
EXPOSITING THE LEGALITY OF GAMBLING IN INDIA: A RELOOK THROUGH THE SPECTRUM OF POUND'S SOCIAL ENGINEERING

Manoj Arvind P, Tamil Nadu National Law University

ABSTRACT

The instant paper confines itself with the evaluation of the legality of betting and gambling according to the sociological school of law and that too, restricted to Roscoe Pound's theory of social engineering, whose very premise is "interests". As opposed to other theorists, who predominantly connect legality to morality, sociological theorists, by taking a 'functional' approach, eschew morality while gauging the legality of a law or a 'practice', whatsoever. The nub of the theory is "balancing the interests". This 'interests' argument is said to be more feasible than the 'morality' argument. This theory has been extrapolated to determine the legality of 'gambling', which is basically the transfer of property made purely through the medium of chance. Those in favour of legalizing gambling accord primacy to individual autonomy, and those who oppose gambling, argue so, on the grounds of morality. There is a conflict between Pound's hierarchical interests (i.e. between 'Individual interests' and 'Social interests'). Indubitably, social interests take precedence over individual interests. There is a middle ground to this, which is the regulation of 'gambling' as a practice. For Pound, "goodness" or "appositeness" is simply the fulfilment of "interests". If we simply go by Pound's straitjacket tabulation or classification of various "interests", we will inevitably resort to the prohibition of gambling, which is not the suggestion given in the instant paper. Neither a blanket prohibition nor an unfettered allowance of gambling is entertained by the Pounds' theory of social engineering. Individual interests are to be looked in the backdrop of both the social interests and public interests, and not in isolation. This paper is an attempt to extend Pound's theory to the practice of gambling and vetting, as opposed to conventional theories which often accord primacy to 'morality' rather than more tangible 'interests', in judging the validity of a practice.

I. INTRODUCTION

"Gambling is a principle inherent in human nature"¹

-Edmund Burke

The realm of Jurisprudence has wontedly grappled with the task of finding out a straitjacket way of determining the 'legality' of a practice, law or whatsoever. However, 'legality' or 'justice' is transcendental in nature, which cannot be truncated to a specific conception or a theory of law. Nonetheless for pragmatic purposes, the courts and jurists have placed reliance on sundry jurisprudential theories for the sake of vetting the legality of any practice or a law. The topic pertaining to our instant discussion is the analysis of the legality of betting and gambling through the sociological theories of law. Rudimentarily, on a philosophical standpoint, the practice of gambling itself is predicated upon a desire to get something for nothing, by taking it from someone else. Let us examine the two plausible outcomes: if you win in gambling, you have got money without contributing anything of value to the society and *per contra*, if you lose, you have forfeited your money and got nothing in return. Either way, this cannot be considered to be virtuous. If we vacuously dwell on this proposition, we will essentially be falling into an entrapment of basic morality and virtues, which is not the concern of sociological school of jurisprudence. The pioneer of sociological jurisprudence was Montesquieu who propounded that a system of law is a living growth intertwined with the physical and societal environment. This "interconnectedness" of law and society is the underpinning basis of the sociological school of thought irrespective of the ethical content and aim of the law. We will be venturing with the functional approach towards the practice of gambling and betting in which 'individual' is not conceived as an individual as such, but as an individual-in-association with the society.

As Roscoe Pound enunciates in all his panache, the 'interest' is the chief subject of law and laws do not create these 'interests', rather they just recognize them. The *raison d' etre* of the sociological theory is to balance the competing interests in which, according to the sociological theory of law, every society is wound up. Particularly, gambling is not an act only of individual concern, but also of wider sociological ramifications since the conflicts between social interests

¹ VM Kanade, Navneet Rajan Wasan and Jaydev Mody, *Should gambling be legalized?* THE HINDU (Mar.30, 2018), <<https://www.thehindu.com/opinion/op-ed/should-gambling-be-legalised/article23385128.ece#:~:text=As%20the%20Irish%20philosopher%20Edmund,kept%20pace%20with%20the%20times>> accessed 20 December 2022.

and individual interests are highly conspicuous in this regard, which Roscoe Pound's brainchild i.e. social engineering aims to resolve.

