

## SHOULD BETTING BE LEGALIZED IN INDIA

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### ABSTRACT

*Betting and gambling are part of society since ancient times. Bet is an agreement in which people guess what will happen and the person who guesses wrong has to give something (like money) to the person who is right. It is fun and enjoyable to people for past decades. They found it as a recreational source. It is a general thing that winning and losing the game is discussed by the audience during sports events and for their further enjoyment they place bets on it. But governments across the world have made it illegal and attached various penalties to it. But it is still in practice in society. Various regulations are made by the government to stop betting which seems to be a failed attempt as it is still active in society and the money earned by it is black money, which is further used to boost corruption, criminal activities, terror financing, etc. To curb these activities government needs to legalize them and earn some revenue from the money made by the gambling sector by taxing it.*

### INTRODUCTION

Gambling is a notable industry around the globe, which makes up 0.6% of world trade, which is around US\$ 384 Billion. It is very popular on the outcome of sports events for lakhs of people in the world, who have fun watching and enjoying their favorite sports. The Director of the Dutch lotto and the second Vice President of the European lottery mentioned gambling in the book – sports betting: law and policy, about the anxious relationship between sports and betting. Betting and gambling would be conflicting if either of them is influenced by the other one. This could probably affect the harmony of sports and will attract ‘fixing of matches’ in sporting events. “integrity” is the essential element required for both betting and sports to co-exist. Sports betting must be conducted in a fair and open manner keeping bad elements away from it. If looking back at history it can be concluded that man has always been ravished by gambling. In Indian history, there are many incidents of gambling and the most revered epic the ‘Mahabharata’ point to the practice of gambling and the evil attached to it. It develops greed in man and alters his thinking from doing hard work to earning by chance. His dependability on luck increases rather than doing hard work. Betting and gambling give a man a chance to

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earn irregular money in a short time without doing hard work. This encourages the dream of the rapaciousness of men. It tempts man away from an honest day's work and has therefore been considered immoral in religious faith and for that reason is steered cleared off by society. "It eats the heart out of honest labor" was commented by the Times in 1890. The impression is made that life is operated by chance and not by laws. Gambling and betting may sound like evil trap but it is not if the player knows how to play them patiently and smartly. Societies' perspective towards gambling has changed but Indian laws have failed to emulate them.

## LEGISLATION IN INDIA

In this article, whether betting should be legalized in India will be discussed, and the current scenario of Indian laws should be examined. Entry 34 of the state list mentions betting and gambling. Being a part of the state list, betting and gambling is governed by state governments. The state has the only power to make rules and regulations regarding betting. Before the commencement of the constitution, betting, and gambling were governed by the central legislation under the public gambling act, 1867 which governed the aspects of gambling in various territories of India. After the independence and after the constitution came into existence various state drafted, there on regulation regarding betting and gambling but some state still holds the Public Gambling Act, 1867 via article 252 of the constitution as a regulating act of gambling. Section 12 of the public gambling act states 'nothing in the foregoing provision of this act contained shall be held to apply to any game of mere skill wherever played.'<sup>1</sup> The act makes a clear distinction between a 'game of mere skill' and a game of chance.'

'Game of skill' is a game where the result is determined by mental or physical skill rather than by chance. A game of chance is a game in which the outcome is determined by the practical observance of skill. A game of chance and a game of skill is distinguished on the basis of dominating element that eventually determines the result of the game.<sup>2</sup> In the case of State v. Gupton,<sup>3</sup> it was held that any athletic game is not a game of chance. A person can apply his skill by judging the strengths and weaknesses of a person in the game he is playing; his form can be determined from statistics and a psychologist will even be able to determine the body language of a person when he is playing. This makes an athletic game different from a game of chance.

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<sup>1</sup> Public gambling Act, 1867

<sup>2</sup> Poe v. Lovin, 179 N.V.164.

<sup>3</sup> State v. Gupton, 30 N.C.271.

## TAX AND REVENUE

Legalizing betting will not only help in breaking off sources of black money but will also generate a good amount of revenue for the state exchequer. If looking at stats, cricket has gained the most popular among various other sports. If analyzing betting in cricket only, an estimated amount of Rs. 720 crore was bet on average One day internationally anywhere in the world. In the first half of 2022, over \$1.8 billion was generated from taxes by the UK gambling act.<sup>4</sup> \$168 million in revenue was generated in the first three months of the activation of sports betting in Ontario.<sup>5</sup> \$6.6 Billion in taxation was revenue in Australia in all its gambling sectors. Approximately \$773 million from casinos, and \$3,669 million from hotels and clubs, in direct tourism gross value added to the economy. Employment of approximately 221,800 people across Australia was generated in the gambling sector, paying just over \$11 billion in salary wages.<sup>6</sup> The formulation of rules and regulations for many modern games can be attributed to sports betting. If the government considers the above arguments provision to tax sports betting can be made as it taxes horse racing. under entry 62 State list, the state government is competent to make rules and regulations to tax betting and gambling. The rate of tax on horse racing in the state of Tamil Nadu has been assessed at 20% of the money earned through sports betting.<sup>7</sup> Further, the income earned through such betting is liable to be taxed under clause (ix) of section 2(24) would include 'any winnings from lotteries, crosswords puzzles, races, including horse racing, card games and other games of any sort or from any gambling or betting of any form of nature whatsoever.' Explanation 2 to the same would cover card games and any other game of any sort. Thus, the income from betting is liable to be taxed in all cases. Section 115(BB) of the Income-tax act would govern the rate of taxation for the same, which would impose a rate of 30% tax<sup>8</sup>. Legalizing the betting by the government would in one way curb the illegal betting market and corruption associated with it and additionally will provide revenue to the government which could be utilized to better sporting infrastructure in the country. If considering the data from past reports a surge can be seen in employment in the sector created

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<sup>4</sup> <https://www.jpost.com/special-content/uk-gambling-industry-generates-over-18b-from-taxes-through-first-half-of-2022-725459#:~:text=About%20Us-,UK%20gambling%20industry%20generates%20over%20%241.8B,through%20first%20half%20of%202022&text=Gambling%20has%20been%20a%20prevalent,gambling%20and%20sports%20betting%20operators>.

