
Should Gambling on the outcomes of sporting events be legalized in India?

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“Money won is twice as sweet as money earned.”

From the movie ‘The Color of Money’

Abstract: Betting is wagering money on a certain outcome in an event. “Chance and probability” both have been surrounded by uncertainty, and when we are uncertain then curiosity arises along with a sense of excitement and when this uncertainty is clubbed with winning of money then more people are attracted. Betting on sports is a grey area in India. Due to the perceived illegality of sports betting, a large sum of money flows untaxed to unlicensed offshore Internet sites or to illegal bookmakers, many of whom are allied with organized crime. This presents a strong case to regulate it as sport betting in the eyes of a large number of people is an inevitable activity and is a mere form of entertainment.

Key-words: betting ; gambling; sports; *Public Gambling Act of 1867*; online gambling; Indian Premier League;

Prologue: “Chance and probability” both have been surrounded by uncertainty, and when we are uncertain then curiosity arises along with a sense of excitement and when this uncertainty is clubbed with winning of money then more people are attracted. Gambling and wagers have always enthralled people ever since the beginning of civilization. Instances of gambling can be found in the Mahabharata, Quran and other religious texts.

Betting is wagering money on a certain outcome in an event. For instance, on a sunny day, two friends can make a bet on whether it’ll rain in the evening. Here one person will bet in favor of rain in the evening and the other will bet against it. One can wager almost anything in a bet (money, livestock, house, business, spouse, self ... anything). People can do it legally, illegally and partially legally.

Fixing is not betting. Fixing is an ancillary to betting. Fixing is using influence to ensure a particular outcome in an event. For instance, in a cricket match between Sri Lanka and India; if the betting company sees that it will have to pay more money to betting people, if India wins;

then it will use influence (mostly money, paid to key Indian players) to ensure that India plays in such a manner that the team India loses.

This distinction between betting and Fixing became amply clear in the fixing scandal in England involving Pakistan players. In the said scandal, in which Mohammad Amir, Salman butt and others had to face imprisonment; the players were prosecuted not for betting but for Fixing. In England sports betting is legal. This means that any person can bet on Sports event outcomes, legally. Hence the bets waged on games involving Pakistan team was legal. But what the players were found guilty of was the Fixing. That's how they conspired with the bookies, took money from the Bookies and ensured a particular outcome. The court which found the Pakistan players guilty of Fixing — saw the act as one duping those who have waged money on the said event. Thus fixing and Betting are two different things, which normally follow one another

Sports betting is the activity of predicting sports results and placing a wager on the outcome. It is generally considered to be a form of gambling .There are many types of bets they are as follows:

- **Straight bets** are wagers that are made against the spread. The spread, or line, is a number assigned by the bookmakers which handicaps one team and favors another. This is the most common type of bet in sports.
- **Proposition bets** are wagers made on a very specific outcome of a match. Examples include predicting the number of goals each team scores in a handball match, betting whether a player will score in a football game, or wagering that a baseball player on one team will accumulate more hits than another player on the opposing team.
- **Parlays** : it involves multiple bets (usually up to 12) and will reward a successful bettor with a large payout. For example, a bettor could include four different wagers in a four-team parlay, whereby he is wagering that all four bets will win. If any of the four bets fails to cover, the bettor loses the parlay, but if all four bets win, the bettor receives a substantially higher payout (usually 10-1 in the case of a four-teamer) than if he made the four wagers separately.
- **Progressive Parlays** : A progressive parlay involves multiple bets (usually up to 12) and rewards successful bettors with a large payout, though not as large as normal parlays. However in a progressive parlay, unlike a regular parlay, a reduced payout will still be made even should some of the bets lose.
- **Teasers** :A teaser allows the bettor to combine his bets on two or more different games. The bettor can adjust the point spreads for the two games, but must get all the games correct to win and recognizes a lower return in comparison to parlays.
- **If bets**: An if bet consists of at least two straight bets joined together by an if clause which determines the wager process. If the player's first selection complies with the condition (clause), then the second selection will have action; if the second selection complies with the condition, then the third selection will have action and so on.