II. THE KNOTTY BACKDROP OF SOCIOLOGICAL JURISPRUDENCE

It is no exaggeration to assert that the Sociological school of Jurisprudence has been a major departure from the other prevailing schools of jurisprudence which are parochially centred around morality, sources of the law *inter alia*. Much scholarly ink has been spilled on the exposition of various other prevalent theories mechanically connecting law to morality, while the sociological school of thought has been oft-left in the backburner. Needless to emphasize, an unswerving allegiance to any single theory of justice will ultimately distort the wheel of justice delivery. A synthesis of varied juristic thoughts engendered the inception of sociological school of Jurisprudence, which considered law as a social phenomenon at its basics. The proponents of this school eschewed abstract conceptions of individual rights and rather grounded the edifice of their theory on comparatively tangible aspects like social purpose and interests. Simply put, according to the sociological school of Jurisprudence, the legality of an act has to be judged by its effects on the social institutions and not through the prism of morals or its source.²

The philosophers, nonpareil in this school of thought, at least for the scope of this paper, are Roscoe Pound, Rudolph Von Ihering, Eugen Ehrlich, whose theories merit attention. The nub of these philosophers' works is the 'functional approach'³ that they had undertaken towards law. These theories are largely predicated on "balancing the interests", *arguendo* when an individual interest or purpose comes into conflict with a social purpose, the duty of the state, according to this school, therefore, is to further the social purposes by suppressing the individual purpose which clash with it.⁴ The nitty-gritty of this school of Jurisprudence cannot be better captured by Ehrlich himself who said, "*At the present as well as any other time, the centre of gravity of legal development lies not in legislation, nor in juristic science, nor in judicial decision, but in society itself*".⁵ Clear as a crystal, though it may seem, this theory is also rife with many shortcomings. The sociological theories have diagnosed the problem to some extent, but

² NIKLAS LUHMANN, A SOCIOLOGICAL THEORY OF LAW (Routledge 2013).

³ PER BINDE, GAMBLING MOTIVATION AND INVOLVEMENT: A REVIEW OF SOCIAL SCIENCE RESEARCH (Swedish National Institute of Public Health 2009).

⁴ DR. SANJEEV KUMAR TIWARI, JURISPRUDENCE-LEGAL THEORY AND ELEMENTS OF LAW (Samudhvab Publisher & Book Sellers 2012).

⁵ F.S.C NORTHROP, THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE: STUDIES IN THE METHOD OF NORMATIVE SUBJECTS (Greenwood Press 1959).

hitherto no cures have been proffered. Albeit the fundamental proposition underpinning this theory is that the function of law is to reconcile the conflicting interests, no specific direction has been provided to carry out this act of balancing.

At the very outset, it has to be noted that our entire discussion on sociological theories of law and on how the legality of betting and gambling is canvassed in the paradigm of sociological jurisprudence will have to be premised upon the theory of interests. Pound, who is considered the pioneer of the interests' jurisprudence, acknowledges *Ihering* in his classification of interests as individual, public and social interests. The only reservation, I find, in conceding to the appositeness of this doctrinaire compartmentalization of interests, is the surfacing conundrum regarding the pragmatic yardsticks to be chosen for classifying these interests as 'public', 'private' and 'individual'? How are we to rationalize the distinction between 'public', 'individual' and 'social' interests considering its inter-operability?

As logic dictates, several individual interests need to be protected to secure the social interests and vice versa and the lines between these interests stand blurred, the determination of which is the first step in balancing the interests.⁶ Exemplifying this overlap, the interest of an individual to be free from physical harm or injury is both an individual and a social interest since an individual is a part of the social fabric, and this is a like interest which is asserted by everyone in the society and therefore, this interest brooks the collective will of the society.⁷ In such instances, would it be possible to adopt such a straitjacket formula of testing 'legality' which is solely based on 'interests'? These interests are subject to the societal vagaries and cannot be arranged hierarchically in a definitive manner. Nevertheless, the importance of "interests" cannot be understated, as in the modern society, 'interest' is deemed to be the foundation of social behaviour and condition to which morality must respond.⁸ Thus, it can be asseverated that the determination of 'legality' should not exclude the societal considerations for they are the most tangible yardsticks so far available.⁹

Having set this facade, it is now germane to delve into our instant topic before which it is to be evinced that the practice of gambling and betting are not only concerned with an individual but

⁶ Roscoe Pound, *A Survey of public Interests*, 58 HARV. L.REV (1944).