<sup>5</sup> <https://globalnews.ca/news/9098535/report-states-sports-betting-in-ontario-produced-162-million-in-revenues/>

<sup>6</sup> <https://austgamingcouncil.org.au/fact-centre/economic-contribution>

<sup>7</sup> D.R. K.R. Lakshmanan v. state of Tamil Nadu (1996) 2 SSC 226

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[https://incometaxindia.gov.in/Acts/Finance%20Acts/1986/10212000000036289.htm#:~:text=\(ii\)%20the%20a mount%20of%20income,meaning%20as%20in%20section%2074A](https://incometaxindia.gov.in/Acts/Finance%20Acts/1986/10212000000036289.htm#:~:text=(ii)%20the%20a mount%20of%20income,meaning%20as%20in%20section%2074A)

by betting in various nations. According to a 2017 report by the U.S. Bureau of Labor Statistics more than 120,000 people were employed by the private gambling sector.<sup>9</sup> More than 1 lakh people were employed in the gambling sector in the U.K. in a country like India where unemployment is the trending issue amongst youth. Legalizing sports betting would surely create employment opportunities.

## **RULES AND REGULATION**

For legalizing sports betting government needs to take some recommended steps and consult with various authorities from the central and state levels. A supreme court committee of justice retd. R.M. Lodha has suggested some reforms in the structure and functioning of the Board of Control for Cricket in India (BCCI). In that report, the legalization of sports betting was suggested. The committee was appointed in wake of a spot-fixing scandal in the Indian premier league (IPL). The Lodha committee<sup>10</sup> in its report stated its belief in legalizing betting in cricket and its influence on players and officials. The committee's recommendation includes the legalization of betting in cricket and its role in curbing corruption in cricket. It expressed its view and suggested some ways to regulate betting and one of its recommendations states that all people should be allowed to place bets except the players and officials. The report made a clear distinction between betting and fixing, favoring the legalizing of betting and criminalizing the fixing.

In 2018, the Law Commission of India<sup>11</sup> chaired by Justice B.S. Chauhan submitted its report, examining whether betting may be legalized in India. The commission noted that it is difficult to stop gambling even after the presence of various rules criminalizing them. So, it would be much beneficial to regulate them and get the revenue for the development of sports infrastructure in the country.

Some measures which may be taken are:

- Although betting and gambling are state subjects parliament can enact a model law that the states may adopt also, parliament is competent to make legislation in national

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<sup>9</sup> <https://www.bls.gov/opub/ted/2018/over-10000-employed-in-private-gambling-industries-in-california-and-indiana-in-2017.htm>

<sup>10</sup> [https://gujaratcricketassociation.com/wp-content/uploads/2020/01/Lodha\\_Committee\\_Report.pdf](https://gujaratcricketassociation.com/wp-content/uploads/2020/01/Lodha_Committee_Report.pdf)

<sup>11</sup> <https://prsindia.org/policy/report-summaries/legal-framework-gambling-and-sports-betting-including-cricket-india>

interest under Article 249 or under Article 252 which states that the parliament can make law if two or more states consent to it. Parliament has the competence to make the rules and regulations for online betting and gambling.

- It was recommended by the commission that betting and gambling should only be permitted by licensed operators from India. A limit on the number of transactions by participants can be put for a specific time period i.e., monthly, half-yearly, or yearly. This step would stop participants from overspending money on betting. The transaction should be totally cashless and a penalty should be imposed for cash transactions. Aadhar card and pan card must be linked to the account of participants and operators for transparency in the system. Tax must be imposed on the income earned from betting and gambling under the income tax act, 1961, and other relevant acts.
- Certain classes of people should be barred from participating in online or offline gambling and this includes minors, players and officials of sports, and those people who do not fall within the purview of the Income Tax Act, 1961, and Good and Service Act, 2017.
- The commission recommended the amendment to the foreign exchange management act, of 1999 and the foreign direct investment policy to encourage investment from foreign firms in casinos and the online gaming industry and for other purposes. It would thrust the tourism and hospitality industry and would also lead to higher revenue and an increase in employment opportunities.
- Under the Information Technology Rules, 2011 intermediaries were banned from hosting or transmitting content relating to or encouraging gambling. It was recommended by the commission to put the bar on only those intermediaries which illegally transmit or host content related to gambling. This will ensure that intermediaries are not held liable in states which license gambling.
- The commission recommended that match-fixing and sports fraud should be made criminal offenses with severe punishment.

## CONCLUSION

As it can be concluded that sports betting is not a game of chance but a game of skill and falls within the purview of the Public Gambling Act, of 1867. Betting is present in India and a lot of money is generated from it, which is only boosting corruption, black money, crime, terror financing, and various other criminal activities. To curb such crime syndicates government

should legalize sports betting. Legalizing it would aid the government in getting high revenue which could be used for building good sporting infrastructure and facilities for sports utilization. As can be observed from reports of various nations which has legalized betting on their soil about how much revenue they are making. As far as it is concerned, legalizing betting would boost revenue and will curb criminal activities. Betting is legalized in various developed nations and a reference from their policies can be taken to form regulations regarding the legalization of betting.

