious visual impairment that operates its own lottery¹⁸¹.

6.51 Since 2010, match-fixing has been made a criminal offence under the Spanish Criminal Code, 1995 as a form of ‘corruption of private persons’. The conviction is followed by the imprisonment ranging from 6 months to 4 years¹⁸².

6.52 The estimated gross gambling revenue in 2016 was €8,399.71 million and the gambling duties, collected in 2016 exceeded €12.6 million¹⁸³.

10. Switzerland

6.53 Switzerland has a federal legal system, whereunder the law is governed on a national as well as a state or canton level. Gambling and Lotteries belong essentially to the Federal Level¹⁸⁴. In 1923, the Federal Law of Lotteries and Commercial Betting Law was enacted followed by the Gambling Houses Act of 1929. Together they create a double ban with the exception of Canton regulated lottery and certain Gaming Houses established in specific areas for tourism purposes.

¹⁸¹ Carl Rohsler (Ed.), *The Gambling Law Review*, 2nd Ed. Law Business Research Ltd, London, ISBN 978-1-910813-63-8, at Pg. 252.

¹⁸² Código Penal (Criminal Code), 10/1995 (Spain), art.286bis.

¹⁸³ As per the figures released by, the Directorate General for the Regulation of Gambling, *available*

at: <https://www.ordenacionjuego.es/cmisis/brower?id=workspace://SpacesStore/4cabef34-1605-435d-a21f-2a991eee34bf> (last visited on 30-05-2018).

¹⁸⁴ **Sports Betting: Law and Policy** edited by Paul M. Anderson, Ian S. Blackshaw, Robert C.R. Siekmann, Janwillem Soekpg, 777.

6.54 Subsequently, the Swiss Federal Constitution *vide* Article 106, distinguished¹⁸⁵ between games offered in casino, governed by the Federal Act on Games of Chance and Casinos of 1998 (FGA) and other games (such as bets, lotteries and bingos), governed under the Federal Act on Lotteries and Commercial Betting 1923 (LLB). The Act legalised gambling activities in a regulated form with limited-stakes casino gambling. There is also a federal and cantonal supervisory body called the Swiss Federal Gaming Board (SFGB), which is responsible for monitoring and enforcing the legal provisions on games of chance and casinos, supervising the casinos and investigating violations of the gambling laws and regulations.

6.55 The Money Gaming Act, 2017 liberalised gambling and permitted online gambling in the country. The 2017 Act has been challenged with 60,000 signatures and voting on the referendum took place on June 10th, 2018¹⁸⁶. In the referendum the Act has been supported by about 73 per cent of voters and the Act would come into effect in 2019. The Act allows only Swiss-certified casinos and gaming firms to operate. It is reported that the provisions contained therein could tackle addiction to gambling. The Act has been indicated to tax gambling revenue and direct revenues to fund anti-gambling measures as it was estimated by the Government of Switzerland that gamblers have been spending roughly about \$ 250 million per year on unregulated foreign betting sites¹⁸⁷.

¹⁸⁵ Article 106, Swiss Federal Constitution.

¹⁸⁶ Available at: <https://www.admin.ch/gov/en/start/documentation/votes/20180610/Federal-Act-on-Gambling.html> (last visited on 01-06-2018)

¹⁸⁷ <https://www.bbc.com/news/world-europe-44430267> (last visited on 15.06.2018)

11.The European Gaming and Betting Association (EGBA)

6.56 The European Gaming and Betting Association (EGBA) is the Brussels-based industry body representing the leading online gaming and betting operators established, licensed and regulated within the EU. EGBA works together with National Authorities, EU authorities and other stakeholders towards a well-regulated and attractive offer for EU citizens. It focuses on protecting the interest of the consumers by providing a reliable, safe and secure digital environment to ensure consumer protection, while keeping in mind consumer demand. The Association promotes transparency and integrity in betting activities. This Association is co-funded by the European Commission. The EGBA investigates the best practices in the industry and recommends appropriate standards for conducting gambling and betting, in order to protect the interests of consumers, industry stakeholders and regulators¹⁸⁸. This commitment is underpinned further by a rigorous independent assessment of EGBA Members that is performed annually in order to ensure compliance. The European Commission has valued the European Union's gambling market to be worth €84.9 billion with a 3% growth rate per year¹⁸⁹.

6.57 The European Court of Justice has duly taken note of the major characteristics of Online Gambling in the case of *Carmen Media Group Ltd v. Land Schleswig-Holstein and Innenminster des Landes Schleswig-Holstein*¹⁹⁰, observing:

¹⁸⁸The Framework, Principles and Standards to which EGBA Member operations annually subscribe, commit and adhere to, *available at*: <http://www.egba.eu/media/EGBA-Standards-October-2011.pdf> (last visited on 01-06-2018).

¹⁸⁹ European Commission on Growth in Gambling Sector, *available at*: http://ec.europa.eu/growth/sectors/gambling_en (last visited at 30-05-2018).

¹⁹⁰ Opinion of Advocate General, Mengozzi, delivered on 3 March 2010 in Case C-46/08, Para 103.

...the characteristics specific to the offer of games of chance by the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games. Apart from the lack of direct contact between the consumer and the operator... the particular ease and the permanence of access to games offered over the internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover characterised by isolation of the player, anonymity and an absence of social control, constitute so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences attaching thereto, as underlined by consistent case-law.

6.58 Other Countries such as Portugal, Ireland, Austria, Ghana, Singapore and Malta all follow a regulated format of gambling and betting activities being offered in their own respective territories. Countries such as Singapore charge extra fee on their own citizens to partake in gambling activities¹⁹¹. From the above discussion it is evident that gambling and betting laws across the world are at variance from each other and are influenced by their respective socio-economic milieu.

¹⁹¹ Available at: http://eresources.nlb.gov.sg/infopedia/articles/SIP_1615_2009-11-30.html (last visited on 31-05-2018)

CHAPTER VII

Public/ Government Responses

7.1 On receiving the reference from the Supreme Court in *Board of Control of Cricket in India v. Cricket Association of Bihar & Ors.*,¹⁹² to study the possibility of legalising betting in India and its positive and negative implications, the Commission issued an Appeal dated 30 May, 2017 asking the stakeholders, operators, organisations, and the public at large to respond to the same. Besides this, letters were also sent to the State Governments to give their respective opinions on the following issues:

- a. Will legalising betting and gambling help in curbing illegal activities undertaken by the citizens of our country in this regard?
- b. Will licensing such activities help the government in earning substantial revenue and generate employment?
- c. How far legalising betting and gambling will be morally acceptable in the Indian scenario?
- d. What would be the possible mode by which people indulging in these activities can be safeguarded from bankruptcy?
- e. In the event it is decided to be legalised, should foreign companies operating in the field of betting and gambling be allowed to have a foothold in the country?
- f. Any other relevant issue.