- **Run line, puck line, or goal line bets:** These are wagers offered as alternatives to straight-up/money line prices in baseball hockey or soccer, respectively. These bets feature a fixed point spread that (usually) offers a higher payout for the favorite and a lower payout for the underdog (both in comparison to the money line).
- **Future wagers:** While all sports wagers are by definition on future events, bets listed as "futures" generally have a long-term horizon measured in weeks or months *Head-to-Head*. In these bets, bettor predicts competitors results against each other and not on the overall result of the event.
- **Totalizators.** In totalizators (sometimes called flexible-rate bets) the odds are changing in real-time according to the share of total exchange each of the possible outcomes have received taking into account the return rate of the bookmaker offering the bet.

LEGALITY OF SPORT BETTING IN INDIA

The laws related to betting in India

Betting on sports is a grey area in India. The Hon'ble Supreme Court of India's judgement in an appeal on horse racing has held that betting on horse races is a game of skill as it involves judging the breed and form of the horse, form of the jockey, and the conditions amongst other factors. But there is no such judgement dealing squarely with betting in other sports¹. India possesses an archaic legislation called the *Public Gambling Act of 1867*.

The Constitution of India (Seventh Schedule, State List, Entry 34) gives states the right to create their own laws and policies regarding betting and gambling. Therefore the primary responsibility of regulating physical premises based betting and gambling is with the state.

Section 294-A of the Indian Penal Code, 1860: This Section lays down punishment for keeping a lottery office without the authorisation of the State government .

Section 30 of the Indian Contract Act, 1872: This Section prevents any person from bringing a suit for recovery of any winnings won by way of a 'wager.' (An agreement which is based on a future uncertain event wherein the loss of one person is the gain of the other). Thus no claim for recovery of any winnings in lotteries, gambling or betting can be brought before the court.

Most states have made laws prohibiting gambling like, the West Bengal Gambling and Prize Competition Act of 1957, the Bombay Prevention of Gambling Act of 1887, the Madhya Bharat Gambling Acts of 1949, Madhya Pradesh Public Gambling Act, 1867, the Orissa Prevention of Gaming Act of 1955, the Punjab Public Gambling Act, 1867, the Delhi Public Gambling Act of 1955, the Kerala Gambling Act of 1960, the Karnataka Gambling Law, the Meghalaya Prevention of Gambling Act of 1970, the Pondicherry Gaming Act of 1965, the Tamil Nadu Gaming Act of 1930, the Goa, Daman and Diu Public Gambling Act, 1976, the Sikkim.

Casino Games (Control and Tax Rules), 2002 and finally the Sikkim Regulation of Gambling (Amendment) Act of 2005.

¹ . K.R. Lakshmanan v. State of T.N., (1996) 2 SCC 226.

Two states, Goa and Sikkim; have legalized many forms of betting and gambling. But when it comes to online betting the ambit of this Entry 34 becomes murky as legislations pertaining to Information Technology vests with the central government. In pre-independence era there was no such distinction and the Public Gambling Act, 1867 only governed both betting and gambling in the country. Post independence some of the states have adopted this act and therefore this act is still valid for these states.

All gambling statutes in India have, however, excluded ‘games of skill’ from the penal provisions banning gambling activities. The position of law in India is such that it may be perfectly legal to buy a lottery ticket, but the winner of such a lottery will have no remedy against the lottery agency if the said agency refuses to pay the winnings. This same position was reiterated in *Subash Kumar Manwani v. State of M.P.*².

Provisions for online gambling: There is no express provision in India either banning or allowing online gambling. However the Sikkim government has recently introduced the Sikkim Online Gaming (Regulation) Act, 2008 and subsequently by the amended Sikkim Online Gaming (Regulation) Rules, 2009 invited applications for licences to set-up online gaming websites (for gambling and also betting on games like cricket, football, tennis etc.) with the servers based in Sikkim. It is unclear whether Indian residents in other states would be able to avail the services of these websites in the absence of any law prohibiting online gambling.

For deciding whether online gambling in India is legal or not has to be judged by many factors that depends upon the facts and circumstances of each case and upon state to state. There are many states in India where gambling is legal and few where even online gambling and betting is legal. However, there are some states like Mumbai where online gambling is expressly prohibited and made a punishable offense. So it depends upon the state where you wish to carry the online gambling and betting business.

