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*Title: Legalization Of Sports Betting And Gambling In India, Authored By: Ms.
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ABSTRACT:

“The sports betting sector has grown significantly over the past few decades and is now a multibillion-dollar industry. Sports betting is illegal in India under the present legal structure. The Public Gaming Act of 1867 is the key statute that severely limits gambling by excluding specific demographics. It is paradoxical in that it allows gambling in horse racing but outlaws it in other sports. Its colonial origins render it ignorant of online gaming. The current mindset is unable to comprehend a problem that is quickly getting worse. It is impossible to avoid sports betting, and legalising gambling appears to be the only way to address this intractable issue. Among the committees that have steadfastly backed legalising sports betting are the Mudgal Committee and the Lodha Committee. The government will make money from regulating sports betting, more employment will be generated, and the threat posed by the black market will be decreased. Sports betting entails the application of skill and knowledge on the part of the participants, contrary to the law’s premise that it was a game decided entirely or in part by chance. The study paper examines a grave, horrifying issue facing society now and attempts to offer solutions. In this research paper, the author will evaluate the existing state of sports betting in India, offer justifications for its legalisation, and contrast it with the situation elsewhere in the world. The authors investigated books, law journals, reliable internet sources, and reliable reports and articles in order to come to a definite decision”.

I. INTRODUCTION:

“Playing a game for money or property or betting on an uncertain outcome¹” is how gambling is defined. Gambling has historically been considered one of the most enjoyable and well-liked types of entertainment, and it is still prevalent in Indian society. Ancient Indian texts like the Mahabharata mention gambling, where kings were ready to lose their kingdoms, wealth, and even family members². Typical gambling activities include card and dice games, lotteries, computerized slots games, and betting on sporting events. In sports, **“betting”** is the

¹ Merriam Webster, available at: <https://www.merriam-webster.com/dictionary/gambling> (Last Visited on Aug. 22, 2022).

² Mukul Mudgal, Vidushpat Singhania, Law & Sports in India 165 (LexisNexis, 2011).

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act or practise of making bets on the results of sporting events³. Today, gambling greatly increases interest in sports and makes them a lucrative, albeit illegal, multimillion dollar industry. In India, wagering on the results of numerous sports, including cricket, hockey, football, horse racing, and badminton is common. Cricket betting is the most common⁴. Cricket was on the rise in India in the 18th century, a time when gambling was popular, but the “*Public Gambling Act, 1867*” limited the operation and visitors to “*Gambling Houses*”⁵. The national legislation of India governs all forms of gambling, despite the fact that several states have their own state laws. Except for horse racing, all forms of sports betting are forbidden. Despite India’s ban on bookmaking, a substantial industry worth more than €250 million annually continues to exist there unnoticed by local, national, and even international law enforcement⁶. Sports betting-related crime and corruption have increased as a result of the substantial sector’s growth. The shift in cultural attitudes about gambling over the past century, where it is now viewed as a lawful form of entertainment, has not been reflected in Indian rules⁷.

II. CURRENT STATUS OF GAMBLING IN INDIA:

The Public Gambling Act of 1867, forbids gambling and sports betting under the current legal structure⁸. According to the act’s Section 2(b), “*gambling*” includes wagering or betting but does not include lotteries⁹. According to Article 372(1) of the Indian Constitution, the laws that were in effect in the territory of India prior to the commencement of this Constitution shall continue to be in effect there unless altered, repealed, or amended by a competent legislature or other competent authority, despite the enactments mentioned in Article 395 being repealed by this Constitution¹⁰. A state legislature is given the authority to enact gaming and tax laws

³ Ibid.

⁴ Id. at 166.

⁵ V.M. Kanade, Navneet Rajan Wasan, Jaydev Mody, “*Should gambling be legalised?*”, The Hindu, Mar. 30, 2018.

⁶ Paul Keslo, “*Government set to lobby for legalisation of sports gambling in India*”, The Telegraph, Sept. 8, 2010.

⁷ Supra note 5.

⁸ The Public Gambling Act, 1867, No.3, 1867.

⁹ Ibid.

¹⁰ The Constitution of India, art. 372 (1).

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under Entry 62 State List¹¹. Restricting and regulating gaming in “**Public Gambling**” facilities is the main objective of gambling law at all levels¹². A multimillion-dollar clandestine market exists for sports betting. Additionally, the FICCI projected the illegal market’s value to be close to Rs. 10 lakh crores in 2016. Even if legalisation doesn’t entirely purge the gambling business, making operators preserve both electronic and paper records will greatly aid in that effort¹³. Despite the industry’s lack of regulation, it employs thousands of young people nationwide.