⁷ Albert Kocourek, *The Nature of Interests and Their Classification* 3 AMERICAN JOURNAL OF SOCIOLOGY, 359-368(1917).

⁸ Ruth L. Smith, *Morality and Perceptions of Society: The Limits of Self-Interest*, 3 JOURNAL OF THE SCIENTIFIC STUDY OF RELIGION 279-93(1987).

⁹ Roscoe Pound, *Theory of Judicial Decision*, HARV. L. REV 802(1922).

also has huge ramifications in the societal level.¹⁰ Thus, apparently, an issue of balancing these interests crops up which validates the present application of sociological theories to the gambling phenomenon in hand.

III. MORALITY AND ETHICS OF GAMBLING AND ITS GENERAL CONTOURS

In this section, rejiggering our perspective, we will be attempting to vet the legality of gambling by putting it in a moral and ethical paradigm, which, ideally, we should not be doing, in the first place, since, at least theoretically, there is no place for 'morality' in sociological theories of law. Nevertheless, the application of morality in the analysis of the practice of gambling and betting is vital in canvassing Pound's "social interests in general morals", which subsume various laws related to gambling, wager, etc., from the perspective of state's power in prohibiting such practices.¹¹

It has been, by and large, argued that the state has the right to exercise its police power to preserve and protect public morals and since gambling corrupts morals and welfare of people, the state has the legitimate power and duty to prohibit this practice. But obviously, this does not address the question of 'legality' of gambling but rather only the state's power in curtailing the practice. And as a corollary, the state's power to regulate or prohibit gambling does not warrant its illegality. In short, this section is an attempt to draw a connection between sociality (society governed by interests) and morality (society governed by general morals).

i) Can 'morality' and 'legality be connected?

Any embarkment upon discerning the connection between law and morality, leads to the understanding about the profundity in the melange of jurisprudential expositions, which is admittedly outside the ambit of the instant paper. As *Tony Honore* remarks in his *The necessary Connection between Law and Morality*, it cannot be gainsaid that there is always an in-built pressure within every legal system to render every law morally defensible.¹² This is what was touted as a 'permanently operative factor' in Soviet jargon. Conversely, *Raz*, echoing the 'semantic thesis', went to the extent of explaining that the terms such as 'right', 'obligation'

¹⁰ Herbert A. Bloch, *The Sociology of gambling*, 3 AMERICAN JOURNAL OF SOCIOLOGY 215-221(1951).

¹¹ William L. Grossman, *The legal philosophy of Roscoe Pound*, YALE LJ 605(1934).

¹² Tony Honoré, *The necessary connection between law and morality*, 3 OXFORD JOURNAL OF LEGAL STUDIES 489-495(2002).

and 'duty' do not mean the same thing in law and morals.¹³ Things, canvassed so far, build the premise for our further analysis.

At this juncture, the two kinds of moral conduct have to be considered, *malum in se*, i.e. conduct that is inherently wrong and *malum in prohibitum*, i.e. the 'wrongness' of the conduct stems from its prohibition. And those who argue against gambling and betting do so by averring that gambling is *malum in se* (wrong in itself) by claiming that it disrupts the work ethic, increase of crime incidence, addiction and the sorts.¹⁴ This view is particularly incongruous, because immorality, *per se*, merely cannot be a ground to challenge the legality of a practice and in other words, morality and criminality are not coextensive.¹⁵ Since morality is a subjective concept, which remains in a constant vacillation, it would not be kosher to test the practice of gambling on the anvil of 'morality' alone. However, light is also to be sourced from the fact that 'morality' is a ground to impose 'reasonable restrictions' on the freedom of individuals.¹⁶ Contextualization of this principle within the purview of gambling, seems to suggest that the 'autonomy' of individuals to choose their own forms of entertainment are at stake.

Definitionally, 'gambling' is the "*transfer of property made through the medium of chance*"¹⁷ or "*the determination of ownership of property by appeal to chance.*"¹⁸ This definition evinces the "aleatory" or "chance" element involved in the practice of gambling, which is responsible for the widespread resentment it attracts, as well as the thrill of risks, that people savour. The "chance" element refers to the play of natural forces which are beyond our control and *per contra*, when these forces can be manipulated, it becomes a "game of skill" thereby ceasing to be gambling.