7.2 The Commission received numerous responses from various stakeholders including State governments, individuals, operators, associations of operators and institutions. The questionnaire received a mixed response. Some people have opposed the legalisation of gambling and betting, contending that it creates a pernicious atmosphere and tends to vitiate the solemn nature of transactions. Such activities expose and exploit the vulnerable sections of society. A losing gambler,

¹⁹²(2016) 8 SCC 535.

chases the metaphorical rainbow and is allured by the chances of recouping wins, which misleads any human, only to cause further sorrow. Such activities are not consistent and in conformity with the Directive Principles of State Policy enshrined in Article 39 of the Constitution.

7.3 Many responses cited examples from the Mahabharat and the Ramayana and referred to various prohibitory clauses from ancient texts. They canvassed that it would breed corruption, match fixing and may give rise to various criminal activities. The State Government of Odisha has expressed that such activities are unethical and not in the interest of the public at large. However, if they prevail, such activities should be regulated within the premises of clubs, hotels, and associations. In any case, foreign companies should not be allowed to operate gambling facilities in India.

7.4 While some responses have expressly suggested to legalise gambling for entertainment purposes, others have, however, suggested that, as it is not possible to prevent such illegal activities, they should be legalised and there must be stringent provisions for regulating the same. They have argued that gambling should be regulated like the stock market, for some degree of skill is involved in both the activities. Decriminalisation of these activities could prevent people from being subjected to loan-sharking, i.e., incurring debts and borrowing loans at exorbitant rates. It will also preserve the integrity of the 'game'. As the illegal and unregulated betting industry is thriving and it is extremely difficult to curb/control it, it is necessary to legalise and regulate such activities to prevent pernicious consequences that it ensues. This will, on one hand, generate huge revenues for the States and on the other hand, would save people from any kind of inconvenience

at the hands of the law enforcement agencies. This would especially help in curbing unethical betting activities of the likes of match fixing in sports.

7.5 It has also been argued by many that since horse-racing has always been considered legal, gambling and betting activities should also be treated alike.

7.6 The straight-jacket prohibition on gambling has resulted in a rampant increase in illegal gambling, resulting in a boom in black-money generation and circulation. Regulated gambling could ensure detection of fraud and money laundering and would create transparency. Betting and gambling transactions should be linked with operator's as well as player's/participant's Aadhaar card/PAN card, so as to ensure transparency and State supervision. The cap on the maximum amount that can be staked in a wager should be fixed by law and be strictly implemented. Such amount must be so prescribed that an individual with limited means can also participate in gambling activities. Further, wagering should be restricted to money alone; not in kind. Gambling transactions should be made cashless, making use of electronic means of payment such as credit cards, debit cards, net-banking, Virtual Currencies (VC – also known as Cryptocurrency), etc. Stringent law(s) should be put in place to control Foreign Direct Investment and at the same time, to prevent money laundering, while also implementing necessary tax reforms.

7.7 There were some responses that expressed concern that if websites are to advertise content related to gambling, then it should be ensured that there is no objectionable or pornographic content displayed on their platforms/portals. Violations of relevant provisions of law laying down standards of

obscenity should attract severe penal consequences for the same.

7.8 It was also suggested that if the tax rate is higher than 20 per cent of gross gaming revenue (GGR), it will have a negative influence on the pay-out level of the licenced operators. Therefore, there must be a moderate rate of tax on such activities as also a moderate/low GST rate.

7.9 The All India Gaming Federation (AIGF) has *inter alia* suggested to remove the embargo on goods and/or service providers from offering games or contests as long as there is no separate consideration for entry fee apportioned for participating in such games/contests. Thus, section 2(1)(r)(3)(b) of the Consumer Protection Act, 1986 which prevents the conduct of any contest, lottery, games of chance or skill for the purpose of promoting any product or interest should be accordingly remedied.

7.10 Some people have suggested that since a huge amount is siphoned off to foreign countries every year and the government loses the revenue, it is in the interest of the general public that though gambling and betting are State subjects, the Parliament should enact a law in exercise of its legislative competence under Article 249 or Article 252 of the Constitution of India. Additionally, it was suggested that, an Inter State Council may be constituted under Article 263 of the Constitution for effective regulation of Gambling activities in India.

7.11 A gist of the responses from the stakeholders is given in the **Annexure I** to this Report.

CHAPTER VIII

Need for Regulation

8.1 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 gambling¹⁹³.

8.2 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 chance¹⁹⁴.

8.3 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

¹⁹³ Dr. Luke Clark: <http://www.cam.ac.uk/research/news/the-psychology-of-gambling> (last visited on 25-05-2018).

¹⁹⁴ *Ibid.*

to provide for pan-India application of licences obtained thereunder.

8.4 Explanation to Section 2 (1) of the Nagaland Act states that:

“Once a licence has been obtained under this act, wagering or betting on online ‘games of skill’ or making profit by providing a medium for playing ‘games of skill’ shall not amount to gambling so long as they are being provided by players and being accessed by players operating from territories where ‘games of skill’ are exempted from the ambit of gambling.”

8.5 Section 2 (2) of the Nagaland Act defines the term “territory” for the purposes thereof as “any territory in India in which ‘games of skill’ are permitted and are recognised as being exempted from the ambit of ‘gambling’.”.

8.6 Accordingly a conjoint reading of these two provisions may imply that the Nagaland Act, while being in consonance with Article 246 of the Constitution of India provides that a licence obtained there under may be used to offer games of skill throughout the country, provided that such games are exempted by the States in which they are so offered under their own prevalent laws.

8.7 On the other extreme rests the Telangana Gaming Amendment Act, 2017 ¹⁹⁵ enacted with the object of implementing “the policy of zero tolerance against gambling which has serious impact on the financial condition and well-being of the common public”. With this objective, the Telangana Act seeks to expressly prohibit gambling as a whole, both online and offline.

¹⁹⁵Telangana Gaming Amendment Act, 2017, Act No. 15, Acts of Government of Telangana, 2017 (India).

8.8 A District Court in Delhi was confronted with similar issues. The following issues, among others, were raised before the court:

- Whether there is any restriction on playing games of skill with stakes on websites making profits by offering such games?
- Whether wagering and betting on games of skill constitute the act of 'gambling'?

8.9 The court held that a game when played in a physical form as a skill based game need not necessarily be considered as such when played online, as technology can be manipulated to increase the degree of chance involved in the game. A Civil Revision Application was filed before the Delhi High Court challenging this order, however, the petitioners filed an application to withdraw the proceedings before the District Court and also the revision application filed before the High Court. The High Court allowed this request and also ordered that the observations of the District court no longer survive¹⁹⁶.

8.10 To curb online betting and gambling, authorities rely on the Information Technology Act, 2000 (Technology Act). Section 67 of the Act, reads as:

Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to

¹⁹⁶ Order of the Delhi High Court dated April 21, 2016 in C.R.P. 119/2012 arising out Order of the Delhi District Courts dated November 19, 2012 in Suit No. 32 of 2012 of *M/s Gaussian Network Pvt Ltd v. Monica Lakhanpal & Anr.*,

three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.

