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**Should Sports Betting And Gambling Be Legal In
India?**

Gourav Kumar & Akash Kumar

School Of Legal Studies, CMR University, Bangalore

Abstract

Gambling is wagering of money or something valuable on any event whose outcome is not fixed, with the intention of winning. It has three elements: consideration, risk and prize. On the other hand, Sports betting basically means the activity of placing a wager on the outcome by predicting the sports results. Gambling can be traced back in every age, civilisation and culture. India stands ninth, in terms of gross profits, in the list of major betting nations. There is a huge potential for gambling and sports betting in India. As in India Gambling and sports betting are illegal in nature, so its secrecy is promoting “collusive corruption.” This is further degrading the economic and social life of the country. Gambling has been integral in the culture of Indian societies. Several instances of betting and gambling are found in the Indian history and Hindu mythologies. There are have been instances of illegal betting rackets been run in the country. Through this paper, the authors seek to delineate the contentious issue of legalization of gambling on sporting events in India within the circumscribing limits of the thriving legislative framework. The paper has focused on the debate on social and economic dimensions of gambling in Indian context.

Introduction

Gambling and betting are common throughout the world. In India, people bet on animal fights on the street, playing card games etc. Over a period of time, the people have started betting on cricket and other national sports. With several crores of money being transacted illegally and the government's failure to end the menace, there is a wide spread comment about the need to create a robust regulatory framework for legalising gambling. The reasons behind legalising and regulating gambling are several. First, gambling is already operating in a huge way. In spite of having several legislations, legal enforcement authorities are not able to curb it. Gambling and betting is mostly done very secretly and handled in a delicate manner. It is mostly headed by the underworld and strong syndicates who use the unaccounted money earned from gambling activities for nefarious activities. These activities could include financing various illegal activities like terrorism, human trafficking, drug trade etc. So legalising the activity will not only help curtail an important source of black money but also stop funds flowing to terror agencies.

Since betting is illegal in India, those interested in it bet overseas. Gambling in India has a very real association with criminality and this has created many scandals over the years. By legalising gambling it would become much easier to eliminate these types of scandals from the game of cricket and punish the culprits, which would in result yield the nation's economy and its pride. The greatest advantage of regulating sports betting is going to be the accountability for the large amounts of money transferred through illegal channels and reduction in cases of match fixing, money laundering and crimes, creating knowledge and education about ill effects in a focused manner are inbuilt conditions to save vulnerable groups. Besides, it could potentially fund sports development, education, social protection or welfare schemes and infrastructure development plan besides employment generation.

History Of Gambling And Betting

The history of gambling in India can be traced right back to the era of Kautilya. During Kautilya's era gambling was a state regulated industry which imposed 5% tax on winnings¹. In the Indian epic, the Mahabharata, Yudhisthira lost his whole fortune during a dice game- a defeat which forced the five Pandava brothers and their wife to go into exile. There have been

¹ <http://www.helsinki.fi/iehc2006/papers1/Mishra24.pdf>.

instances of betting in India on bull fights, cockfight, goat fights, a tradition which still continues discreetly in many parts of the world. The fight continues until one animal dies or defeats and the other one and is declared the winner. This way the bets are honoured.

The attitude towards betting and gambling in the society has varied across time and geography. It has been considered as the game of aristocrats. This activity is looked upon as a means of winning of huge with a small investments. The mythological story of Nala and Damayanti, depicts that gambling existed in ancient India. In fact, laws were framed in ancient India to regulate it². Like Yagnavalkya, the Narada- Smriti³ and Kautilya⁴, all advocated that gambling should exist under the control of the State. 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 skill⁵. Ancient texts have analysed gambling as a great source to yield income for the state.

Economic, Social And Constitutional Dimensions Of Gambling And Betting

Economic Dimension

The legalization of sports betting in India is one of the most debated issue and its roots can be traced back to the epics in India and the age of mythology. The 276th report of Law Commission of India has suggested that Sports betting and gambling should be legalized with regulations. This can help the government in earning revenue. The Law commission of India has recommended that by allowing FDI in this industry would bring more investments which will further lead to growth in Tourism, hospitality industries, etc. These things will enable the states to generate revenue and in curbing the issue of unemployment.

According to FICCI , the legalization of sports betting will boost the economy as there are unregulated economic activities of over Rs.3,00,000 Crores. This revenue can be used for welfare activities and can also be used for sports developmental activities, which are often ignored because of shortage of funds. For the development of sports in country, these revenue

²Mukul Mudgal, Law and Sports in India: Development Issues and Challenges 226 (LexisNexis, 2016).

³ 2ndEd. Ancient Indian History and Civilization by Sailendra Nath Sen, New age International Publishers.

⁴ AIR 1957 SC 699.

⁵ <http://www.helsinki.fi/iehc2006/papers1/Mishra24.pdf>.

can be used for funding starting from grassroots to the work of organising national leagues and even world class tournaments.

Illegal betting is burning or causing loss to exchequer which can derive revenue by legalizing it. It is estimated that Government can earn Rs. 12,000-20,000 Crores as taxes. If betting and gambling are legalised in India, then the government will make all the income from the activities taxable under the Income Tax Act, 1961 and the Goods and Services Tax Act, 2017. The revenue generated from betting will improve India's gross domestic product (GDP) tremendously.

Illegal betting generates huge profits, which are redeployed in the main stream economy. These illegal funds are often used through legitimate markets like stocks, etc. It has a very bad impact on income distribution. As in case of Drug trafficking rich people make money at the cost of students, workers, etc. in the same way in gambling and sports betting also transfers of money occurs from poor to the rich. In short it can be said that the ill effects of illegal betting on economy are difficult to quantify, but is undoubtedly large.

