

**CRITICAL ANALYSIS OF ONLINE BETTING IN INDIA AS A  
CYBER OFFENCE**

**A DISSERTATION TO BE SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENT FOR THE AWARD OF DEGREE OF MASTER OF LAWS**

**SUBMITTED BY**

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## **LIST OF ABBREVIATIONS**

AC - Appeal Cases

AIR - All India Report

Art –Article

Bom- Bombay

CWP – Civil Writ Petition

CSR – Corporate Social Responsibility

CPC - Civil Procedure Code

Del – Delhi

Id- Immediately preceding citation

Ibid - Ibidem: in the same place

ILR - Indian Law Report

PC - Indian Penal Code (1860)

Ltd – Limited

SC - Supreme Court

SCC - Supreme Court Cases

Supra - Earlier cited

Vol – Volume

Vs – Verses

Sec – Section

ITA - Information Technology Act

NRI - Non Resident Indian

Sch– Schedule

SLP – Special Leave Petition

Co. – Company

ICA - Indian Contract Act

PGA – The Public Gambling Act

## **TABLE OF CASES**

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# CHAPTER-1

## 1. INTRODUCTION

When it came to celebrating important events or just having fun on a regular basis, gambling in ancient India was always considered a social pastime for enjoyment. Gambling has a long history in India. Gambling has a long and well-documented history in the country, with references to it occurring in numerous ancient literature. In ancient times, there was no distinction between what was considered game play and what was considered gambling. Excavations at Harappan revealed the presence of dice and gaming boards, demonstrating the city's existence as far back as 1000 BC. Even the Rig Veda has a hymn titled "Gambler's Lament," demonstrating the song's popularity throughout the early IndoAryan civilization in which it was written. In fact, according to Hindu mythology, each of the four sides of a four-sided dice is named after one of the four yugas of the earth.Significance of the Game of Dice in Mahabharata

The Mahabharata, Sanskrit's longest epic, tells the narrative of two sets of paternal first cousins who became bitter adversaries. The struggle for Hastinapura's crown is the central theme of the epic. The Kauravas and the Pandavas are two of the family's collateral branches who are involved in the conflict. The Kauravas were the hundred sons of Dhritarashtra, the blind king, while the Pandavas were Pandu's five sons. Yudhistira (eldest son), Arjuna, Bhima, Nakula, and Sahadeva were five brothers who were always respectful and dutiful. Draupadi was one of the Pandavas' five wives. In many respects, the Kauravas were cruel and wicked towards the Pandavas. In a game of dice, they took advantage of the eldest Pandava, Yudhistira. Yudhistira, who now lives in the new region of Indraprastha, transforms his poor kingdom into a prosperous kingdom and proclaims himself King of Kings. During his visit to the splendid palace, Duryodhana, the eldest of the Kauravas, is jealous and humiliated. He mistook a glass floor for a pool, then fell into one. Draupadi and Bhima both make fun of him. He returns home determined to plan their demise.

### 1.1 Game of Dice

Compulsion to gamble was shown in the Mahabharata, in which Duryodhana takes his uncle's advise, the clever Sakuni, a skilled dice player, and invites Yudhistira to a dice game. They are