8.11 Further, this may be supplemented by section 69-A of the Technology Act, which empowers the Central government to direct its agencies and/or intermediaries to “block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource”.

8.12 These sections may be pressed into service to curb gambling or betting activities on the ground that such activities appeal to the prurient interest or tend to deprave and corrupt persons.

8.13 As gambling is not defined in Information Technology (Intermediaries Guidelines) Rules of 2011(Rules 2011), taking action against foreign betting websites that may indulge in money laundering through online gambling, can be challenging. Moreover, as gambling websites are hosted in countries where gambling is legal, it is difficult for Indian law enforcement agencies to take any legal or remedial action¹⁹⁷.

8.14 Initially online gaming was limited to a certain group of people. Slowly, its sphere increased and more people began to engage in it. Today, the scenario is such that people are even being hired to play or gamble online. Even Industry giants are keen to hire and invest in ‘professional’ gamers. For example, Cobx is ready to invest a sum of \$10 million on ‘professional’ players from India alone. Similarly, *Nazara*, a mobile company,

¹⁹⁷“Thanks to ambiguous laws, online poker websites are flourishing in India”, *available at*:http://www.business-standard.com/article/current-affairs/thanks-to-ambiguous-laws-online-pokers-are-flourishing-in-india-116110400758_1.html(last visited on 25-05-2018).

is planning to invest \$ 20 million on Indian e-sports¹⁹⁸. It is also estimated that the current market of online gaming in India will rise from \$360 million to \$1 billion by 2021¹⁹⁹. Another indicator of the flourishing of online gambling is the increase in the prize money in tournaments, which has risen from Rs.3 lakhs in the past two years to Rs.1 crore today. The trend is rising rampantly day by day. For example, as per a claim by Cobx, there were only 12 professional gaming teams in India as of 2016. However, there are 30 such teams today.

8.15 Such activities show no signs of being stopped or curbed; the least that could be done is to regulate them. The Government, being a welfare State, acts in a manner to promote economic and social well-being of its citizens, and therefore, it is incumbent upon the State to protect the vulnerable sections of the society. The linkage of PAN / Aadhaar would restrain the people from vulnerable sections, particularly those who are **below poverty line (BPL)** and to whom, as a social welfare measure, Central / State Governments provide subsidies through their Jandhan accounts. Putting such restrictions is a must so that the money provided by the Government under different heads is not misused by indulging in gambling and betting. Such regulation would serve a two-fold purpose, first, to provide protection to people involved and second, to use the revenue so generated for the development of the Country.

A. Consequences that ensue due to unregulated gambling and betting

8.16 Some of the major problems related to illegal gambling and betting activities are the exponential growth of illegal trade

¹⁹⁸Shalina Pillai, “Now, online gaming is a career for some”, (May 7, 2018) available at: <https://timesofindia.indiatimes.com/india/now-online-gaming-is-a-career-for-some/articleshow/64056984.cms>, (last visited on 02-06-2018).

¹⁹⁹ Study by KPMG and Google, online gaming in India: Researching a new Pinnacle, May 2017. See also <https://www.stoodnt.com/blog/career-in-online-gaming/> last visited 25-05-2018.

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.

8.18 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.

B. Illegal Commerce

8.19 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

²⁰⁰ “Should Gambling Be Legalized?” The Hindu (Mar. 30, 2018) available at:<http://www.thehindu.com/opinion/op-ed/should-gambling-be-legalised/article23385128.ece> (last visited on 25-05-2018).

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.

8.20 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 e-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 year²⁰³.

C. Corruption in sports

8.21 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

²⁰¹ Available at: <https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11243&Mode=0>, last viewed at 04.07.2018)

²⁰² *Internet and Mobile Association of India v. Reserve Bank of India*, W.P.(C) No.528/2018

²⁰³ <https://www.reuters.com/article/us-soccer-worldcup-gambling-asia/authorities-across-asia-battle-illegal-gambling-surge-ahead-of-world-cup-idUSKBN1J70PN>

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.

8.22 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 soon²⁰⁵.

8.23 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.).

8.24 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

²⁰⁴Sriram Veera, “*The games cricket’s fixers love to play*”, Indian Express, New Delhi, 31-05-2018.

²⁰⁵ Available at: http://www.espn.in/espn/story/_/id/20514748/coming-soon-new-sports-code-targets-vips-voting-lobbies (last visited on 30-05-2018); See also <http://www.thehindu.com/news/national/Govt.-constitutes-panel-to-draft-National-Sports-Development-Code/article16993002.ece> (last visited on 30-05-2018)

²⁰⁶ Available at: <https://www.pressreader.com/india/the-times-of-india-new-delhi-edition/20170131/textview> (last visited on 30-05-2018).

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 market²⁰⁷. 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.

8.25 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 provided²⁰⁸.

8.26 Therefore, it is obvious that betting and corruption in sports, especially cricket, is rampant throughout the world. It

²⁰⁷Available at: <http://www.espnricinfo.com/ci-icc/content/story/978837.html> (last visited on 25-05-2018).

²⁰⁸ David Harrison (26th May 2018), Exclusive: Al Jazeera exposes the match fixer from Mumbai, available at: <https://www.aljazeera.com/news/2018/05/exclusive-al-jazeera-exposes-match-fixer-mumbai-180526162256017.html> (last visited at 30-05-2018).

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.

D. Advantages of a regulated gambling and betting industry:

8.27 Various stakeholders have made several arguments in favour of regulating this industry. 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.

E. Autonomous regulation of gambling and betting industry

8.28 The strategy of allowing the industries to establish their own standards with a degree of Governmental control is not a rare phenomenon. There are several advantages of having an industry which is regulated by Industry Bodies, such as:

²⁰⁹Sriram Veera, “The games cricket’s fixers love to play”, Indian Express, New Delhi, 31-05-2018.

- i. It is efficient for these Industry Bodies, comprising of the operators to set their own standards depending upon the variances in the games, the element of skill and the technical standards involved.
- ii. These Industry Bodies, dedicated to perform the activities of rule-making and monitoring, including the enforcement for violations, will result in the freeing-up of State resources.
- iii. There will be increased transparency in the consumer market as the consumers would be able to identify the gaming operators which are certified by particular Industry Bodies.
- iv. Membership with these Industry Bodies will ensure better compliance of law as well as the industry codes, on the part of the operators. Additionally, affiliation with a reputed industry body would instil consumer confidence and subsequent profit to the gaming operators.
- v. There are issues pertaining to the jurisdiction in cases where the games are offered online because the Internet is universally accessible without any handicap of territorial limitations. The presence of a self-regulatory body, would enable the consumers as well as the State Governments to initiate action against an errant gaming operator at a single forum.
- vi. Subjectivity may arise in cases where the enforcement of gaming enactments depends upon the establishment of knowledge or intention of the offender. A self-regulatory mechanism would incentivise these Industry Bodies to assist the State mechanism in relation to the subjective tests by laying down the standards under the Industry Codes.