Then there is the rule of skills versus chance as laid down by the courts of India. As a general rule, where the game involves application of skill on the part of the player and the element of chance is minimal, the activity would be considered to be a game and not an act of gambling. However, the applicability of this test of skill versus chance may not be applicable to online or Internet games, betting and gambling as various judicial decisions pertaining to different sets of facts and circumstances and can be distinguished easily in subsequent litigations.

Finally, economic and taxation legislations like tax laws of India, anti money laundering laws, etc are also involved while operating online casinos, online gambling and betting and online gaming platforms. The provisions of these economic legislations are very stringent in nature and can cause great detriment to the owner or operator of the online casino, gambling and betting website.

There has been a considerable debate in various countries across the world as to which games or activities may be considered to be ‘games of skill’ and thus not attract the provisions of gaming acts and which games are based predominantly on luck where a person’s skill or intellect has little role to play.

² AIR 200 MP 109

Games Of Skill And The Indian Judiciary

Black’s Law Dictionary defines gambling or gaming as “the act of risking something of value for a chance to win a prize”,³ while a wager is defined as “money or other consideration risked to an uncertain activity.”⁴

Indian gaming statutes have also drafted a similar definition of ‘common gaming house.’ According to the Public Gambling Act, 1867 (‘Public Gambling Act’):“Common gaming-house” means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever.”⁵

From the above definitions, it is apparent that chance, mutual consideration and prize are essential for an activity to be considered gambling. The absence of any one of these elements may mean that the activity is not of a gambling nature.

S.12 of the Public Gambling Act exempts games of skill from the penal provisions against gambling. It thus becomes clear that playing games where luck has little or no role to play and the winner is entirely determined by the player’s intellect and skill would be permissible as there is no other statute that criminalises or punishes playing of such games of skill.

The Indian judiciary has also concluded that while prize competitions (with a pre-determined ambiguous solution) and competitions where the winner is determined by draw of lotteries are of a gambling nature and cannot be afforded protection of freedom of trade and commerce under Art. 19(1)(g) of the Constitution, games of skill may be afforded such protection.⁶

In 1996, the Supreme Court elaborated that games involving a ‘substantial or preponderant’ degree of skill would amount to games of ‘mere skill’ as laid down by s.12 of the Public Gambling Act and similar relevant sections of the various other state gaming acts.⁷ The Supreme Court further maintained that betting on horse-racing by owners for a prize was a game of skill and cannot be included under the ambit of gambling. The Court added that such a sport of horse-

³ Black’s Law Dictionary 701 (2004).

⁴ *Id.*, 1610.

⁵ The Public Gambling Act, 1867, §1.

⁶ State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699. See also M.J. Sivani v. State of Karnataka, (1995) 6 SCC 289: AIR 1995 SC 1770 (In the M.J. Sivani case, the Supreme Court confirmed the Chamarbaugwala judgment to the extent that freedom of trade and commerce is available to games of skill. The Supreme Court however clarified that reasonable restrictions or conditions may be imposed on video games based on chance and the constitutional protection under Art. 19(1) (g) does not apply to owners of video game parlours).

⁷ Dr. K.R. Lakshmanan v. State of Tamil Nadu, (1996) 2 SCC 226: AIR 1996 SC 1153.

racings and the betting carried on by owners would be granted the fundamental right of freedom of trade guaranteed under Art. 19(1) (g) of the Constitution .⁸

Legality of sport betting in USA UK and AUSTRALIA.

USA

The United States of America in 1992 legislated the Professional Amateur Sports Protection Act (PaspA) that makes it illegal to bet on professional and amateur athletics. This was a federal legislation that applied to the whole of the United States of America. Main concern was the fact that gambling would injure the integrity of sport by causing fans to question whether a missed shot or a fumble was fixed.

