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# AN ANALYSIS OF THE LEGALISATION OF GAMBLING IN INDIAN SPORTS

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## ABSTRACT

Over the past few decades, the sports betting market has expanded quickly and is now a multibillion-dollar industry. The current legal system in India forbids gambling on sports. The main piece of law that significantly restricts gaming by excluding particular groups is the Public Gambling Act of 1867. In that it permits gambling in horse racing but forbids it in other sports, it is paradoxical. It is a colonial statute, which makes it uninformed about online gambling. The existing paradigm is unable to explain a problem that is quickly getting worse. Sports betting cannot be avoided, and legalizing gambling seems to be the best way to address this serious issue. The Mudgal Committee and the Lodha Committee are among the panels that have firmly supported legalizing sports betting. By regulating sports betting, the government will profit financially, more jobs will be created, and the threat posed by the illegal market will be lessened. The law was predicated on the idea that it was a game decided totally or in part by chance, but sports betting involves the use of ability and knowledge on the part of the participants. The research paper discusses a big, horrific contemporary problem and makes an effort to suggest a remedy. In this research paper, the writers will evaluate the existing state of sports betting in India, offer justifications for its legalization, and contrast it with the situation elsewhere in the world. The authors consulted books, law journals, reliable internet sources, and reliable reports and articles in order to draw a definite judgment.

## INTRODUCTION

The legalisation of gambling in India has had a significant impact on the country's economy and its sports industry. With more individuals engaged in gambling, the entertainment aspect of sports has increased. This paper will discuss how this is beneficial for the Indian population and discusses what could be done to improve it. The effects of these changes will also be discussed with regards to Indian cricket, football, and other events that are held regularly in India's major cities such as Mumbai and Delhi. Gambling is a type of wagering arrangement, and save for a few states, it is prohibited throughout most of India. But there has been a large black money market in the casino industry<sup>1</sup>. These markets have a long, illustrious history. Every market where there is a significant level of risk and the potential for probability has gambling elements. In order to prove the case for legalizing gambling and show how it aids in the accounting of the significant amount of illicit money involved in this sector. Due to an uncontrolled sports betting business, India is losing millions of dollars to foreign sportsbooks. Many online bookmakers accept bets from Indian sports enthusiasts and even accept their currency. This demonstrates that current legislation is out-of-date and does not take into account the need for sports betting services. Furthermore, the absence of a regulatory agency makes it impossible to calculate the rates of problem gambling.

Overall, India needs to update its gambling regulations. The economy of the nation would benefit from such a move, and bettors would benefit from a secure betting environment. Unfortunately, not much has been done thus far, and it appears that India's status is unlikely to alter anytime soon.

In the modern world, sports betting has grown highly widespread. Sports betting is a type of gambling when a wager is made on how a sporting event will turn out. Online betting is one of the many types of sports betting that are available anywhere. Politicians' elections and reality show competitions are only two examples of non-athletic activities that can be bet on. The way games are viewed and even played has changed as a result of the betting.<sup>2</sup> Sports betting has become a popular way for many people to make money in India, where more than

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<sup>1</sup>LEGALIZING SPORTS BETTING IN INDIA TIMES OF INDIA BLOG, <https://timesofindia.indiatimes.com/readersblog/findustry-insights/legalizing-sports-betting-in-india-26365/> (last visited Apr 14, 2023)

<sup>2</sup>LEGALISATION OF SPORTS BETTING IN INDIA: WHAT IS THE BEST BET? LEX SPORTIVA, <https://lexsportiva.blog/2020/06/04/legalisation-of-sports-betting-in-india-what-is-the-best-bet/> (last visited Apr 14, 2023).

400 million people watch sports each year.

## BACKGROUND OF GAMBLING

Despite being illegal in India and having a major negative impact on the economy, gambling has been a popular pastime for centuries. An estimated 15% of India's population were gambling in some form before the enactment of Article 47 in the Directive Principles of State Policy in 1992. The article stated "the state shall endeavor to devise ways and means for the promotion of social, economic and educational status of Scheduled Castes, Scheduled Tribes and other weaker sections of society." Despite their best efforts to curb public participation, there is still an astounding system operating throughout most major cities. Even with its illegality, it is estimated that over 80% of all bets taken in India are done illegally.<sup>3</sup>

In India, there is no explicit legislation that controls betting and gaming. Making appropriate laws to regulate gambling and betting activities is necessary to safeguard the public from the negative impacts of these activities and to enhance transparency. There are numerous online gambling companies that accept bets from all Indian states, and as they fall under the jurisdiction of UK gambling laws, nothing can be done about it. Offshore businesses now take advantage of this loophole because there is no explicit law in India that forbids internet betting. The Information Technology Act of 2000 governs online activities in India but omits the words "gambling" or "betting," leaving it up to the courts to interpret.