III. ONLINE GAMBLING IN INDIA:

There are two types of online gambling that are available everywhere. Rummy and poker fall under the first category of gambling, which is casino-style gaming. Second, it fits into the area of sports betting, where wagers are made on sporting events while taking into account the odds of the players. Sikkim and Goa are the two states in India that allow casino gaming¹⁴. However, Sikkim is the only legal state that permits online casino gambling. The second scenario involves wagers being placed in real time on sporting events using websites operating outside of India, such 1XBet and Bet365¹⁵. However, sports betting is prohibited in India. Typically, these websites fall outside the purview of Indian Law. An Indian citizen could thus wager on websites whose servers are located in nations where gambling is permitted in that situation¹⁶. For instance, sending and receiving funds via bank transfer, wire transfer, and other means, as well as placing an online wager on such websites. However, because betting on sports other than horse racing is prohibited in India, legislators have found ways to impose restrictions on online gambling. The Indian government cites *Section 67 of the Information Technology Act*, which punishes anyone who publishes, transmits, or causes to be published in electronic mode

¹¹ Aditya Agrawal & Dhruvo Das, “Legalization of Sports Betting in India” 5 Journal of Legal Studies and Research 35 (2019).

¹² Lotteries, Revenues and Social Costs: A Historical Examination of State Sponsored Gambling, available at: Lotteries, Revenues and Social Costs: A Historical Examination of State Sponsored Gambling | IMGL (Last Visited on Aug. 22, 2022).

¹³ Financial Express, “Bet on legalising gambling: There are big gains – from revenue to bringing down crime” The Financial Express, Jul. 7, 2018.

¹⁴ Indian States That Allow Casinos, available at: Indian States That Allow Casinos | RitiRiwaz (Last Visited on Aug. 23, 2022).

¹⁵ Ibid.

¹⁶ Supra note 3 at 181.

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any material containing offensive sexual material or if its effect is such as to deprave and corrupt people who are liars with a fine of up to Rs. 1 lakh and a sentence of up to 5 years. There is no explicit legislation against online gambling in this sector¹⁷. Any website offering these services will surely come under the term of corrupt or depraved in the aforementioned paragraph because gambling and sports betting are prohibited in India¹⁸. Currency exchange, money transfers from India to any foreign country, and the entrance of foreign capital into India are all governed under the *Foreign Exchange Management Act of 2000*¹⁹. According to *Rule 3 of the Schedule Financial Exchange Management Act of 2000*, payments made to purchase lottery tickets, forbidden periodicals, football pools, sweepstakes, and other similar activities are not permitted²⁰. Any transfer that is connected to gambling is prohibited by the rule, albeit it has been left open to other forms of wagering as well. As a result, nobody would be able to buy anything on these websites. Any resident who attempts to engage in online gambling through any of these websites by opening a foreign currency account in countries where sports betting is legal may be subject to the *Foreign Exchange Management Regulations (Foreign currency amounts), 2000*²¹. Section 3 of which prohibits any Indian resident from opening, holding, or maintaining a foreign currency account without special permission from the RBI²².

IV. WHY SHOULD SPORTS BETTING:

IV.I Unavoidably existing in some capacity:

Gambling has undeniably developed into a sizable industry in India. The impact gambling has on society is one reason why sports betting should be restricted in India and everywhere else

¹⁷ Information Technology Act, 2000 (Act 21 of 2000), s. 67.

¹⁸ Law Commission of India, “276th Report on Gambling and Sports Betting to be legalized in India” (October, 2018).

¹⁹ The Foreign Exchange Management Act, 2000 available at: Foreign Exchange Management Act (FEMA) | Department for Promotion of Industry and Internal Trade | MoCI | GoI (dpiit.gov.in) (Last Visited on Aug. 23, 2022).

²⁰ Ibid.

²¹ Supra note 19.

²² Legality of Online Gambling in India, available at: LEGALITY OF ONLINE GAMBLING IN INDIA – Lexlife India (wordpress.com) (Last Visited on Aug. 24, 2022).

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on Earth²³. Sports betting is a popular method of making money. In the enormous country of India, there are a lot of destitute people. People who lack comforts and resources are drawn to betting because they view gambling as a quick way to make money. It is generally accepted that gambling cannot completely be eradicated and will always exist in some form.