F. Suggestions by FICCI

8.29 In 2013, the Federation of Indian Chambers of Commerce and Industry (FICCI), in a report titled 'Regulating Sports Betting in India', highlighted that the underground betting market in India is huge at an estimated INR 3,00,000 crore²¹⁰. It was also noted that sports betting is different from the other common forms of gambling like playing games of chance and taking part in lotteries. The Report highlighted various advantages of regulating rather than completely prohibiting sports betting. It noted that the greatest advantage of regulating sports betting would be the accountability for the large amounts of money which is otherwise transferred through illegal channels leading to the reduction of national revenue/funds primarily due to match- fixing, money laundering and crimes.

8.30 Some of the other important advantages mentioned in the Report are:

1. Protection for the young and vulnerable against the dangers of unwise betting behaviour.
2. Employment generation (more than 8000 people are employed in casinos in Goa).
3. Fairer and more trusted betting experience for consumers, offering entertainment in a controlled and responsible manner.
4. Blow against organized crime like match fixing which threaten to damage public trust both in sport and in the legitimate betting industry.
5. Generation of revenues from taxation of sports development and preventing sport betting from

²¹⁰Available at:<http://ficci.in/SEdocument/20208/report-betting-conference.pdf> (last visited on 25-05-2018).

being linked to criminality or used to launder proceeds of crime.

6. Protection of players, coaches and all involved with sport from unprincipled approaches.

8.31 Having discussed the pros and cons of legalising regulated gambling and betting activities, it would be apt to say that the arguments in favour of the same far outweigh the arguments alluding to the immorality of these activities. The argument that had gambling been regulated in the Mahabharat period, Yudhishtir could not have put his brothers and wife as stakes, perhaps Mahabharat could not have been there, is full of substance. This is evident especially in the light of the fact that the existing black-market operations relating to these activities are a major source of influx of black money in the economy, making, regulation rather than complete prohibition the logical step to be taken.

CHAPTER IX

Conclusions and Recommendations

9.1 With the advent of online gambling and the anonymity that it ensures, the gambling and betting activities have acquired a global presence. It has, therefore, become more challenging for countries to monitor or curb these activities. Many countries that prohibit gambling have not been successful, particularly with regard to online gambling. The transnational character of online gambling platforms calls for a much needed change in approach. With the changing times, there could always be an option to have a relook at the earlier approach of a complete ban. The relook, if any, may take into account the possible loss of revenue and employment generation that a regulation could bring about.

9.2 The size of the global gambling market has grown manifold in the last decade. This increase in size is naturally accompanied with an increase in revenue generation, that continues to rise every year. For example, Europe has reported a yield of 41% GGY (Gross Gaming Yield) and Asia has approximately yielded 39%²¹¹. In fact, Japan has the largest national betting market which is the result of permitting betting on horse racing, cycling, motorbike racing and boat racing, constituting a market twice the size of the United Kingdom. The same is also evident from the rapid increase in sales of Mainland China's State lotteries, recording a \$51.1 billion high in 2013.

9.3 According to experts, though land-based lottery and casinos still dominate the gambling market, online gambling

²¹¹ European Gaming and Betting Commission Report on Sports Betting, *available at*:<http://www.egba.eu/facts-and-figures/studies/6-sports-betting-report/> (last visited on 25-05-2018).

and betting are showing rapid growth. Such activities, if properly regulated would ensure transparency in the market, as also strike at the underworld's control over the illegal and unregulated gambling industry. Additionally, the revenue so generated by regulating and taxing betting and gambling, may become a good source of revenue, which in turn, could be used for public welfare.

9.4 Regulation would therefore, empower the authorised agencies to identify and prevent instances of gambling by minors and 'problem-gamblers' as well as save the public from any kind of inconvenience at the hands of the law enforcement authorities. It would also enable the Government to effectively curb the menace of black-money generation through illegal gambling.

9.5 There is merit in the argument that, had gambling been regulated at the time of the Mahabharat, Yudhishtir could not have staked his wife and brothers in a gamble. On the other hand, the argument made for 'revenue over morality' lacks merit. States such as Gujarat, Bihar, Manipur, Nagaland and Lakshadweep, prioritising societal morality over revenue collection, have put legislative embargos on the sale, storing and consumption of liquor; taking into account its ill-effects on the society. Therefore, keeping in mind that the Indian society has always frowned upon gambling, considering its self-destructing capabilities and pernicious nature, it is most likely for the Indian people to choose morality over revenue in matters of gambling too.

9.6 Gambling has been proven to result in financial losses, causing an adverse impact on one's economic state, personal life and social life. Such activities affect the vulnerable sections of the society in unimaginable and often, irreparable ways.

Further, in an unregulated environment, inherent greed and corruption result in increased criminal activity. One of the major drawbacks of illegal gambling and betting activities is loan-sharking, i.e. taking loans at exorbitant rates for gambling. Aberrational behaviour sprouting out of compromised individual and social ethics is also a common side-effect of unchecked and unregulated 'betting and gambling', ultimately weakening the moral fibre of the nation.

9.7 The existing policy of the Government (National Sports Development Code of India, 2011, etc.), the current socio-economic atmosphere in the country and the prevalent social and moral values do not encourage betting and gambling. Accordingly, the Commission reaches the inescapable conclusion that legalising betting and gambling is not desirable in India in the present scenario. Therefore, the State authorities must ensure enforcement of a complete ban on unlawful betting and gambling.

9.8 However, incapability to enforce a complete ban has resulted in rampant increase in illegal gambling, resulting in a boom in black-money generation and circulation. Since it is not possible to prevent these activities completely, effectively regulating them remains the only viable option. Thus, if Parliament or the State Legislatures wish to proceed in this direction, the Commission feels that regulated gambling would ensure detection of fraud and money laundering, etc. Such regulation of gambling would require a three-pronged strategy, reforming the existing gambling (lottery, horse racing) market, regulating illegal gambling and introducing stringent and over-arching regulations. For such an eventuality, the Commission recommends:

1. Since online betting and gambling are offered and played over media (telephones, wireless, broadcasting and other like forms of communication) covered under Entry 31 of List I of the Seventh Schedule to the Constitution, the Parliament has the legislative competence to enact a law(s) dealing with the same.
2. The Parliament may also enact a model law for regulating gambling that may be adopted by the States or in the alternative, the Parliament may legislate in exercise of its powers under Articles 249 or 252 of the Constitution. In case legislation is made under Article 252, States other than the consenting States will be free to adopt the same. Being a State subject under List II of the Seventh Schedule to the Constitution, it is needless to say that State Legislature(s) is competent to enact the required Law for the State(s) concerned, while duly taking note of the National Policy on gambling etc., and other legal considerations.
3. Since horse-racing, being considered a game of skill, has been exempted from the ambit of blanket prohibition on “gambling”, both by the legislatures and the judiciary, other skill-centric games may also be afforded this exemption.
4. Operators ought to focus on the safety and protection of players indulging in such skill-centric games.
5. Gambling and betting, if any, should be offered only by Indian licensed operators from India possessing valid licences granted by the game licensing authority. For participants, there must be a cap on the number of transactions an individual can indulge in these activities in a specific period, i.e., monthly, half-yearly

or yearly. The nature of stakes should be restricted to money with a linkage to PAN card and Aadhaar card, and the betting amount should be prescribed by law, having an upper limit on the amount one can legally stake in a gamble, which may be on the basis of the deposit, winnings or losses.