well aware of Yudhistira's one flaw: gambling. Vidura is sent to Hastinapura to ask the Pandavas to join a dice game there. The invitation is accepted by Yudhistira. Both Dhritarashtra and Yudhistira disregard Vidura's caution to stay away from the game, which could have disastrous consequences. Sakuni was certain that he could easily vanquish Yudhistira, allowing Duryodhana to achieve his nefarious goal of outdoing the Pandavas. Yudhistira stakes his money, jewellery, Indraprastha, and his brothers' valuables one by one at the dicing event, and loses one by one. At each stage, Sakuni mocks and provokes Yudhistira, demanding to stake. As a result, he loses his brothers Nakula and Sahadeva. Then Sakuni mocks him, saying that while those are his stepbrothers, Arjuna and Bhima are not, and he will not bet them. As a result, Yudhistira is forced to stake Arjuna and his liberty at the stake, as Sakuni demands. Yudhistira is insulted again to stake Draupadi at this point of his entire defeat, including himself. Draupadi is staked and lost by Yudhistira. When Yudhistira staked her, the gathering erupted in laughter. When Draupadi was forced and taken in front of the assembly, she questioned the validity of staking her. Her inquiries elicited favourable responses. Surprisingly, Vikarna, Duryodhana's younger brother, rallies in support of Draupadi. He boldly claims that Yudhistira is persuaded to play Duryodhana and Sakuni's intricately devised game. And that Draupadi cannot be staked by a lost Yudhistira. The assembly backed him up. Karna, on the other hand, silenced him by claiming that he was too young to speak before the others in the room. Duryodhana chastises Draupadi in the open court and encourages her to sit on his leg while patting and baring his thigh. He commands Dussasana to strip her naked in front of the court. Dussasana starts to do the act. Draupadi, however, cannot be bared. To whatever extent the clothing are dragged by Dussasana, she is bestowed with the divine grace of being in fresh dress. Dussasana, the powerful asana, fails and becomes weary. The Assembly is taken aback by the miracle. Bhima swears that he will tear open Dussasana's heart and consume his blood, as well as breaking Duryodhana's thigh, on which Draupadi was tauntingly invited to sit. By the heavenly favour, the indestructible Draupadi made Dhritarashtra even more terrified of the Pandavas. He begs Draupadi's forgiveness and releases everything that happened throughout the dicing events. Sakuni and Duryodhana, disgusted with Dhritarashtra's actions, plead with Dhritarashtra for another dice game with Yudhistira. Yudhistira is defeated again in the second dicing event, and is forced into exile for 12 years. The restriction is that they must dwell in the woods and complete the 13th year in disguise without being discovered. If they are discovered during their

disguise phase, they must repeat the 12 years of exile in the forest and the 13th year in disguise. The Pandavas began their exile in the forest after losing in a deceptive gambling game and being ridiculed by the Kauravas. Vidura advised Yudhistira to keep mother Kunthi at home because she was old and frail. Yudhistira concurred. Draupadi, on the other hand, went to the wilderness with her husbands. Both Hastinapura and Indraprastha became de facto rulers under Duryodhana. The Pandavas are not alone in the forest; several faithful Brahmans and attendants accompany them. The gods provide them with an endless supply of food for everyone. The Pandavas arrived at Kamyak woodland and decided to take a break there. Krishna appeared to assist them. He counselled Pandavas to remain attentive and not lose heart after inquiring about their well-being. The hardship they were put through was for their own good. Good and negative experiences are necessary for proper perspective and life fulfilment. Suffering and sadness elicit the necessary sense of renunciation required to pursue a greater aim in life. The fate of the Pandavas was settled by a dice game. Due to their defeat in the game, they had to endure hardship and pain. Yudhistira's temptation resulted in that unexpected outcome. Draupadi, his wife, and his younger brothers were all victims of the ordeal. Another unfortunate outcome of the dice game was the fate of the Kauravas.

## **1.2 Why a Game of Dice**

India's religion and cultural history includes dicing. When it comes to myths and rituals, dicing appears to have a specific significance. Dicing is also a feature of Deepawali, the Hindu New Year. Besides the traditional Pujas and festivities, there is a lot to look forward to in terms of gaming. Gambling is one such practice that has evolved into an annual competition between friends, families, and relatives throughout time. The explanation behind this has a lot to do with Hindu mythology and has a fascinating backstory. Goddess Parvati, according to legend, was the first to start playing a game of chance with Shiva, her spouse. There are various versions of this narrative, but the original one is more than a game of chance. It takes on a story of consolidating elements that wish to play against one another with the final product prompting a victor and a failure. The two people who play address the creation and obliteration of thoughts and drives, something inherently a piece of the human brain throughout recent centuries. Parvati and Shiva participate in a type of joke over a round of dice. Shiva lost more often than not and was likewise blamed for cheating by Parvati. Being the victor notwithstanding, Parvati proclaimed that the

people who play dice on the propitious day of Diwali would find success and prosperity consistently. This normally has finished into a deep-rooted custom of messing around of chance on propitious events.