Social Dimension

The practice of gambling is deep rooted in the tradition and culture of Indian Society. Diwali, which is one of the important Indian festival is the time for new utensils, clothes, and gambling. People have a belief that on this night, Goddess Parvati played dice with Shiva and enjoyed it so much and she decreed that whoever gambles on this night will prosper throughout the coming year. There are many festivals and rituals which are either directly or indirectly connected to gambling. Studies show at least two-thirds of people have gambled in their lives. But for most of the people it is just a matter of entertainment. About one percent of people lose their control and become addicted to it.

There is a need for reforms which should ensure freedom of choice for consumers. It is high time when the popularity and the benefits arising out of gambling and sports betting should be examined. By the regulations, it should be legalised so that our culture and traditions also remain intact without any harm to the society.

Constitutional Dimension

In India the power of legislation is divided between the Centre and the State. The Constitution of India through Article 246, has divided the powers of Centre and State into three lists. The power to bring legislations on the matter listed in list I vest with the Centre

(Central List), while the power to legislate on subjects enlisted in List II is vested with the State, List III is known as Concurrent List, consist of matters on which both State and Centre can bring upon legislations. Gambling and betting fall under the category of Entry 34 of the State List. It is therefore the duty of the state to analyse the scope of gambling and betting in India. Post-independence various states enacted their own law relating to gambling and betting. The importance of Public Gambling Act, 1867 though still remains since certain states have adopted the Public Gambling Act to apply to their territory via Article 252 of the Constitution of India.

The central government may also consider that the nature of sports betting activities has changed drastically⁶ with the advent of technology. Since betting and gambling is spread throughout the country, a single state could not be able to regulate the whole activity. It is therefore the duty of Central Government taking into consideration the public interest that it shall regulate the enormous gambling and betting under the ambit of Union List Entry 42 'Inter-State trade and commerce'.

The Information and Technology Act has been legislated on the basis of Entry 31 (Union List) which gives the Union Legislature the power to bring upon legislation on the subject 'Posts and telegraphs, telephones, wireless, broadcasting and other forms of communications'. The Union government could seek to carve out an exception here pertaining to sports betting and draft rules for its regulation on the internet and draft detailed rules for its regulation on the internet and other means of communication.

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. 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

⁶ <http://ficci.in/spdocument/20321/KnowledgePaper-Sports-Betting.pdf>

themselves to ‘small gambling’, not being permitted to stake high amounts (falling within the bracket of ‘proper gambling’)⁷.

Why Gambling And Betting Should Be Legalised?

Gambling and other forms of betting are common throughout the world. In India, people bet on playing card games, cricket and Crores of money are transacted illegally. There is a need to create a regulatory framework for legalizing gambling. Now why it should be legalized can be understood by some of the following arguments:

Curb Black Money and Terror Financing

Gambling is already operating in a huge way. Despite of legal measures and covert actions, legal authorities are not able to combat it. It is done secretly and mostly headed underworld who use these unaccounted money earned from gambling and betting activities for terror financing. So by legalization of gambling and sports betting will not only help in combatting the problem of black money but also will stop funds flowing to terror agencies.

Huge Revenues

The size of gambling market in India vary according to various private and government agencies. According to KPMG report, the size could be around \$50-\$60 billion, while some other institutions value it even in higher numbers. One normal estimate suggests that with just 15 per cent GST, the government could earn tens of thousands crores by legalizing gambling and sports betting. The tax revenue will also increase by huge amount, if online gambling and casinos are permitted in restrictive way. These revenues can be used to fund constructive projects of the government.

Employment opportunities

Legalization of gambling and sports betting will create huge employment. Globally, wherever it is regulated, has created a massive opportunity for employment. Directly or indirectly, it can create jobs for around 25-40 lakh people in India. U.S. employs around 2.5 lakh people in gambling industry, while in U.K. about 1 lakh individuals are employed.

⁷ <http://lawcommissionofindia.nic.in/reports/Report276.pdf>

Conclusion

India has a huge population with diversified culture and traditions. So there is no surprise that there are a lot of people who enjoy gambling and betting on sports activities. Sports betting is quite popular in India, particularly on cricket. Casino gambling and playing poker are popular as well. But despite of the popularity of gambling in India, it's prohibited in Indian society. Legislations which are related to gambling are outdated and unclear. The point of outdated and unclear legislation in India holds good, when it comes to online gambling. As a result, it is very difficult to measure what is legal and what is not in India.

There is a huge potential for the gambling industry of India. It is the need of hour to project the income and employment opportunities of this gambling industry and sports betting in India. There are divergent views amongst policy makers on gambling. Transparency can bring the illegal market into the legal ambit. But the present legal situation is neither addressing the economic nor the social costs. The development of gambling and sports betting in India requires a three-steps strategy: reforming the existing gambling market and legalizing the present illegal market (introducing new products), while introducing stringent and over-arching regulations. India can have regulations to ensure transparency and can also minimize the social costs associated with gambling.

Therefore, the platform that India should adopt towards gambling is that- (a.) it should be legal and regulated, (b.) if any complaint comes or issue arises then it should be viewed in the same manner as any other complaint related to contract ,etc. Private information providers would publish data further for expected payoffs, so that citizens could know about the preferences. There is also an overwhelming support backed by the Law Commission report regarding the idea of legalization of gambling and sports betting in India.

To conclude, it can be said that Gambling and sports betting should be legalized in India as it has the potential of proving itself an important asset and a great source of revenue with huge employment opportunities.