6. Similar restrictions should also be prescribed for the purpose of the amount one would be allowed to stake while using electronic money facilities of the likes of credit cards, debit cards, net-banking, VCs, etc..
7. Gambling must be classified into two categories, namely 'proper gambling' and 'small gambling'. 'Proper gambling' would be characterised by higher stakes. Accordingly, only individuals belonging to the higher income group shall be permitted to indulge in this form of gambling. On the other hand, individuals belonging to the lower income groups will have to confine themselves to 'small gambling', not being permitted to stake high amounts (falling within the bracket of 'proper gambling').
8. In order to protect the public from the ill-effects of these activities and with a view to have enhanced transparency and state supervision, all betting and gambling transactions should be linked to the operator's as well as the participant's/player's Aadhaar Card/PAN Card.
9. The enactment(s) so made to regulate gambling and betting activities must ensure that vulnerable sections of the society are protected from being exploited by the possible ill-effects of these activities. In particular, the youth and children below the age of 18 years (who may

or may not be posing as adults), and those who are below poverty line and to whom as a social welfare measure, Central / State Governments provide subsidies to their Jan Dhan Account for sustenance. Putting such restriction is a must so that the money provided by the Government for their sustenance on different heads under the Direct Benefit Transfer Scheme is not misused in participating in gambling and betting and these vulnerable people are protected from the vice of gambling and betting. In other words, all those who get subsidies or do not fall within the purview of the Income Tax Act or the GST Act should be debarred from participating in online and / or offline gambling platforms.

10. The websites advertising gambling must compulsorily ensure that there is no objectionable or pornographic content on display on their portals/platforms.
11. Information regarding the risks involved in gambling/betting and how to play responsibly must be displayed prominently on all gambling and betting portals/platforms.
12. The transactions made between and among operators and players/participants indulging in these activities should mandatorily be made 'cashless'. This would go a long way in enabling appropriate authorities to keep a close eye on every single transaction so made. Necessary provisions should be made part of the relevant law(s), attracting penal consequences for cash transactions so made.
13. Any income derived from such activities should be made taxable under the Income Tax Act, 1961, the Goods and Services Tax Act, 2017 and all other relevant

laws for the time being in force applicable to such activities in India.

14. The Foreign Exchange Management Act, 1999 and the Rules²¹² made thereunder as also the Foreign Direct Investment (FDI) Policy²¹³, may suitably be amended to encourage Foreign Direct Investment in the casino/online gaming industry, lawfully permitting technological collaborations, licensing and brand sharing agreements, etc. Allowing FDI in this industry would bring substantial amounts of investment to those States that decide to permit casinos, propelling the growth of the tourism and hospitality industries, while also enabling such States to generate higher revenue and employment opportunities.
15. There must be a stringent law(s) in place to regulate Foreign Direct Investment on one hand and to prevent money laundering on the other.
16. Under the Information Technology (Intermediary Guidelines) Rules, 2011²¹⁴, Intermediaries are barred from hosting or transmitting content relating to or encouraging gambling. However, this provision creates an anomaly when a State decides to regulate or allow gambling. For instance, even though the State of Sikkim has permitted online gambling and betting, it is unclear whether the Rules of 2011 would apply to licensed online gambling and betting enterprises. It is

²¹²Notification No. G.S.R.381(E), 03-5-2000, *available at*:

<https://rbidocs.rbi.org.in/rdocs/content/pdfs/87256.pdf> (last visited on 26-05-2018)

²¹³ Chapter 5 of D/o IPP F. No. 5(1)/2017-FC-1, 28-8-2017, *available at*:

http://dipp.nic.in/sites/default/files/CFPC_2017_FINAL_RELEASED_28.8.17.pdf (last visited on 26-05-2018).

²¹⁴ The Information Technology (Intermediaries guidelines) Rules, 2011 have been enacted under the power conferred upon the Central Government under clause (zg) of subsection (2) of section 87 read with sub-section (2) of section 79 of the Information Technology Act, 2000 (21 of 2000).

therefore suggested that the Intermediary Guidelines Rules be suitably amended to insert the word 'illegal' before the word 'gambling' so that those intermediaries that transmit or host content relating to illegal gambling, i.e., gambling activities not licensed by any State, may be held liable.

17. The "National Sports Development Code of India, 2011", which aims at preventing betting and gambling in sports or any other code applicable from time to time, will also require an amendment/modification, to create an exception for the same, if betting and gambling are to be regulated.
18. An agreement could be rendered unlawful by section 23 of the Indian Contract Act, 1872, if the consideration is not lawful or it affects the morality or is against public policy. Further, section 30 thereof makes wagering contracts void but not illegal²¹⁵. These provisions stand detrimental to the interests of players/participants who indulge in gambling transactions and may not be provided winnings, as it makes it impossible for a party to assert such a right in a Court of Law. It is therefore suggested that section 30 be suitably amended to exempt transactions that legally take place with licensed gambling operators or casinos, from the ambit of 'wagering agreements'.
19. Detailed safeguards *inter alia*, for employees of casinos, minors, internal control requirements for casinos (like customer due diligence), maintenance of accounts, audits etc., and establishment of a council to look into

²¹⁵*Gherulal Parakh v. Mahadeodas Maiya & Ors.*, AIR 1959 SC 781.

and prevent ‘problem gambling’ and ‘gambling by minors’ must be put in place.

20. Match-fixing and sports fraud should be specifically made criminal offences with severe punishments.

21. Amend any other existing law(s) that puts an impediment to bring into effect the regulating mechanism to such effect.

The Commission recommends accordingly.

9.9 The Commission would like to conclude the Report by quoting Justice D P Madon that “*as the society changes, the law cannot remain immutable*” and that “*the law exists to serve the needs of the society which is governed by it.*” (*Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr.*, AIR 1986 SC 1571).