IV.II Game Of Skill Rather Than Chance:

Nothing in the aforementioned provisions of this Act shall be deemed to apply to any game of simple skill, wherever played, according to *Section 12 of the Public Gambling Act of 1867*²⁴. Participants in sports betting must possess knowledge, application, and analytical abilities. It is important to distinguish between chance games and skill games. In the case of *Rex vs. Fortie*²⁵, it was determined what a game of chance was. There is no reason for judgement, practise, talent, or adroitness in this game, which is fully or partially determined by chance. On the other hand, in a “*game of skill*”, the outcome is determined by greater knowledge, attention, strength, talent, and practise rather than chance²⁶. The Supreme Court of India ruled in the case of *Dr. K.R. Lakshmanan vs. State of Tamil Nadu*²⁷, that football, baseball, boat racing, and horse racing are all regarded as games of skill. The regulation is contradictory in that it allows gambling on horse races but restricts it on other sports. It was clearly established by the Supreme Court in the rulings *State of Bombay vs. RMD Chamarbaugwala*²⁸, and *State of Andhra Pradesh vs. K Satyanarayana*²⁹, that “*competitions where victory depends on a substantial degree of talent are not gambling*”. A game that is essentially a game of skill is nevertheless referred to as a “*sole skill*” game, even if there is a chance component. All sports are “*games of skill*”, not “*games of chance*”, according to the numerous judgements the courts have repeatedly upheld³⁰. Being a “*game of skill*”, horse racing is allowed. The form, fitness, and natural ability of the horse, the jockey's prowess, the amount

²³ Supra note 10 at 167.

²⁴ Supra note 5.

²⁵ 13 Que K.B. 308.

²⁶ Laws related to betting and gambling in India: The road ahead, available at: Betting and Gambling related laws in India: the road ahead (ipleaders.in) (Last Visited on Aug. 23, 2022).

²⁷ AIR 1996 SC 226.

²⁸ AIR 1957 SC 699.

²⁹ (1968) 2 SCR 387.

³⁰ Differential Treatment of Game of Chance v. Game of Skill in India, available at: Differential Treatment of Game of Chance vs Game of Skill In India By GLC (Last Visited on Aug. 25, 2022).

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of weight carried, and the length of the race are among the several elements that affect the outcome of a horse race. These elements are all quantifiable facts that bettors may judge. In other sports, it's critical that the person placing the wager be able to assess the playing surface, the climate, the squad composition, and the current form. All sports betting should be legal based on this logic.

IV.III Fantasy Sports:

Over the past ten years, the Fantasy Sports market has experienced significant growth. The Dream 11 is one of many fantasy sports systems available on various apps and websites. In fantasy sports games, players are entrusted with putting together teams out of all the athletes competing in a specific match of a specific sport on a specific day³¹. After the user has formed a team on these platforms, they must pay a fee in order to enter a contest. These contests are common, with variable rewards and entrance criteria. There are numerous entrance fees and prizes for various competitions. Users are often required to select their teams before the competition starts. When the competition starts, each player is awarded points according to how well they perform. The total points scored by the members of the user's drafted squad make up the user's overall score. The team's overall score determines how well the users are rated. The winning teams take home the cash. The fantasy sports sector has been involved in legal disputes of its own. In *Humphrey vs. Viacom*³², the plaintiff argued that because the points received by the participants are mostly determined by chance, accounting for potential player injuries and other random factors, the entry fees paid to participate in these games are a sort of wager or bet. Because it believed that choosing players for a virtual team needed a high level of analytical talent and expertise, the court denied the motion. The Nagaland Prohibition of Gambling and Promotion of Online Games of Talent Act, 2005, was passed in Nagaland, India, and it deems fantasy sports to be a "game of skill"³³. According to a 2017 ruling by the

³¹ Supra note 18.

³² 2007 BL 38423

³³ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 (Nagaland Act No.3 Of 2016), available at: https://www.indiacode.nic.in/bitstream/123456789/15162/1/the_nagaland_prohibition_of_gambling_and_promotion_and_regulation_of_online_games_of_skill_act_2015 (Last Visited on Aug. 23, 2022).