This story was combined with the idea of inviting Durga, who is an indication of monetary thriving in all families. Dice was supplanted over the long haul with different games with money related stakes however the story and favorability behind its starting point continued as before. Presently games have become the overwhelming focus. Famous games incorporate Rummy, Teen Patti, Blackjack, Bluff, and even Poker. Parties are known to be coordinated such that helps keep the money-related stakes high and permits individuals the breathing space of contending with negligible limitations. Such gatherings are typically restricted to loved ones as betting essentially is unlawful in India. Police have likewise gotten serious about betting gatherings consistently as they are a wellspring of a few criminal operations separated from illegal money-related exchanges. Playing games for cash goes under betting and thus, a great many people keep their games as hidden as could be expected. In any case, it proceeds to flourish and endure many years across India in different structures and under different occasions.

This is an excellent illustration of irresponsible gambling. Gaming's role in generating revenue is not new; during Kautilya's time, gambling was regulated by the state, which charged a 5% tax on all winnings. By the 15th century, gaming had been organized by the king, who took a cut of all legalized gambling institutions' profits. People used to gamble on bullfighting, cockfighting, goat fights, and other such events during the time. During some animal battles, they attached blades to their heads to injure one other. The combat continues until one of the animals dies or is defeated, at which point the bet sums are paid out. Gambling has been outlawed in its totality in Manusmriti, Verse 221, due to the potential for it to bring a kingdom crashing down around it. It also called for the penalty of anybody who participates in the game or gives a possibility for it to take place.

The rules governing gambling in India have evolved in tandem with the passage of time and the growth of the legal system in the country as well. Gambling has progressed in tandem with the development of new technology, particularly with the expansion of the IT sector. Mobile phones,

fax machines, and the internet are all used to place lottery bets. Networks connect gambling hosts, and money can be transferred quickly and easily using net banking. Television and radio have both played stock market lotteries. Satellite-based live telecasts have made betting on cricket, hockey, and football conceivable. Many middle-class people enjoy their television viewing by placing bets over the phone or fax. Everyone believes that their behaviour is personal, private, and not socially unacceptable. Initially during British control, Section 290 of the Indian Penal Code of 1860 served as the sole provision in the criminal code that could outlaw any gaming activity if the conduct had an adverse effect on and disturbed the public interest. Section 290 was repealed in the Indian Penal Code of 1956. With such unclear criteria for regulating gambling, the Public Gambling Act was enacted in the year 1867 to regulate the activity. The original intent of this Act was to suppress public gambling in big towns located within the various regions under the jurisdiction of their respective governments, without resulting in persecution or other malpractices on the part of the police force.

Antigua and Barbuda's Free Trade and Processing Act was enacted in 1994, allowing groups wanting to create online casinos to be granted licenses to do so. Micro gaming, an Isle of Man-based programming company, was the first to develop a functional betting software prior to internet club. This was protected by Cryptologic, a company that develops internet security software. Main online club was founded in 1994 once safe trade became practicable. When the Kahn awake Gambling Commission was established in 1996 in the Mohawk Territory of Kahn awake, it was tasked with regulating internet gaming and awarding gaming licenses to a substantial percentage of the world's online clubs and poker rooms. This didn't go down well. In 1999, a new kind of online gambling was introduced: multiplayer. This was the first-time people could gamble, visit, and communicate with one another in an intuitive online environment on their own. Any online clubhouse that had not been permitted and operating before to May 2000 was made illegal in 2000 by the main Australian Federal Government's Interactive Gambling Moratorium Act.