[Justice Dr. B.S. Chauhan]
Chairman

*

[Justice Ravi R. Tripathi]
Member

[Prof. (Dr.) S. Sivakumar]
Member

[Dr. Sanjay Singh]
Member-Secretary

**

[Suresh Chandra]
Ex-officio Member

[Dr. G. Narayana Raju]
Ex-officio Member

* **Submitted a separate opinion**

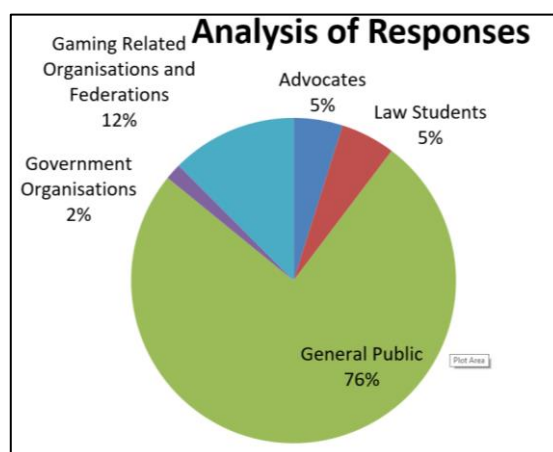
** **Out of country on official visit**

Responses from Stakeholders

Pursuant to the mandate given by the Supreme Court of India to study the possibility of legalising betting in India, the Commission issued an Appeal on 30 May 2017 requesting the stakeholders, operators, organisations, and the public at large to respond (Appended). State Governments and various sports associations were also requested to give their opinion on the following issues:

- a. Will legalising betting and gambling help in curbing illegal activities undertaken by the citizens of our country in this regard?
- b. Will licensing such activities help the government earn substantial revenue and generate employment?
- c. How far will legalising betting and gambling be morally correct in the Indian circumstances?
- d. What would be the possible model by which people engaging in these activities can be safeguarded from bankruptcy?
- e. If legalised, should foreign betting and gambling companies be allowed to have a foothold in the country?
- f. Any other relevant issue.

The Commission received numerous responses from various stakeholders including State governments, individuals, operators, sports associations, etc. It is observed that there has been a mixed response to



the questionnaire put in the public domain. The Commission received 195 responses. The Commission examined the responses received from the stakeholders and a brief analysis is given below.

GOVERNMENT ORGANISATIONS:

- The Government of Uttar Pradesh was against the legalisation of betting and gambling on the basis that it is against social norms and would increase the crime rates.
- The Government of Orissa in a similar manner further suggested that it would result in the elevation of corruption levels. However, it:
 - It should be allowed to limited extent and the revenue collected can be utilized for the welfare of the citizens and it will generate employment.
 - Foreign Companies should not be allowed to have foothold in any type of gambling and betting and will lead to various other complicated issues.
 - Betting and gambling need not be legalized except in specific area of operation such as in clubs, hotels, and similar places under control of responsible administration.
 - Mostly, poor people will suffer financially by getting themselves engaged in gambling and betting for which the tribal's are even allowed to take part in similar events only on festive occasions.

Hence, the Orissa Government has opined that as a social menace it should not be legalised in general terms.

ADVOCATES:

The Advocates were in favour for legalising of betting and gambling.

- If gambling and betting gets legalised, India will collect tax revenue which can be used for development of India and then tax load on every individual will definitely decrease.
- This will lead to an increase in employment and disabled individual will get a chance to earn a living.
- India's Gross Domestic Product (GDP) will increase when hotels and restaurants will come into existence and with increase of tourism.
- Legalising betting and gambling will help the Government to keep the underworld activities under check.
- If the sports betting get regulated then there will be accountability for large amount of money transferred through illegal channels leading to a reduction in cases of match-fixing, money laundering and corruption.
- The need of the hour is to come up with an active regulatory framework, whether the principle philosophy is to permit or restrict betting, but not compulsory banning it.
- At present each state has power to legislate betting and gambling. The advocates have suggested that the Central Government must enact a Primary Legislation which would clearly define what constitute gambling, lotteries, sports betting and casual betting.
 - Set the procedure for procuring license and should be granted for limited period and that can be renewed.
 - Stringent reporting obligations will need to be put in place, which may include annual and monthly reports to be filed with a regulatory authority constituted specifically to govern the betting and gambling.
 - Should also mention the penalty and punishment provision in case any fraud happens.

- It may prescribe limits on the amounts that may be involved in each transaction.
- Separate regulatory authority should be constituted who would issue license, review reports, issue directions, conduct inspections and prescribe various security measures.
- Most of such activities like gambling etc. are done through illegal sources and having strict Know Your Customer/Client (KYC) norms would help regulate the economy and help the government fighting corruption. Also, such KYC could prevent illegal activities like match-fixing etc.
- The law permitting gambling should mandate that only those persons who have attained majority under the Indian Majority Act, 1875 should be allowed to play games for stakes in casinos and to open an account on online gambling websites.
- The law regulating the payment systems, particularly in terms of mobile and internet wallets need to be amended to allow payment system providers to facilitate the use of such payment systems for gambling, the operators of such payment systems would need to ensure that a KYC check is completed before allowing individuals, to use their instruments to place bets.
- Responsibility of the Government while providing guidelines to also ensure that such online sites do not present any objectionable and pornographic content.
- Compulsory Corporate Social Responsibility (CSR) mandate and entity should pay certain percentage of its gross revenue to an NGO.
- That 'line-in-betting' should be made illegal. That is betting on a certain event should be closed at least one hour prior to the start of an event. This policy is similar to

that followed in horse riding in India, wherein betting take place prior to the beginning of the race.

- Any person wishing to undertake betting and gambling activities must provide his/her PAN and Aadhar Card details. This shall not only allow the Regulator to monitor the earning of the person but shall also allow the betting and gambling operator to detect any signs of addictive behavior on part of the individual.

STUDENTS:

- If the legalisation of gambling and betting happens it must have authorities to keep a check on –
 - (i) Age limit of adolescents
 - (ii) Specific licenses for operators and those who do not have them must be penalized
 - (iii) A gambling registration number must be provided to each player
 - (iv) A moral check on the players.
 - (v) Heavy taxation would help build good monetary economy.
- Jurisprudentially law must be conformed to the sociologically beneficial purposes. Thus, encouragement to the gambling industries would result in economic growth thus social welfare.
- Those involved in malpractices like match fixing must be penalised.
- A certain section of students who were against legalising betting and gambling suggested that these contracts are not legally enforceable and thus, must not be made legal. Further, they said it is immoral in nature.
- Also, bringing the unregulated industries like the betting and gambling under the legal frame work would lead to overall increase in the economic benefits to the country.

But having a precisely functioning regulatory authority is a must.

- A fundamentally precise legislative framework is needed to have an overall fiscal growth.
- Further a new Gambling Act,2018 must be enacted which should contain the following points –
 1. Define the scope of law.
 2. Define the role and responsibility of Central and State governments.
 3. Define the national structure and supervising authority.
 4. Licensing structure, process, framework and due diligence.
 5. Full open market or limited accesses.
 6. Penalties and fees
 7. Social Responsibilities clauses on players and industries.
 8. Marketing code
 9. Regulatory Reforms
 10. Technical Standards.
- Tax on gambling must be based on gross revenue and not on single bet basis.

GAMING RELATED ORGANISATIONS AND FEDERATIONS:

- A SMART CARD APPROACH must be adopted:-
 1. KYC based smart card must be made.
 2. Player can invest only 10% of his income as mentioned in Income Tax Return.
 3. NRIs would not have any limit to invest.
 4. Only those who have attained the age of 18years are allowed to participate.