UK

It was the year of 2005 that the British Parliament enacted a piece of legislation that changed the betting landscape in the Great Britain. *The Gambling Act of 2005* , came into force with the specific objective to prevent gambling from being a source of crime or disorder, being associated with crime or disorder or being used to support crime, ensuring that gambling is conducted in a fair and open way and protecting children and other vulnerable persons from being exploited by gambling. This is a path-breaking legislation that allows its citizens to place bets in sport, gamble in a legal manner, subject to safeguards that come with the act. It further defines “gambling”⁹ “as an act that can constitute gaming, betting and participating in a lottery.” The advent of the technology in the modern day ensures that the Act extended the scope of remote communications¹⁰ by which a person can engage in the act constituting gambling through the internet, telephone, television, radio or any other kind of electronic communication.

Though the legislation advocates for betting of all forms in sports with legal boundaries, it regulates the industry through what is known as the Gambling Commission¹¹. Its role is to regulate commercial gambling within the territory of the Great Britain in partnership with the local authorities and the national sporting bodies.

Australia

Australia is one of the earliest proponents of “anti-betting” legislation in sport. Their legislation allows betting in sport only prior to the start of a sporting event through an overseas operator. It makes it an offence to offer or advertise “real money” online interactive gambling services such as online poker and casino to Australian residents. The Act however does not prohibit an

⁸ *Id.*

⁹ AIR 1957 SC 628

¹⁰ AIR 1968 SC 825

¹¹ AIR 1957 SC 628.

overseas operator from providing an opportunity to an Australian citizen to engage in an online gaming activity other than sport . Sports betting through licensed operators is legal, provided that the betting occurs prior to the start of the event. The Australian law shows the tenacity to change with times, and has also proactively shown immense maturity in dealing with betting in the sporting industry.

Whether Betting Should Be Legalized In India

Due to the perceived illegality of sports betting, a large sum of money flows untaxed to unlicensed offshore Internet sites or to illegal bookmakers, many of whom are allied with organized crime. This presents a strong case to regulate it as sport betting in the eyes of a large number of people is an inevitable activity and is a mere form of entertainment. The problems that arises from criminalization of unregulated sports betting are :

- Lack of information on the gambling industry particularly because most of it is in the black market.
- There is no information on whether bookmakers are gambling with minors or those who have problems of addiction to gambling and so one can do nothing to combat and check this threat to the society.
- There is no information on whether the punter who places bets with bookmakers is getting a fair deal or not.
- There is no accountability on the money flows through black market gambling.
- There is no way to monitor the pattern of bets being placed on a sporting event one of the key ways in which one can detect and prevent match fixing.

The absence of Independent Regulator gives boost to criminal activities, it is a threat to the society and leads to sporting frauds like match fixing. Regulating betting provides the framework to address all of these problems. Legalizing and regulating sports betting might not completely solve the problem of fixing, it just makes it easier to track, investigate and catch anomalies as betting patterns can be monitored. At the same time it also limits the amount of money and opportunities available with the fixers to tilt the odds in their favour, thus make fixing less lucrative. The focus of the police or the regulatory authority will also shift from a preventive action to regulatory action. It will be more of monitoring a business transaction like that of SEBI monitoring the share market .Under regulated betting, bookmakers will be required to keep proper records of the transactions that they are involved with and know the identity of those with whom they are betting which is the key to ensure that sports fraud is detected and dealt with. Tracking cash exchanges among betting agents will be easier and when there's a greater fear of getting caught which generally translates into lesser illegal activities such as fixing. In fact license holders will themselves ensure and create systems where sports fraud would be very difficult as their licenses can be revoked, or good will is affected if they are found flouting the rules. That process is possible only after legalizing and regulating betting. It is important to control remote gambling. The problem is that the internet has fundamentally changed the marketplace for gambling. Twenty years ago , gambling required the gambler and the operator to be physically proximate. Now, with penetration of mobile and internet devices and rapid