Sketching out the basic implications of gambling in a narrower sense, firstly, the prize or reward of the winner directly comes from the pocket of the loser, secondly, the nexus between the prize and the wager is arbitrarily fixed and it is not a natural condition of social life, for instance, there is no nexus between me giving you a hundred rupees and, say, the Argentina's victory in the 2022 FIFA World Cup. Next, more importantly, out of this activity, the society,

¹³ JOSEPH RAZ, *THE AUTHORITY OF LAW. ESSAYS ON LAW AND MORALITY*, 79 (OUP Oxford 1983).

¹⁴ K. Rand and S. Righty, *Moral Policymaking and Indian Gaming: Negotiating a Different Terrain*, BOSTON COLLEGE (Nov. 12, 2022, 7.38AM)

<https://www.bc.edu/content/dam/files/centers/boisi/pdf/f07/gamblingpapers/Rand-Light.pdf>.

¹⁵ S. Khushboo v Kanniammal, AIR 2010 SC 3196.

¹⁶ Ramesh Yeshwant Prabhoo v Prabhakar Kashinath Kunte & Ors., AIR 1996 SC 1113.

¹⁷ LESTER B. DONAHUE, *THE ETHICS OF GAMBLING* (Catholic University Bulletin 1906).

¹⁸ John A. Hobson, *The Ethics of Gambling*, 15 INTERNATIONAL JOURNAL OF ETHICS 135(1905).

as a whole, does not receive any benefit since there is no production of added utility. What one loses, the other gains and since the reward is not coming from the third party, it is not possible to expect that the gambler should desire for his own interests as well as that of his opponent's at the same time. This leads to the loosening of social ties and thus is the very marrow of immoral action.¹⁹ However, the afore-stated illustration is not to signify any causal claims, rather only to put morality-legality paradigm into perspective.

ii) 'Interests' argument-more feasible and tangible than 'morality' argument

It is also acknowledged that unlike excessive drinking, sex demoralization and addiction to drugs, gambling creates no deteriorating effects upon the social structure or a human organism as such.²⁰ The issue lies in the fact that it disrupts the normative roles of a person, which the organized society expects him to perform. So, by and large, gamblers are frowned upon by their inability to perform normal productive functions rather than due to the inherent decadency of 'gambling' itself. This is where the 'morality' argument falls and the 'interests' argument, as per the sociological theorists of law, steps in.

The illegal activities can be bifurcated into: A) activities which emphatically jeopardize the society, for instance, trade in contraband substances B) activities like gambling and betting which affects the individuals but their social impact varies.²¹ *A fortiori*, it is dubious whether or not 'gambling', as an act, affects the society at large while it is certain that it affects individual morals(i.e. private morals), since it is even held to be infringing a person's right to life guaranteed under the Indian Constitution.²² But does the State really have the power to regulate 'private morals'? This is the stifling question, underpinning every gambling prohibition legislation. JS Mill delineates the extent to which the state is permitted to circumscribe the liberty of individuals.²³ Prior to that, the ethics of the "ownership" of property cannot be put in the backburner. As already stated, gambling involves the determination of ownership of property by an appeal to "chance" rather than to "efforts". This behoves us to reflect on the ethics governing the ownership of property. The common ethics of ownership of property ties

¹⁹ Gerda Reith, *Gambling and the contradictions of consumption: A genealogy of the "pathological" subject* 1 AMERICAN BEHAVIOURAL SCIENTIST 33-55(2007).

²⁰Herbert A. Bloch, *The Sociology of gambling* 3 AMERICAN JOURNAL OF SOCIOLOGY 215-221(1951).

²¹ Nirod Kumar Palai, Sarojini Mishra, et.al., *Gambling v, State: A Study of Problems and Prospects of Gambling Industry in India under Globalization Regime*, INTERNATIONAL ECONOMIC HISTORY CONGRESS (2006).

²² Guru Prasad Biswas v. State of West Bengal, 1998 SCC OnLine Cal 95.