Lasseter's Internet became the primary online clubhouse that could legally operate in Australia; nonetheless, they are not allowed to accept wagers from Australian people because of the new statute. Despite the enactment and claim challenges that online gambling would continue to receive, the estimated number of people who had participated in web-based betting had risen to 8

million by 2001. Overall online gambling revenue was estimated at \$21 billion by H2 Gambling Capital in 2008. In 2016, Statista predicted that the web-based betting market will grow to \$56.05 billion by 2018, with a volume of \$45.86 billion.<sup>1</sup>

*“The Internet has paved the way for new types of betting to emerge. Innovation has revolutionized betting habits in the same way as video lottery terminals, keno, and scratch cards changed the betting industry in the mid-twentieth century. The National Council on Problem Gambling (NCPG) is an organization that works to prevent and treat problem gambling. Gambling has turned out to be*



*a standout amongst the most famous and profitable businesses on the Internet. According to the UK Gambling Commission, the betting industry had a turnover of more than £84 billion in 2007.”* This is only partially due to the large number of betting options available to appeal to a diverse group of people. (From the National Council on Problem Gambling.) According to an article by Darren R. Christensen, Nicki A. Dowling, Alun C. Jackson, and Shane A. Thomas, a study conducted in Australia found that lotteries (46.5 percent), keno (24.3 percent), instant scratch tickets (24.3 percent), and electronic gaming machines were the most widely recognized types of betting (20.5 percent ). Because of their ability to generate large assessable money streams, most lotteries are regulated by governments and are strongly guarded against competition. *“The primary online lotteries were run by private individuals or organizations and were permitted to operate by small governments. Most private online lotteries have ceased trading as governments enacted new legislation to provide themselves and their own lotteries more security. Government-run lotteries now provide their games over the internet.”*<sup>2</sup>

Gambling , betting and online gaming are one of the quickest developing zone on the internet. Reports show that online games and gambling or betting have been utilized to perpetrate wrongdoings, including the trade, fraud, betting in virtual online casinos, online betting in sports,

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<sup>1</sup> Pawar, Sakshi, Naman Lohiya, *Legalising Online Sports Betting in India: A Gamble unto Itself*, INDIAN JL & PUB. POLY 4, 35 (2017).

<sup>2</sup> K. Ramesh, *Bad regulations could play spoilsport for online gaming*, NLU Delhi: Vidhi Gyan Snagrah, <http://14.139.58.147:8080/jspui/handle/123456789/4947> (2021).

betting in horse race etc. The Guide line of betting over and outside the internet differs between countries, a provision that has been misused by guilty parties, just as legitimate organizations and gambling clubs. It is tough for law requirement organizations to decide with betting limitations to control the utilization or exercises of online gambling clubs. The internet is disrupting a few nation's legitimate limitations on access by residents to web based gambling.

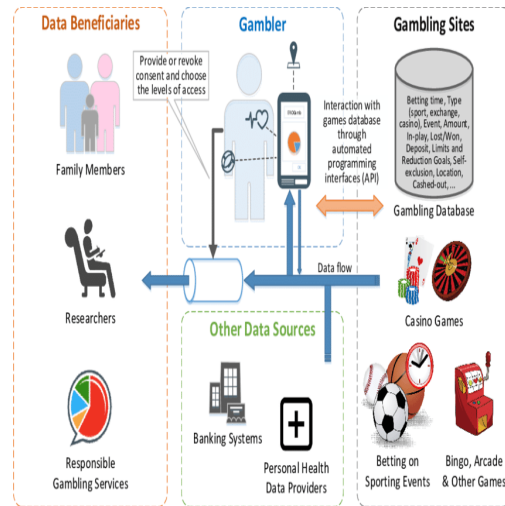


## CHAPTER -2

### 2. OVERVIEW OF GAMBLING AND BETTING IN INDIA

#### 2.1 Introduction

Online gambling is any kind of gambling conducted on the internet. As previously said, gambling is an antiquated idea in India and is thus outlawed by law. As a result, the Indian Constitution has expressly delegated legislative authority to the Centre and the States in the area of gambling. Online gambling includes virtual poker, casinos and sport betting. The first online gambling venue opened to the general public was ticketing for the Liechtenstein international lottery in October 1994. As a