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High Court of Punjab and Haryana, Dream11 is primarily a skill-based game³⁴. After determining that the petition and the *R. Lakshman*³⁵ decision was comparable, the High Court rejected the petition. It continued by saying that a player's ability to analyse situations and make wise decisions are highly necessary when participating in fantasy sports. The court agreed with respondent Dream 11 that judging match circumstances (*such as stadiumsize, team makeup, player statistics, and keeping track of players' prior performances*) is necessary for success in fantasy sports³⁶. Fantasy sports are renowned for requiring participants to be successful by using their understanding of players, performance histories, and statistics, as well as their skill in picking and trading players³⁷. Similar sports analytical abilities are necessary for betting and fantasy sports. Betting differs from fantasy sports in that it takes place in real time, but the player in fantasy sports must assemble their own team ahead of time. Betting, in contrast to fantasy sports, necessitates stronger analytical abilities because it demands the user to analyse match events in real-time and adjust his bets accordingly. Because fantasy sports games are permitted yet sports betting is not, the law is exceptional.

IV.IV The Financial Rewards Are Enormous:

The fact that gambling brings money to states is another justification for its legalisation. The role of gambling in generating income is not new; even during Kautiliya's rule, it was a state-regulated sector with a 5% tax on winnings³⁸. Legalizing gaming creates income for the government while also helping to shrink the black market. The Indian gambling market is estimated to be valued about \$60 billion by a 2010 KPMG report, however more recent estimates place a larger value on the sector³⁹. Even a reasonable projection indicates that legalising sports betting might bring in tens of thousands of crores in tax revenue for the government. The government would surely suffer a large financial loss if gambling were legalised, licences could be obtained for a fee, a GST on gambling services would be implemented, and earnings would be taxed.

³⁴ Sri Varun Gumber vs. The Union Territory of Chandigarh & Ors., (2017), CWP No. 7559.

³⁵ Supra note 27.

³⁶ Supra note 34.

³⁷ Supra note 26.

³⁸ Supra note 14.

³⁹ Supra note 5.

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IV.V Elimination of the Black Market:

*The Law Commission Report No. 276 asserts that outright banning sports betting would only drive it underground rather than eradicate it⁴⁰. This proposal claims that illicit gambling encourages the movement of black money in the market and causes huge financial losses to the economy because gains are not taxed⁴¹. In a word, this illicit activity has a detrimental effect on the country's economy. The proposal also goes through how the mafia now controls the Indian sports gambling sector as a black market, which is unregulated. Most of the money produced in the gambling sector is either transported abroad or used for criminal purposes. The majority of transactions are performed in cash, which makes it impossible to track them, therefore there is no method to keep track of the money. *Justice Mukul Mudgal* describes in his book the challenges investigators confront in finding bookmakers who bet on sports and the money they make from it⁴². Recognizing this challenge, the Mudgal Committee study suggested that legalising sports betting would lessen the impact of organised crime and the use of black money while also facilitating detection and investigation⁴³.*

V. INTERNATIONAL PERSPECTIVE:

Three techniques have been tried by nations all around the world to restrict betting and wagering. Some nations, especially those that encourage religious and moral practises, hold that it is the duty of the government to safeguard its inhabitants against the unfavourable effects of such practises. Some nations that place a great importance on religious ethics forbid betting and gambling, whereas other nations see betting and wagering as a business that supports the tourism industry and jobs while also generating revenue and exchange. A few nations also operate in the grey area between these two extremes, achieving a balance by allowing betting in a controlled setting and making a sizable profit from the taxes levied on such operations.

V.I UNITED KINGDOM:

Prior to its liberalisation in 1960, gambling in the UK was severely prohibited for many years.

⁴⁰ Supra note 18.

⁴¹ Supra note 29.

⁴² Supra note 2.

⁴³ Supra note 32.

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The Gaming Act of 2005 established regulations for gambling and wagering in the nation with the intention of *“protecting children and other vulnerable persons from being damaged or exploited by gambling”*. With a compound annual growth rate of about 7%, the UK’s online sports betting market is projected to reach a value of £650 million by 2012. In the UK, there are reportedly 2.1 million online gamblers in total⁴⁴. An enormous and quickly expanding global industry, football betting generates billions of pounds in annual revenue. In the UK, a form of football-related gambling known as *“football pools”* rewards players for correctly predicting the results of each week's games⁴⁵. The *“Gaming Commission”* is a corporate entity created by Section 20 of the 2005 Act to oversee gambling and betting operations through authorised operators. These companies offer a range of services while serving as betting intermediates. The Commission is responsible of awarding gaming permits, levying fines, revoking permits, and looking into and prosecuting cases of illicit gambling. It also provides gambling-related advice to the federal, state, and local governments⁴⁶. One of the biggest gaming markets in the world is found in the UK, and it is still growing. Between October 2015 and September 2016, it produced a Gross Gaming Yield of £13.8 billion. Online gaming generated £4.5 billion in gross gaming income, or 33% of all gaming revenue in the UK. Because gambling is now legal, there is a well-regulated sector, which has lessened the risks that come with black markets⁴⁷.