developments in on-line payment mechanisms it is quite possible for a gambler in one country to place a bet with an operator on the other side of the world. Increasingly, Indians are placing bets in this way – and this adds another dimension to the problem of regulation. But these problems are not insurmountable – many jurisdictions in Europe and elsewhere in the world have found solutions to the regulation of international gambling, provided there is a proper framework. Regarding the gambling many people have strong feelings against it but it should probably be treated as morally neutral: something which lies between an entertainment and a financial service. Public should be given the respect and should have freedom of choice as to whether to bet or not, and ensuring that there exists a framework designed to protect the young and vulnerable and to ensure good law and order. Most countries that have permitted gambling/betting and they have statutory regulatory bodies/ gambling commissions created by the state which is responsible for distributing licenses to betting operators. National regulator may have state level chapters. The regulator will have powers of entry and inspection into operator's premises and online networks and to have co-operation from operators. Where problems are detected, the regulator will have powers to impose conditions on operators, together with a range of regulatory remedies from warnings to financial penalties removal or suspension of a license and even criminal prosecution. The regulatory body will have an important role in examining license applications from third parties. The national regulatory body (a body at the central level) could regulate disputes, where violation/breach involves more than one state's jurisdiction. These could be power to void a particular bet, power to prosecute or seek cooperation between states as well formulating guidelines and dispensing information to the public about betting including listing events on which bets can be placed.

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 focussed 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.

Conclusion

India continues to move closer to legalized sports betting in the wake of the headline-grabbing spot-fixing scandal that overshadowed Indian Premier League (IPL6) cricket series. Horseracing is the only activity on which the federal government has authorized legal wagering, and another state has just decided to join the party. The state government in Punjab approved the Punjab Horse Race (Regulation and Management) Act, 2013, which authorizes the operation of horseracing tracks in the state and wagering on the outcome of races. At the same time, the Punjab Cabinet authorized the state lottery to offer lottery games via a network of computer terminals at approved retail locations.

After the IPL6 spot fixing scandal, involving dozens including S Sreesanth, it is time for India to legalize sports Betting in India. In the absence of a Betting law the Government is simply ignoring the presence of it. It's the "pigeon and the Cat situation", where pigeon on seeing a cat, simply closes its eyes, assuming that the cat is not there.

Legalizing betting will serve three purposes:

1) It'll make a certain part of the sports betting in India traceable (although illegal betting will always be there). Traceable means, knowing the big money sources and their entry channels. . Such transactions involving huge amount of money then can be brought within the country's tax net. This will then create real prospects of generating collectible revenues in a State. This will be a positive step against money laundering and black money.

2) It will give a certain protection from unfair practices like Fixing, to people who wage money on these bets. The way it safeguards the bettees in UK .

3) It will safeguard the vulnerable young players from betting mafias. As only when betting is made legal, clauses and sub clauses stating "dos and don'ts" in betting will be incorporated. The picture will then become similar to Anti-doping legislation, where players know which drugs are considered dope and which don't.

It will bring competition and transparency into the murky underworld of gambling. Lawmakers should rather focus on allowing certain aspects of sports betting which are not per say 'bad'. Legalizing some good aspects of sports betting will eradicate current corrupt practices and will introduce element of transparency in the whole affairs. If this happen, then a substantial amount involved in betting exercise could be seen to be transacted as per law and in public view. In addition, public will also not resort to underhand dealings in sports betting . In this connection, countries like Australia and England have shown model legislations on sports betting which can go a long way in eradicating sports corruption. They are pragmatic legislations enacted with foresight in mind, and will show a way forward in legalizing the sports betting and resulting benefits to the State economy. Other liberal legal systems around the world will do well to replicate the English and Australian legislative experiments in the area of sports betting.

Reference

1. <http://www.thehindubusinessline.com/opinion/make-betting-in-sport-legal/article4736501.ece>
2. Popularity of betting sites in India, <http://sportsbetting.net.in/>
3. The Public Gambling Act, 1867
4. Wanna bet?
5. www.bbc.com/news/business-21501858
6. <http://calvinayre.com/2013/05/28/business/support-for-legal-sports-betting-in-india-grows/>
7. K.R. Lakshmanan v. State of T.N., (1996) 2 SCC 226
8. Black's Law Dictionary 701 (2004).
9. "Sports Betting Favoured by ICC". *CasinoOnline.net.in*. Retrieved 8 December 2013.
10. Patil, Ajit (28 May 2009). "Casinos in India". *India Bet*. Retrieved 28 January 2014.