consequence, the local government have the power to enact laws pertaining to gambling and gaming laws, which has resulted in the creation of a plethora of legislation in their different areas. In reality, quite a lot of local governments have made gambling illegal in their jurisdictions, and others have explicitly legalized the activity. However, when it comes to internet gambling, Indian legislation is deafeningly mute. At the moment, the Information Technology Act, 2000 (IT Act) is in charge of regulating cyber operations in India. Despite the fact that online gaming is not specifically mentioned, it is stated in Rule 2(b) of the IT Intermediary Rules that intermediaries need to exercise due diligence and tell their customers to refrain from hosting, displaying, uploading, modifying, publishing, transmitting, updating, or sharing any information.<sup>3</sup>Of a short understanding of the wording in the IT Rules, it seems that any cyber activity that motivates online gambling is not legal under the rules. India has astonished and substantial history with gaming. Betting during Diwali (an Indian celebration).

Many countries restrict or ban online gambling. However, it is legal in some states of the United States, some provinces in Canada, most countries of the European Union. The intermediary

<sup>3</sup>Rana, Nripendra P., et al., *Adoption of online public grievance redressal system in India: Toward developing a unified view* 59, COMPUTERS IN HUMAN BEHAVIOR 265, 281 (2016).

should take care of informing its users of the existing rule; but, when it comes to putting the rule into effect, problems crop up since, in a virtual world, the distinction between jurisdiction and laws might be difficult to discern. On the other hand, internet gambling is expressly prohibited in Delhi, but it is permitted in Goa. In accordance with our law, every local government has the authority to establish regulations governing gaming.

As a result, Goa's argument for allowing online gambling and generating money by leasing out its gambling platform is legally sound. Additionally, IT Act and the Rules implementing it are both fundamental legislations that specifically specify that online gambling and the encouraging of such gaming should not be permitted. Thus, there is an obvious conflict between Central Rules and a State legislation, as well as a great deal of uncertainty in the subject matter.<sup>4</sup> In India, sports betting, particularly on cricket, is a thriving illegal betting sector. In 2016, almost Rs. 2500 crore (nearly \$375 million) was wagered on one India-West Indies cricket match, while nearly Rs. 30,000 crore (nearly \$4.4 billion) was wagered on the 2016 T20 Cricket World Cup.<sup>5</sup> In 2016, the Supreme Court of India ordered the Law Commission of India to investigate the best strategy to deal with illicit gambling in India. The Law Commission of India<sup>6</sup> stated in its 2018 report that "because it is not possible to totally avoid these acts, proper regulating remains the only feasible solution." Before the declaration of the constitution of India, betting in India was represented by the Public Gambling Act 1857. The Public Gambling Act 1857 and the Betting Act 1853, established by the Parliament of the United Kingdom. The Indian Public Gambling Act 1857, which prohibit public betting and the keeping of the normal gaming, made an exemption for talent based games.

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<sup>4</sup>Schenk, Erin Gardner, *Betting on Bowlers: This Just Isn't Cricket* 43, DENV. J. INT'L L. & POL'Y 92 (2014).

<sup>5</sup>Wallets Grew Lighter as Hope Stayed Alive Till the Very End Kochi: *Economic Times*; 2016.

<sup>6</sup>Legal Framework: Gambling and Sports Betting Including in Cricket in India, Report No. 276. 2018. <http://www.lawcommission.nic.in>

## 2.2 What is Online Gambling ?

Online gambling is participating in gambling activities through the internet by placing bets or wagers on games and events to win money or prizes. It can be played on various devices and involves virtual chips or digital currencies instead of cash.