- Certain changes need to be made to the existing legislative framework in order to accommodate gambling and betting. The suggested changes include:-
 - A provision must be incorporated under Section 30 of the Indian Contract Act, 1872 similar to the current exemption in favor of horse racing, to exempt contracts made with licensed gambling or betting operators from the main provision that makes wagering contracts void and unenforceable.
 - By way of a constitutional amendment, the power to enact and rule on online gaming (both skill and chance) can be entrusted with the Centre while the power to enact and deal with brick and mortar gaming (physical) can be entrusted to the States. The Integrated Gaming License can then be enacted as a central legislation.
 - For matters where the Parliament does not have the power to make laws for the States, Article 252 of the Constitution of India allows two or more states to approach the Parliament to enact laws regulating such matters which can apply to States which adopt the same by passing a resolution to that effect. This article can be used for making the required legislation.
 - Section 2(1)(r)(3)(b) of the Consumer Protection Act, 1986 which specifically prohibits the demeanor of any contest, lottery, games of chance or skill for the purpose of promoting any product or interest should be amended or narrowed down.
 - Section 2(sa) of Prevention of Money Laundering Act, 2002 should be amended to bring all licensed online and offline gaming operators, whether

offering games of skill or chance within the definition of 'person carrying out designation business and profession'.

GENERAL PUBLIC:

- The general public were of the opinion that the betting and gambling should be legalised because of the following reasons:
 - It should be legalised in a regulated manner.
 - It will help in generation of revenue.
 - It will create job opportunity.
 - Legalising would help curb the parallel economy of black money as it would help to keep a track on transactions done in such places. So, such entities would fall in nexus with the Government and help to generate revenue for the development of our country.
 - It will help in promotion of tourism industry.
 - It will help in controlling of money laundering business- At present betting racket is run by the underworld and huge amount of money is transferred through Hawala transactions which is used for terrorism.
- The general public were of the view that:
 - The skill based games and sports must be legalised.
 - It should be legalized with certain rules and restrictions so that poor and lower middle class do not suffer.
 - The maximum limit for betting should be prescribed.
 - That betting and gambling should be made online or digitalised and the mode of payment should be

also digitalized through net banking so that the transactions can be tracked.

- Some stakeholders have opposed the legalising of gambling and betting contending that it creates an unholy atmosphere and tends to vitiate the solemn nature of transactions. It is also observed that there is a conflict between Government and gaming related organizations and federations. The two State Governments who responded were of the view that it would be against the social norms and the principle of welfare State under Article 39 of The Constitution of India. However, the gaming related organisations have supported the legalisation of betting and gambling and have suggested that having proper authorities and apt regulation would lead to increased income. They have opined that monetary and fiscal benefits would also be seen in the economy, which would thus lead to development of the country as a whole leading to formation of welfare State.

List of Persons Who Responded to Law Commission's Appeal on
Betting and Gambling

ADVOCATES

1. Harvindra Kumar Garg
2. Amin Rozani
3. Nilay Dutta
4. Aman Gupta
5. Varun Srinivasan
6. Baredy Nayana Reddy
7. Devadas – V
8. Catherine Qu
9. Jain Pandit (J.Sagar Associates)

STUDENTS

1. Acharya Law School
2. John T. Holden
3. Vaibhav Parikh
4. Harshita Mohan
5. G.Yashasvi Raghavender
6. Anindya Gopal
7. Jay Sayta
8. Praveen James Anthony
9. Sachit Singla
10. Harpit Singh Gupta
11. SIPLA, NLSIU

GOVERNMENT ORGANIZATIONS

1. Government of Manipur, Secretariat law and Legislative Affairs Department
2. Virendra Kumar Srivastava, Principal Secretary, Uttar Pradesh
3. Shri Lalit Das, IPS, Special Secretary to Government,, Government of Odisha

GENERAL PUBLIC (INDIVIDUALS)

1. Vivek Kumar Jain
2. Santosh Kumar Gangwar
3. Jagdish Devrag Pawar
4. Satyanarayan Narayanji Mohan
5. Arun
6. Shekhar Anand
7. Shaun
8. Aaditya Kumar Nirala
9. Raghuveer Soni

10. AshishDhanopia
11. AyanHazra
12. HirenAswani
13. Dr. Deepak J Kalarickal
14. LalitMistry
15. Vikas Jain
16. Manoj Sharma
17. E. Raja
18. Suryanarayanan
19. Atul Kumar
20. Gautam Mohan
21. JignaKotecha
22. BinaRai
23. RajendraBansal
24. ParveenThapa
25. Ramesh Yadav
26. Nawaz Husain
27. Rodhasi Media
28. SusantaChakraborty
29. Gobal Tech Videos
30. VinodKarki
31. Anil Kumar
32. Deepak Kodwani
33. Suresh Ramchandani
34. Rahul Chand Rawat
35. P.S.Natarajan
36. P.S SrinivasaRao
37. B.S.S Sandilya
38. Varsha Nanda Kumar
39. JagannathSethyBala
40. Dr.Shyam
41. Fransis Pinto
42. Prakash K
43. Surendra
44. Manish Kumar Pajnani
45. Gitesh
46. Rajat Kumar Nayak
47. Nikhil Swami
48. Mrinal Ali Hazarika
49. Arvindra Pal Singh Gulati
50. PradeepMandge
51. VaibhavBhutani
52. RaghunadhamNittala
53. N.Raghunadham
54. DilipGocul Das
55. ShreenathMahajan
56. Deepak lulla
57. Amit Kumar
58. PhanisuryaBathula

59. AshishMehra
60. MadhumilindKamte
61. NagarajSubramani
62. Fanny
63. Shreyansh Shah
64. Ram Pratap Singh
65. Chirag
66. Francesco Rodano
67. B.S Sahney
68. Julio Ribero
69. Ashok
70. FirdausNariman
71. Nitin Raj Tanwer
72. Anant Mittal
73. Raj Kundra
74. SandeepPimpale
75. SharukhGhyara
76. NizwarKaranj
77. AdityaTiwari
78. Welesley Philip Vaz
79. VeerendraTiwari
80. Rena Tanna
81. MohitPrashar
82. Adiraj Singh
83. SubySudhakaran
84. Karan Thawrani
85. Dr. Ravinder Reddy
86. Patricia Castelino
87. Shailendra Singh
88. Anil Shrivastava
89. ShaileshPandit
90. Rajesh Dhanker
91. DonalRozario
92. Adhiraj Singh
93. Rajender Kumar Pinjani
94. AmitBansal
95. AbhishekMazumder
96. VrajeshUdani
97. Nadeem Sheikh
98. Shubham Gupta
99. Paawan
100. ChandanBalraj
101. Alok Prasad
102. M. Sarah
103. VikasSoni
104. Dr. VeerandraKaja
105. Pradeep Singh
106. RohitPathak
107. UpamanyuChatterjee