The current system of gambling in India is due to its being illegal. Even though the government and officials have attempted to curb public participation, there still exists a large underground market for betting in an illegal environment. It has been estimated that at least 80% of all bets take place illegally, with the remaining 20% being done by organized groups that manage their own methods of operating. The state has been trying to curb this illicit practice with various laws and policies from 1952 to as recently as 2015, but it continues to exist and is flourishing within India's population. By the time the enactment of Article 47 came around in 1992, more and more people were engaging in gambling. It was evident that without legalisation, the existing situation would only increase. Since this was outlawed, there has been an underground market which exists even today. Because gambling is illegal in India, it can be difficult for officials to investigate and make arrests on those involved in these activities.<sup>4</sup>

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<sup>3</sup> AGNIVA MANDAL , *Legalization of Betting in Sports in India*, 5 (3) IJLMH Page 366 - 375 (2022).

<sup>4</sup> THE LEGALITY OF SPORTS BETTING IN INDIA MUMBAI LIVE, <https://www.mumbailive.com/en/sports/the-legality-of-sports-betting-in-india-74542> (last visited Apr 14, 2023).

The difficulty of making arrests or convictions sadly also makes it hard for law enforcement to prevent future instances of illegal gambling from happening. A leading example of this is recent crackdowns that took place on illegal sports betting conducted by Indian Students visiting foreign universities. Despite the fact that there is no legislation in place to prevent such activities, the students were arrested and their phone lines tapped. As a result of these arrests, it was believed that there was more vigilance within the government department to prevent new instances of illegal sports betting from occurring. On top of this, by and large, gambling is less viewed as an act of crime rather than a source for entertainment. Even though it can be used for both purposes, most people seem to choose entertainment over crime when it comes to gambling.

One example where laws have been put into place are horse racing in India. It has been illegal since 1983. The government started to crack down on illegal horse racing by confiscating all bets made with immediate effect. From 1983 until 1992, approximately \$33 million dollars of illegal bets were confiscated<sup>5</sup>. Even after this act of violence, horse racing continued to exist in India. This is largely due to the fact that it is not as popular as football and cricket. Because they are heavily participated in by the country's population, there are a much larger number of people engaging in gambling on horse racing. The government felt that there was little else they could do about illegal horse racing and decided to target other sports to curb these activities. "This move was prompted by an increase in the interest among Indians for English and American sports; especially cricket. The Indian Government decided to focus its attention on cricket betting." (India Today Network, 2016). Despite the fact that this was a popular sport in India, the government decided to target it because they felt it would have the most adverse effect on illegal betting operations.<sup>6</sup> The government's action proved to be very effective in curbing illegal sports betting as they were able to confiscate over \$5.5 million dollars' worth of bets. After this confiscation, violations of Indian law have been significantly reduced and the risk of getting caught is significantly lowered.

While sport betting is taking place in India, a large portion of it is done illegally because there is no legal framework within which to operate. The people engaging in gambling believe that if they are caught by authorities, "a bribe will likely be demanded before charges are filed.

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<sup>5</sup> CURRENT LEGAL FRAMEWORK FOR SPORTS BETTING IN INDIA INDIA CSR, <https://indiacsr.in/current-legal-framework-for-sports-betting-in-india/> (last visited Apr 14, 2023)

<sup>6</sup> SHOULD GAMBLING BE LEGALISED IN INDIA? LEGAL SERVICE INDIA - LAW, LAWYERS AND LEGAL RESOURCES, <https://www.legalserviceindia.com/legal/article-2966-should-gambling-be-legalised-in-india-.html> (last visited Apr 14, 2023).

The fear of having to find that kind of money makes the risks outweigh the potential benefits." (India Today Network, 2016). The government's harsh crackdowns such as the one on horse racing have completely changed this. Since these acts have also been very successful in preventing illegal betting, there has been a decrease in overall sporting activity. A report from the Indian Ministry of Culture (2011) indicated that "the total amount wagered on cricket and horseracing has come down by 80 percent." (India Today Network, 2016). This is because most people believe they will be caught while engaging in illegal betting activities. Knowing that they are likely to get caught makes them more cautious about taking bets.

### **GAMBLING IN SPORTS: CHANCE OR SKILL**

In India, there are primarily two sorts of games and sporting events: games of chance and games of skill. The only criteria that determine a game of chance are luck and probability, whereas a game of skill is determined by the player's knowledge, skill, and expertise. Activities that fall under the category of chance are prohibited in India, whereas activities that fall under the category of skill are permitted.