The global online gambling market was valued at USD 63.53 billion in 2022 and is expected to grow at a CAGR of 11.7% from 2023 to 2030, with the Asia-Pacific region being the largest market.

There are different types of online gambling, including blackjack, casino games like slots, sports betting, roulette, poker and lottery. It is regulated in most countries, including India, with varying degrees of restrictions and laws.

The Public Gambling Act, 1867 is an old act and does not contain any laws regarding online/internet gambling or betting. There are many online betting agencies that entice gamblers to place bets using the internet. In order to regulate and restrict online gambling in India, the reserve bank of India was authorized under the payment and settlement act 2008 to operate or start a payment system for regulating electronic payment mechanisms of all kinds in India. FDI policies have also restricted enterprises to get involved in betting lottery and gambling activities. IT intermediary guidelines rule also block access to certain types of websites and content relating to gambling.

Therefore the IT act 2000 regulates cyber activities or online gambling in India in a way it gives the Indian Government the power to block or instruct foreign betting games and sites. It can be concluded that there is no explicit law that makes online betting and gambling an illegal activity in India. Theoretically, it is allowed to bet on these leading casino platforms online without running the risk of getting punished for the same.

The most significant obstacles that gamblers may face in India or due to the payment portals as the RBI has instructed the banks and payment gateways not to process transactions that are related to online casino sites or gambling.

### **2.3 Different Types of Gambling and their Legality**

- **Gambling in Casinos**

Gambling in a casino is said to be outside the legal ambit of illegal “gambling” and is regulated by the Public Gambling Act. However, only two states: Goa and Sikkim have legalized casino gambling to a limited extent, where only five-star hotels can acquire licenses approved by the state. Goa has also allowed casino gambling on the board of an offshore ships.

- **Sports/Horse Race Betting**

The Supreme Court has held that betting on horse racing was a game of skill. Most of the Gaming Enactments have carved out an exception for betting money or wagering upon horse racing. However, certain conditions are levied upon horse racing for it to be exempted under the gaming enactments. These conditions include that such betting shall take place on the specific day when the horse has run and in an enclosure sanctioned by the state governments etc.



Turf clubs regulate betting on physical horses within their premises. Apart from the rules set by the Government and Enactments, independent turf clubs set their own rules as well.

Online betting on real horses would also require the conditions prescribed under horse racing exemption to be met. Bengaluru and Calcutta turf clubs has recently (during the COVID-19), received permission from their respective state governments to offer online betting on horse races conducted in turf clubs.

As far as sports betting is concerned, only the state of Sikkim permits it. Under the Sikkim Act, an operator must obtain a license to offer such games in the State. These games can be offered through the internet only within the state of Sikkim.

- **Cricket Betting**

No gambling laws strictly and outrightly prohibit Indian from betting on cricket, however, the Central Government looks at betting as a game of chance and not that of skill (like in horse racing). After post-2013 spot-fixing scandal it was recommended by the law commission to the central government to legalize betting in India but, under control. The main reason for this was



to curb money laundering. However, since internet gambling is a global business and the Indian laws do not have jurisdiction over foreign websites, the government has set certain practices in place in order to make the use of these websites difficult.

- **Poker**

It is generally argued that certain types of variations of poker are games of skill and not of chance, for the purpose of the Gaming Enactments. Therefore, such games are and should be permitted as per the Indian States (to the extent that they fall under games of skill).

The Nagaland act specifically categories poker as a game of skill. Similarly, the State of West Bengal has specifically excluded poker form the ambit of “gambling” under the West Bengal Gambling and Prize Competition Act 1957. When poker is played as a game of skill, a license is not required under the Karnataka Police Act, 1963, as per the Karnataka High Court. However, the High Court of Gujarat has held that poker is a game of chance and is thus currently prohibited in the State.