108. Yogesh Jain
109. AnandVijaywargi
110. Mohinder Jindal
111. BhupenKharawala
112. HarunHafeez
113. Abhishek Gupta
114. RohitDandona
115. Ra Parekh
116. ManmadhaRai
117. ChiragKhandelwal
118. MayurGathani
119. VikasVerma
120. Suresh Bisht
121. Abdul Samad
122. SharukhGhyara
123. JaydevMody
124. Ranadev Nair
125. A. Gandhi
126. DarpanGoel
127. Manoj Kumar
128. GauravSethi
129. AdiGapat
130. Manjeet Singh
131. VishwasShetty
132. AmbrishLaddha
133. Rudolph Furtado
134. PradeepRaut
135. Naveen Venugopal

Gaming Related Federations and Organizations

1. Playwin
2. Deltin Group
3. Hyderabad Race Club
4. The Remote Gambling Association
5. Greentube Malta
6. Gambling Laboratories International, Australia
7. UNLV International Center for Gaming Regulation
8. Golden Play Private Limited
9. Genius Sports
10. Rowing Federation of India
11. Saurashtra Cricket Association
12. Hockey India
13. Ice Skating Association of India
14. All India Gaming Federation
15. Equestrian Federation of India
16. The week
17. Amicus Rarus
18. PMU, France

19. ESSA Sports Betting Integrity
20. 1710 Gaming
21. Tripura Cricket Association
22. Indian Constitutional Law Review

Appendix

डा० न्यायमूर्ति बलबीर सिंह चौहान
पूर्व न्यायाधीश, सर्वोच्च न्यायालय
अध्यक्ष
भारत का विधि आयोग
भारत सरकार
हिन्दुस्तान टाइम्स हाऊस
कस्तूरबा गांधी मार्ग, नई दिल्ली - 110001
दूरभाष: 23736758, फैक्स: 23355741



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Former Judge, Supreme Court of India
Chairman
Law Commission of India
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30 May 2017

Appeal

The Supreme Court, in *Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.*, (2016) 8 SCC 535, mandated the Law Commission of India to study the possibility of legalizing betting in India, *inter-alia*, observed thus:

... the recommendation made by the Committee that betting should be legalized by law, involves the enactment of a Law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.

While considering the issue, the Commission discerned that gambling is also a subject which is very closely associated with betting. While considering legalization of betting, leaving aside gambling may render the whole exercise futile. Therefore, the Commission would like to study the issue of legalizing betting as well as gambling in the country.

Various media reports time and again point out that betting and gambling, though not legal in India, is practised across the country clandestinely. These reports argue that many families are rendered bankrupt and many people are behind the bars owing to these practices. Strict rules against betting and gambling have not necessarily acted as a deterrent. Online gambling and betting is another area which has become very difficult to curb. It is understood that a lot of money is involved in illegal gambling business, creating almost a parallel economy, converting legally earned money into black money that is drained to gambling operators in other countries online.

The Commission has been mulling this idea for quite some time now. Discussions were initiated with some of the stakeholders and the Commission is working towards a possible report. Will legalizing betting and gambling help in curbing the illegal activities undertaken by the citizens of our country in this regard? Will licensing such activities help the Government earn substantial revenue and generate employment? How far will legalizing betting and gambling be morally correct in the Indian circumstances? What could be a possible model by which the people engaging in such activities can be safeguarded against bankruptcy? If legalized, should foreign betting and gambling companies be allowed to have a foothold in the country? These are certain basic areas that need to be addressed, along with any other issues that may come up while considering the matter.

The Commission would like to invite views and suggestions from all concerned - the stakeholders and the general public, with regard to legalizing betting and gambling, so as to arrive at a judicious opinion and make suitable suggestions and recommendations to the Government, which are balanced and protect the interests of the common man and the stakeholders alike. Your suggestions may be sent either by post or in person, to the Law Commission of India, 14th Floor, Hindustan Times House, Kasturba Gandhi Marg, New Delhi – 110 001; or by email at lci-dla@nic.in [i.e., LCI<hyphen>DLA<at>NIC<dot>IN]; or by fax at +91 11 23355741, so as to reach the Commission within 30 days.

[Dr. Justice B S Chauhan]

Law Commission of India

Subject: Opinion on the report of the Commission titled “Legal Framework: Gambling and Sports Betting in India”.

For the reasons given below, I beg to submit my opinion on the report titled “Legal Framework: Gambling and Sports Betting in India”:

- While referring the matter to the Commission, the Supreme Court has very clearly observed that “*the recommendation made by the Committee that betting should be legalised by law, involves the enactment of a Law which is a matter that may be examined by the Law Commission and the Government for such action as it may consider necessary in the facts and circumstances of the case.*” Thus, the intent of the court is clear and it mandated the Commission to consider legalising betting in cricket, and *not* sports betting in a general manner.

The issue of gambling has never been a subject of reference to the Commission. In the past, the Law Commission has generally carried out the mandate given to it. The Commission has not been taking any subject of study *suo motu* and I feel the practice must have continued. Further, the socio-economic and cultural circumstances of the country are not pragmatic to accept legalised gambling activities, as it is still treated as a social stigma. Further, as I see, there is a vested interest in getting gambling legalised in the country, for favour of amassing money clandestinely, by a handful of game operators, thereby pushing the innocent masses to hands of poverty and penury. The Lodha Committee report has not considered the socio economic conditions in the country. With widespread poverty prevalent in India, to me, the present condition in the country is not ripe for legalizing betting in ‘sports’. Further, since the subject matter was never referred to the Commission for study, and in order to save the future generation from treading unethical paths, I am of the opinion that no form of gambling can be permitted from the soil of the country. Also, a study on gambling should invariably cover operation of lotteries, casinos, etc. In this context, the present report is not comprehensive

- The policy of the Government, in general, is to disallow betting and gambling and I apprehend that the recommendation of the Commission may lead to an unhealthy and unwarranted discussion.



(S. Sivakumar)
Member, Law Commission of India

LIST OF CASES

1. *Bimalendu De v. Union of India*, AIR 2001 Cal 30, p.19
2. *Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.*, (2014) 7 SCC 383, p.3
3. *Board of Control of Cricket in India v. Cricket Association Of Bihar* (2015) 3 SCC 251, p.43
4. *Board of Cricket Control in India v. Cricket Association of Bihar & Ors.*, (2016) 8 SCC 535, pp.4, 96
5. *Bobby Art International, etc. v. Om Pal Singh Hoon & Ors.*, AIR 1996 SC 1846, p.37
6. *Carlill v. Carbolic Smoke Ball Co.*, (1892) 2 Q.B. 484, p.45
7. *Carmen Media Group Ltd v. Land Schleswig-Holstein and Innenminster des Landes Schleswig-Holstein*, Opinion of Advocate General, Mengozzi, delivered on 3 March 2010 in Case C-46/08, Para 103, p.94
8. *CBI v. Ashok Kumar Aggarwal* (2013) 15 SCC 222, p.43
9. *Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr*, AIR 1986 SC 1571 pp.43, 121
10. *D. Krishna Kumar v. State of Andhra Pradesh*, 2003 Cr LJ 143, p.23
11. *Director, Inspector General of Police v. Mahalakshmi Cultural Association*, (2012) 3 Mad LJ 561, p.23
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