²³ Richard Wollheim, *John Stuart Mill and the limits of state action*, SOCIAL RESEARCH 1-30(1973).

"rewards" to "efforts" and not to mere "chance",²⁴ which itself is defied in our instant case of gambling. Any property entails division of labour and community of effort, and as soon this conception arose, the possession of property, which is an upshot of efforts, becomes a matter of social interest.²⁵ Corroborating further, gambling has led to cascading cases of suicide, embezzlements, bankruptcies and so on, which is blatantly subversive of the social solidarity.²⁶

Building further, the afore-stated considerations have created a conspicuous antinomy: Gambling should be dissociated from morality and we should be cavalier about morals while judging gambling; and the validity of gambling should be judged within the purview of 'morality'(private morals and public morals). Unconventional, though it may sound, application of morality is even a precondition to the application of Pound's theory of social interests, since practices like gambling and betting fall directly under the 'general morals' as conceived by Pound. On the other hand, 'immorality' alone cannot be the ground to challenge its validity and as it follows, once gambling is freed from the clutches of morality, it can legitimately be regulated as an activity.²⁷ Having presented this gleaming conflicting picture, it is apposite to venture to explore the conflict of 'interests' as characterized by Pound which demands 'balancing'.

IV. BALANCING THE INTERESTS AT STAKE: MARROW OF THE SOCIOLOGICAL THEORY OF LAW

The arguments, marshalled till now, set the context for the kernel of this paper. Roscoe Pound, the forerunner of the American Sociological Jurisprudence, acknowledged his debt to William James in devising a system of legal evaluation based on his ontology of 'radical empiricism'. James' disciple R.B Perry took a leap and based his system of evaluation on "interests". For him, the goodness is "*fulfilment of interest*". Succinctly put, according to him, things are good because desired, not desired because good.²⁸

i) The 'Interests' at stake

Firstly, it is important to present all the sides of the issue at hand. Those who argue in favour

²⁴ John A. Hobson, *The Ethics of Gambling*, INTERNATIONAL JOURNAL OF ETHICS 135(1905).

²⁵ Frank N. Freeman, *The ethics of gambling*, 1 THE INTERNATIONAL JOURNAL OF ETHICS 76-91(1907).

²⁶ B. SEEBOHM ROWNTREE, *BETTING & GAMBLING: A NATIONAL EVIL* (Macmillan 1905)

²⁷ Harsimran Kalra, Abhishek Mukherjee, et.al., 'Twisted Willow, Gambling, Sport and Cricket in India' (2013) THE HINDU CENTRE FOR POLITICS AND PUBLIC POLICY (23 Nov. 2022)

http://www.thehinducentre.com/multimedia/archive/01478/Issue_Brief_1478229a.pdf.

²⁸ RALPH BARTON PERRY, *THE MORAL ECONOMY*:1909, 11(Cornell University Library 2009).

of legalizing gambling accord primacy to individual autonomy and minimal state interference. And those who argue against legalizing gambling, do so, on the grounds of morality, by stating that immorality is a justifiable ground for circumscribing individual liberty, thereby maintaining societal order. And there are also some, who take the midway between these two extremes, who argue in favour of regulating gambling. They argue by calling for dissociating morality from gambling, for proper regulation of the same. This is the conspectus of the lines of argument hovering around the practice of gambling.

Adverting to the interests at stake in our instant scenario, the individual interests are the autonomy of an individual in choosing his own form of entertainment, which, in turn, also contributes to the social stability by eliminating potentially disrupting forces, for gambling is well-touted to be a reliever of individual tensions and boredom.²⁹ The germane governmental interest at stake is the revenue generation³⁰ which is facilitated through the regulation of gambling.³¹ But can revenue be chosen over morality? 'Morality' alone would not suffice to countervail the benefits of revenue generation. *Per contra*, the social interests, at stake, are very apparent. The practice of gambling itself encourages the fervour of reckless propensity for making easy gain by sheer luck, which ultimately leads to the loss of hard-earned money, thereby subsequently plunging him as well as his family into poverty and a chronic state of indebtedness.³² Gambling is notoriously known as a form of social pathology, which derails the very fundamental order of society.³³

Individual interests	Public interests	Social interests
Personality	Interest of the state as a Juristic person	The General Security
Domestic relations		
Individual interests of substance		

²⁹ Mark Lutter, Daria Tisch, and Jens Beckert, *Social explanations of lottery play: New evidence based on national survey data*, 4 JOURNAL OF GAMBLING STUDIES 1185-1203(2018).