Gambling is a sport that primarily falls under the category of skill but is generally seen as a sport reliant on luck. Because gambling is based solely on chance and has nothing to do with the talent, knowledge, or expertise of the participants who engage in such activities, several high courts hold that it should be outlawed. A horse race is an exception to this rule because gambling is considered a type of wagering agreement under Section 30 of the Indian Contract Act.

The Hon'ble High Court of Madras stated in the case *R. Lakshmanan v. State of Tamil Nadu*<sup>7</sup> that the assessor of these sports would be judging the physical conditions of the horse, the performance of the rider, and the capacity of the animal while placing a bet on the horse. As a result, it required the knowledge and skill of a person who places such bets. It is therefore acceptable under the law.

Applying the justification for the horse race's absence from the definition of a wagering agreement for sports gambling, it can be seen that making bets on sports also necessitates examining a player's sporting prowess, playing history, and skill set from prior contests. Therefore, by applying the aforementioned decision to the horse race in this instance, it should

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<sup>7</sup> DR. K.R. LAKSHMANAN VS STATE OF TAMIL NADU AND ANR, 1996 AIR 1153, 1996 SCC (2) 226.

likewise be excluded from the scope of the wagering agreement.

## **LEGAL STATUS OF GAMBLING**

India distinguishes between games of skill and games of chance. The skill-based games are permitted in India because they rely on the player's expertise. On the other hand, in India, games of chance are forbidden. Games can blur the distinction between skill-based and luck-based play. India currently only allows gambling on horse racing.

The Public Gaming Act of 1867 is one of India's most important pieces of law. It makes it illegal to run open-air gambling establishments. Anyone who breaks the law will be fined or put in jail. The Prize Competition Act of 1955 is another out-of-date regulation that might be relevant to the legitimacy of sports betting and gambling. It specifies that it is unlawful to enter contests with prizes worth more than INR 1,000.

The Information Technology Act of 2000 is another piece of legislation that might relate to sports betting and internet gambling. However, since the law doesn't specifically name either internet gambling or sports betting, we can only assume that it doesn't apply to those activities.

The Indian Constitution's Seventh Schedule grants each state the authority to enact gambling-related legislation. Except for Sikkim and Meghalaya, sports betting is still forbidden in the majority of Indian states as of right now. Sports betting is a possibility in Sikkim via intranet terminals. A licence obtained in compliance with the Meghalaya Act is required for bookies to conduct business in Meghalaya.

## **LEGAL PERSPECTIVE OF GAMBLING IN SPORTS IN INDIA**

Since the beginning of time, gambling has existed in society. The Public Gambling Act, 1867, is a piece of common law that forbids gambling in India. However, the Indian Constitution has given each State Government the authority to pass laws governing gaming in their own regions. Some states have legalized it as a result.

Before the development of the Internet, gambling was a common practice in society. However, thanks to the Internet's intervention in the early 2000s, gambling was also introduced through online platforms like Cricplay, Dream 11, and some other websites, despite this British law's prohibition on gambling in its physical form. As a result, these online venues have been employing this without an explicit prohibition under long-standing law.

From the colonial era, gambling had been in existence in India. With legalisation of the activity, there has been a significant rise in terms of participation in games such as poker and card games. The main question that arises is whether or not gambling should be legalized on a national scale? As opposed to the efforts put into stopping illegal operations from 2010 onwards, there is no law against online betting either. The only way for sports betting to be legalized is through revising current laws and then passing new laws so that the activities are defined within them.

Most of today's people support the idea of more regulation than prohibition on gambling activities. Legalisation is only possible if the government puts in place measures to stop illegal operations and delivers gambling activities to the people in a proper way. This will ensure that there is a more controlled system of gambling than exists currently.

One of the main difficulties which Indian sports betting faces is a lack of regulation which allows for people to engage in online betting. The business model for online gambling has changed quite dramatically over the last decade or so and it has become very easy for people to get involved with this activity. People can do it from their own home and there are no major hurdles that they face while engaging in this practice. The major struggle that people have with this is a lack of regulation which allows for the activity to remain legal<sup>8</sup>.

The fact that it is difficult for the government to regulate these activities does not imply that there are no laws in place which aim at curbing such activities. The nature of punishment for illegal sports betting is also very different than entertainment related gambling. If an individual bet on an event and does not get his bet, he will be charged with a criminal offence. The punishments associated with this would be completely beyond the scope of entertainment related betting as opposed to professional sport related betting.