V.II United States of America:

A 1992 Federal regulation that virtually outlawed commercial sports betting in most states was invalidated by the Supreme Court, opening the door for the estimated **\$150 billion** in yearly illicit wagers on professional and amateur sports that Americans put⁴⁸. The judgement has significantly changed how the nation views sports betting. Gamblers were no longer compelled

⁴⁴ Agniva Mandal, “Legalization of Betting in Sports in India” 5 International Journal of Law Management & Humanities 373 (2022).

⁴⁵ Football betting - the global gambling industry worth billions, available at: Football betting - the global gambling industry worth billions - BBC Sport (Last Visited on Aug. 24, 2022).

⁴⁶ Law Commission of India, “276th Report on Legal Framework: Gambling and sports betting including cricket in India”, (July 2018).

⁴⁷ Gambling Commission’s Annual Report & Accounts from 2016-2017, available at: Annual report and accounts 2016 - 2017 (ctfassets.net) (Last Visited on Aug. 25, 2022).

⁴⁸ Supreme Court ruling favors sports betting, available at: Supreme Court ruling favors sports betting - Washington Business Journal (bizjournals.com) (last visited on August 25, 2022).

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to participate in shady offshore wagering operations or illegal bookmaking. In response to long-standing criticism from lawmakers and sports officials, mobile betting was introduced⁴⁹. With the exception of Nevada, Montana, Oregon, and Delaware, which had already permitted some sort of sports betting, the 1992 law that was overturned forbade state-authorized sports betting. Gambling has been legal in Nevada for a long time, and the state has benefited from both gaming and tourism money. The general economy, which supports the food service, hotel, and transportation sectors, benefits from tourists looking for betting conveniences. The building and upkeep of offices is another benefit of Nevada's gambling sector. The airline and hotel services have been solid for a very long time, and the region is presently a well-liked vacation and retirement location. These calculations indicate that legalised gambling increased state GDP by up to \$5 billion. More than \$7 billion in jobs worth 152,000 were provided to citizens⁵⁰.

VI. CONCLUSION:

The legalisation of sports betting has been endorsed by numerous committees and organisations. According to former ICC CEO Haroon Lorgat, "there is no incentive to go underground because you could work with the business and control it better if it were regulated"⁵¹. **The Lodha committee promoted the legalisation of gambling and recommended that the following protections be incorporated into gambling legislation:**

- 1. In order to prevent the cancellation of registrations, regulatory watchdogs would be expected to ensure that betting shops and people who conduct business there are closely regulated.*
- 2. They would have to come from athletes, officials, and those with a direct connection to the sport. It was suggested that the following protections be incorporated into the legislation governing betting in order to promote transparency.*
- 3. Individuals placing bets would also need to have a licence, with age and identification*

⁴⁹ Ibid.

⁵⁰ Sports betting set to become legal across US after Supreme Court decision, available at: Sports betting set to become legal across US after supreme court decision | US supreme court | The Guardian (Last Visited on Aug. 25, 2022).

⁵¹ ICC recommends legal betting in India, available at: ICC recommends legal betting in India | Cricket - Hindustan Times (Last Visited on Aug. 25, 2022).

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information being kept.

- 4. Those who break the licence and other criteria would face harsh penalties.*
- 5. The Mudgal Committee asserted in its report that legalising gaming will reduce the use of illicit cash, organised crime's influence, and gambling-related malpractices. The Law Commission of India also argued for the legalisation of betting on cricket and other sports in its 276th report.*

Over the past few decades, the scale of the sports betting business has only grown. Sports betting is becoming more popular in India as a source of entertainment and a simple way to generate quick money. A variety of issues exist with the ***Public Gambling Act of 1867***, which is an outdated piece of legislation. The rule is incongruous since it allows wagering on horse racing because it is a "***game of talent***," but restricts wagering on cricket and other sports because they are also "***games of skill***." It is also uneducated about online gambling because it is a colonial legislation. Sports like football, hockey, and cricket, like horse racing, have frequently been ruled by various courts to entail the use of knowledge and skill. Legalizing sports wagering will help control this unorganised industry and reduce the risks presented by underground markets. The government can make money through taxes if the industry is legally regulated. Legalizing sports betting in India would enhance employment, business and tax income, as well as tourism.