³⁰ Forrest, David and Robert Simmons, *Sport and gambling*, 4 OXFORD REVIEW OF ECONOMIC POLICY 598-611(2003).

³¹ Law Commission of India, *Legal Framework: Gambling and Sports betting including in cricket in India* Report No 276 (25 Nov. 2022, 9.45 PM) <https://lawcommissionofindia.nic.in/reports/Report276.pdf>.

³² State of Bombay v. R. M. D. Chamarbaugwala, (1957) S.C.R. 874.

³³ Herbert A. Bloch, *The Sociology of gambling*, 3 AMERICAN JOURNAL OF SOCIOLOGY 57, 215-221(1951).

a) Property		Security of Social institutions
b) Freedom of industry and contract	Interest of the State as guardian of social interests	General Morals
c) Promised advantages		
d) Advantages relations with others		Conservation of social resources
e) Freedom of association		General Progress
f) Continuity of employment		Individual life

Source³⁴

ii) Social interests take precedence

As per Pound's classification of interests, which is stated above,³⁵ viscerally it can be said that the 'autonomy' of individuals to indulge in gambling falls under "personality" (as a form of expression) under the individual interests whereas the pathological nature of gambling falls under various categories in the column 'Social interests'. Thus, a conflict between different hierarchical interests is evident. Adding on, the means of balancing these individual interests should not be done in isolation, rather, the evaluation of individual interests should be done in the context of social interests.³⁶

Examining the instant case, while examining the individual liberty to participate in recreational activities, which is an individual interest, the backdrop of the general morals, general progress and general security³⁷, which are social interests, cannot be overlooked. *Ergo*, the validity of 'individual interests' hinges upon the social interests involved at stake. The connection

³⁴ Edward B. McLean, *Roscoe Pound's Theory of Interests and the Furtherance of Western Civilization*, II POLITICO 5-34(1976).

³⁵ Id.

³⁶ 3 ROSCOE POUND, JURISPRUDENCE (West Publishing Co. 1959).

³⁷ Roscoe Pound, *A Survey of public Interests*, HARV. L.REV 58, 909(1944).

proposed here is a connection between individual interests and social interests. Nonetheless, in the event of conflict, the social interests supersede individual interests.

There is also an additional layer to the issue. Pound also conceives another type of interest, which is public interest, which can be construed in two ways: the interests of the state as a juristic person, and the interest of the state as the guardian of social interests. It is incontestable that gambling, as a practice, if regulated, yields revenue to the government in the form of taxation.³⁸ Taxes are quintessential for the operation of a 'welfare state'. So, it can be argued that the taxation, that the gambling generates, can be fit under the category "the interests of the state as a juristic person" within 'Public interests'. Again, the conflicts, whatsoever, will be resolved in favour of the 'social interests'. Thus, here, both the individual interest and public interest conflict with the social interests.

The crux of Pound's theory is the "social interest", which tops the hierarchy of interests, means that an individual in a society ought to protect such an interest from any infraction or impairment, unless in doing so, it comes in conflict with other social interest.³⁹ But I could not find agreement with this straitjacket formula of prioritizing interests by wrapping them in silos, since most of the individual rights are directly linked with the social interests and at the same time, the boundaries between 'public' and 'social' interests have become porous with the expanding conception of a "welfare state". What is an individual interest and what is a social interest is a matter of changing political conception.⁴⁰

Nonetheless, since the present study is predicated upon interests' jurisprudence, though inchoate it may seem, the analysis paints a limpid picture. In a bid to reconcile these opposing interests, two alternatives sound plausible in this regard. 1) Gambling may be removed only to the degree that other recreational choices are cultivated 2) Gambling may be regularized in consonance with conventional social practice through requisite legislation. This is a midway to go about, otherwise, a blanket prohibition only can be made as the social interests will take precedence over individual interests.