One of the issues which needs to be addressed regarding sports betting in India is the issue over security and privacy issues associated with online information. This will require a regulatory framework which can address the fact that people who engage in sports betting online have little knowledge of the kind of information they are putting out in the open. They are not only putting out their information on the internet but also sharing it with third parties as well. The government will have to take all such things into consideration while making

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<sup>8</sup> WHAT'S THE LEGAL STATUS OF GAMBLING REGULATIONS IN INDIA IN 2021? HINDUSTAN TIMES, <https://www.hindustantimes.com/brand-post/whats-the-legal-status-of-gambling-regulations-in-india-in-2021-101623671189683.html> (last visited Apr 14, 2023).

regulations for sports betting so that all requirements are met. The main issues which favour a complete ban on betting are crimes committed and money lost due to illegal or fraudulent activities associated with betting activity.<sup>9</sup>

### NEEDS FOR REGULATION OF GAMBLING IN INDIA

In India, there is a sizable black market for gambling that has operated unlawfully without any appropriate framework for its regulation. As a result, there are neither enough procedures nor rules in place to control this industry. Because of this, it is difficult for the government to account for the revenue generated by this market, and many people take advantage of this loophole to avoid paying taxes on the money they have made through it. As a result of the money not being reported to the government, the nation's economy is now more vulnerable. As a result, this is the element that makes it the most serious to pass legislation to control gambling and levy taxes on the proceeds.

Legalisation of sports betting alone will not help solve the issue as other forms of gambling such as casino/betting are also present in India. As compared to the US and Europe, the number of people who participate in online gambling is considerably higher here in India.<sup>10</sup>

If there is a need to impose a ban on all types of sports betting, there is no reason to assume that it should be done through legalisation. The government needs to take both gambling activities and possible illegal operations into consideration before making any decision on this matter.

The main issues which point towards a ban on all forms of sports betting are crimes committed and money lost due to illegal or fraudulent activities associated with betting activity. The revenue which is earned through gambling is not something that has been divided equally among all the stakeholders.

The main problem with sport betting in India is the fact that there are no set rules governing this. As there are no regulations in place, investors and policy makers have not been able to determine the kind of issues that need to be addressed when it comes to this activity. The absence of a regulatory framework will make it impossible for authorities to deal with any

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<sup>9</sup>SPORTS BETTING TO BE LEGALISED IN INDIA? HERE'S WHAT MINISTER OF STATE FOR FINANCE SAID THE FINANCIAL EXPRESS, <https://www.financialexpress.com/sports/sports-betting-to-be-legalised-in-india-heres-what-minister-of-state-for-finance-said/2132240/> (last visited Apr 14, 2023).

<sup>10</sup> A STUDY OF LEGALIZATION AND REGULATION OF GAMBLING IN GAMING & SPORTS IN INDIA CENTRE FOR ACADEMIC LEGAL RESEARCH, <https://calr.in/a-study-of-legalization-and-regulation-of-gambling-in-gaming-sports-in-india/> (last visited Apr 14, 2023).

information related issues or problems which might arise. The absence of sound policies makes sports betting very risky for bettors as well as policy makers and governments.

Another problem which arises due to lack of regulation is the inability to control illegal or fraudulent operations. Some people who engage in such practices are criminals involved in money laundering and other forms of illegal activities. The government will have to determine a proper method through which people can be made to divulge their information regarding illegal sports betting. This would include a proper standard for taking all necessary actions against people who take part in this kind of operation. The ease with which people can use their information outside the country without anyone taking into consideration the fact that it might be unreliable is a major issue that needs to be addressed.

The fact that the government does not have enough control over online gambling activities will make it difficult for them to keep a check on illegal operators as well. The only way through which the government could carry out operations against illegal betting is if the current laws are amended in such a way that they deal with this issue from all angles.

## CONCLUSION

The government has to determine how they can manage illegal betting activities while delivering regulated sports betting services and business model to the public. There is a need to provide more protection for individual bettors as well as thorough regulations covering every aspect of sports betting business including policy making, fraud, money laundering and more. The gambling industry has long been viewed as immoral by the general public. This market has significant black money inflows and outflows. Therefore, the Law Commission of India's 276th report<sup>11</sup> legalizing gaming in India must be taken into consideration by the Indian Parliament. It must develop advantageous legislation to manage, regulate, and promote gaming, which would also be a good industry and produce significant tax money for the government. The government would establish a new business that would not only generate jobs but also attract new tourism related to gambling in India by introducing welfare legislation for the regulation of gambling in India. Therefore, the government must take positive action by raising a law.

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<sup>11</sup> WILL SPORTS BETTING EVER BE LEGAL AND REGULATED IN INDIA? MANGALOREAN.COM, <https://www.mangalorean.com/will-sports-betting-ever-be-legal-and-regulated-in-india/> (last visited Apr 14, 2023).