V. INCONGRUITIES AND SHORTCOMINGS

Albeit, the sociological Jurisprudence has provided a unique way of gauging 'legality' through

³⁸ Clarke, Harry, *Taxing sin: some economics of smoking, gambling and alcohol*, 2 MELBOURNE REVIEW: A JOURNAL OF BUSINESS AND PUBLIC POLICY 4, 30-36(2008).

³⁹ OLIVER WENDELL HOLMES, *THE PATH OF THE LAW* (The Floating Press 2009).

⁴⁰ VIDYA DHAR MAHAJAN, *PRINCIPLES OF JURISPRUDENCE AND LEGAL THEORY* (4th ed.1980).

"interests" involved, in the present context of gambling too, it grapples with a number of shortcomings. Firstly, it is to be noted that Pound's classification of interests catalogues the interests into various categories on the basis of relative values and priorities, and Pound's social engineering equates society to a factory like mechanism and the inexactitude is egregious.

Law is a social process rather than an outcome of applied engineering. *Dr. Allen* channelizes his criticism towards the 'utilitarian' aspect in Pound's theory as it confines the interpretation of wants to mere material welfare of individual's life by leaving the basic personal freedoms required for a quality life in limbo.⁴¹ Next, this theory does not hold water in an incredibly diverse and pluralistic society like India, since different communities have different interests, and harmonizing these interests will be chimera. Moreover, sociologically, the resentment and proclivity towards gambling also have a 'class perspective'⁴² compounding the glaring obfuscation, *ergo*, balancing these interests will not be pragmatic, at least in the present context of the analysis of legality of gambling.

VI. CONCLUSION

The analysis of the legality of gambling through sociological school of thought evoked more questions than offering answers. Do the economic benefits as well as the individual interests of autonomy and liberty outweigh the adverse effects that gambling inflict on the society as a whole? Whether 'morality' can find a place in evaluating the 'legality' of gambling in a sociological framework? Having regard to the questions galore, it should be noted, as far as the interests' jurisprudence is concerned, that there has to be both the recognition of interests as well as limits of the interests. It would be trite to articulate that 'law is the object of its own science in as much it can be explored only through concepts and categories devised or created by legal science.'⁴³ Thus, a kosher justification can be advanced for the approach, undertaken in this paper, i.e. analysing the 'legality' of a practice through a theory devised by the science of law(i.e. Jurisprudence).⁴⁴

Tying together these analytical points, there are three sides which need to be explored: legalizing gambling, prohibiting gambling and regulating gambling. Each of these processes

⁴¹ Id.

⁴² Herbert A. Bloch, *The Sociology of gambling*, 3 AMERICAN JOURNAL OF SOCIOLOGY 57, 215-221(1951).

⁴³ Geoffrey Samuel, *English Private Law: Old and New Thinking in the Taxonomy Debate*, 24 OJLS 335, 341(2004).

⁴⁴ Hans Kelsen, *Pure Theory of Law and Analytical Jurisprudence*, HARV. L. REV. 55, 44(1941).

involve their own costs and benefits. Although, the sociological school of law adopts a mechanical view of the society and law, it offers the clear picture of the issues in hand. Since a heavy reliance has been placed upon Roscoe Pound for the present paper, I feel obliged to acknowledge that the real danger of his theory lies in interpreting 'wants' and 'desires' in their subjective immediacies. On the one hand, government revenues and individual liberty are at stake, and on the other hand, the abounding social costs (i.e. loss of livelihood, morals) of gambling are considered. Achieving a balance here *simpliciter* implies according primacy to the social interests over individual and public interests, as per this theory. But this is a doctrinaire approach towards this problem, which smacks of fallacy and the analysis so far done, has merely compounded the conundrum.

VII. BIBLIOGRAPHY

Books referred

1. OLIVER WENDELL HOLMES, THE PATH OF THE LAW (The Floating Press 2009).
2. VIDYA DHAR MAHAJAN, PRINCIPLES OF JURISPRUDENCE AND LEGAL THEORY (4th ed.1980).
3. 3 ROSCOE POUND, JURISPRUDENCE (West Publishing Co. 1959).
4. THE MORAL ECONOMY 11(New York: Charles Scribner's Sons 1909).
5. B. SEEBOHM ROWNTREE, BETTING & GAMBLING: A NATIONAL EVIL (Macmillan 1905).
6. 2 LESTER B. DONAHUE, THE ETHICS OF GAMBLING (Catholic University. Bulletin, 1906).
7. F.S.C NORTHROP, THE COMPLEXITY OF LEGAL AND ETHICAL EXPERIENCE: STUDIES IN THE METHOD OF NORMATIVE SUBJECTS (1st ed.1959).
8. NIKLAS LUHMANN, A SOCIOLOGICAL THEORY OF LAW (Routledge 2013).
9. PER BINDE, GAMBLING MOTIVATION AND INVOLVEMENT: A REVIEW OF SOCIAL SCIENCE RESEARCH (Swedish National Institute of Public Health 2009).
10. DR. SANJEEV KUMAR TIWARI, JURISPRUDENCE-LEGAL THEORY AND ELEMENTS OF LAW (1st ed.2012).
11. ROSCOE POUND, SOCIAL CONTROL THROUGH LAW (Transaction Publishers 1997).

Articles referred

1. Van Schalkwyk, May CI, Mark Petticrew, Rebecca Cassidy, Peter Adams, Martin McKee, Jennifer Reynolds, and Jim Orford, *A public health approach to gambling regulation: Countering powerful influences*, 8 THE LANCET PUBLIC HEALTH 6, 614-619(2021).
2. Herbert A. Bloch, *The sociology of gambling*, 3 AMERICAN JOURNAL OF PSYCHOLOGY 57,215-221(1951).
3. Hans Zeisel, *The Law, Gambling, and Empirical Research*, 990-996(1965).

4. Roscoe Pound, *Individual Interests in the Domestic Relations*, 3 MICHIGAN LAW REVIEW 14, 177-196(1916).
5. Roscoe Pound, *A Survey of public Interests*, 58 HARV.L.REV, 909(1944).
6. Ruth L. Smith, *Morality and perceptions of society: The limits of self-interest*, JOURNAL FOR THE SCIENTIFIC STUDY OF RELIGION 279-293(1987).
7. James H. Frey, *Gambling: A sociological review*, 1 THE ANNALS OF THE AMERICAN ACADEMY OF POLITICAL AND SOCIAL SCIENCE 107-121(1984).
8. Terry Di Filippo, *Pragmatism, Interest Theory and Legal Philosophy: The Relation of James and Dewey to Roscoe Pound*, 4 TRANSACTIONS OF THE CHARLES.S PEIRCE SOCIETY 24, 487-508(1988).
9. Frank. N. Freeman, *The ethics of gambling*, 1 THE INTERNATIONAL JOURNAL OF ETHICS 18, 76-91(1907).
10. John A. Hobson, *The ethics of gambling*, 2 THE INTERNATIONAL JOURNAL OF ETHICS 15, 135-148(1905).
11. E.G. Nalbandian, *Sociological jurisprudence: Roscoe Pound's discussion on legal interests and jural postulates*, 1 MIZAN LAW REVIEW 5,141-149(2011).
12. Frothingham, Octavius Brooks, *The ethics of gambling*, 309 THE NORTH AMERICAN REVIEW 135,162-174(1882).
13. Edward B. McLean, *Roscoe Pound's Theory of Interests and the Furtherance of Western Civilization*, II POLITICO, 5-34(1976).
14. Linus J McManaman, *Social engineering: The legal philosophy of Roscoe Pound*, 1 JOHN'S L. REV 33(1958).
15. Douglas M. Walker, Russell S. Sobel, *Social and economic impacts of gambling*, 3 CURRENT ADDICTION REPORTS, 293-298(2016).
16. James A. Gardner, *The sociological jurisprudence of Roscoe Pound (part I)*, 1 VILL L. REV., 7(1962).
17. Gordon, Ross, and Gerda Reith, *Gambling as social practice: a complementary approach for reducing harm?* 1 HARM REDUCTION JOURNAL, 1-11(2019).

Case laws referred

1. S. Khushboo v. Kanniammal, AIR 2010 SC 3196.
2. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte & Ors., AIR 1996 SC 1113.
3. Guru Prasad Biswas v. State of West Bengal, 1998 SCC OnLine Cal 95.

4. State of Bombay v. *R. M. D. Chamarbaugwala*, (1957) S.C.R. 874.