- **Bingo**

Bingo may or may not fall under the category, or within the ambit of lottery or betting / gambling under most Gaming Enactments, since these are considered a game of chance and thus banned in most states in India.

- **Lotteries**

The Central Lotteries Regulations Act 1998 governs government lotteries. State governments are authorized under this act to hold lotteries and to frame rules and regulations that should not intervene or contradict the central lotteries act. The drawing of lotteries is restricted to one draw of lottery a week . However many Indian states have been permitted to open lottery terminals in abundance where draws take place even every 15 minutes Sikkim is one such popular state known for its gambling terminals and its regulatory framework. Sikkim has a constitutional right under the seventh schedule allowing it to create its own laws for all kinds of gambling and is thereby permitted not to follow the Central Lotteries Act.

The State governments have the right to authorize lotteries within the jurisdiction and also lay down the tax clauses for the same, as per the lotteries regulations act of 1998.

For example: when a person plays poker online in India, tedious may be automatically deducted if they win, from their winning amount.

## **2.4 Application for a License and License Restrictions for Gambling in India.**

**Types of licenses may be required as follows:**

- **Casino:** Goa act and Sikkim casino Law State laws for offering casino products in five star hotels in Goa, Daman, Diu and Sikkim. However, licenses for offering casino products offshore in Goa dominant you are available under the Goa act.
- **Poker:** Most Indian states allow operators in India to offer skilled versions of poker without a license. However, Sikkim, Nagaland, Telangana, Andhra Pradesh and Gujarat licenses for poker may be required.

- **Betting:** If betting is a game of chance, it is prohibited in most Indian states. However, if betting is a case of casino games, the licenses for casinos will apply. In case betting is for sports a horse race then license for Sir James will be required.
- **Sports/Horse Betting:** if the betting is for physical horse races, licenses will be required for keeping such horses. However foreign horse races are not included in this. Betting on horse races online does not require licenses.
- **Fantasy Betting:** no license will be required if the fantasy sports game qualifies as a game of skill. However, under the Nagaland act license must be obtained for offering the said games in Nagaland.
- **Lotteries:** State government have the power under the lottery laws to appoint an individual or a corporate as a distributor or selling agent to market and sell lotteries on behalf of the organizing state. Private lotteries are prohibited in most Indian states under the Indian penal code.
- **Social Gaming:** most Indian states do not require any licenses for such games.
- **Skill Game:** only the state of Nagaland has active regime for licenses for online games of skill as per the Nagaland act. Most of the games of skill operate under the exclusion of such gambling games and most gaming enactments.

## **2.5 Features of Internet Gambling**

The use of digital forms of money like credit cards, electronic bank transfers and e-wallets is used in online gaming, betting and the increased gambling losses can lead to more expenditure which particularly is observed by gamblers who feel that they are not spending 'real' money. Survey predicts that 15% of people view online gambling or betting as more addictive form of gambling than land based gambling. Reports also show that the interruption of sleep patterns and change in eating patterns are more common in gamblers who are addicted to online gambling than those who are more addicted to land based gambling or betting. Treatment policy which includes formal help from professionals to reduce online addiction is very out of work which makes this small yet growing problem very serious. Internet gambling disorder involves high amount of time spending on variety of gambling forms. Research has found out that the Internet gambling is often found in those who have existing problems in gambling as compared to those gamblers which have no problems while gambling. Internet gambling or betting has played causal role for

people who have primarily started gambling and only gambles online have problem but with internet addiction, problems took a negative attitude and increased in frequency for those who had prior problems with gambling which could be called land based gambling problems (which doesn't include internet or online gambling activities)

## **2.6 Physical and Mental Health Comorbidities**

Researches have shown that, Internet gambling or betting is more prevalent in males, young adults and has people from varied cultural background. Population of young children are more exposed towards online gambling and betting problems and researches are to be started for risk minimization of the youths towards the problem. Psychopathological profiles or personality characteristics are identified for the people who are at the risk of developing Internet online problems. The profile of those who are at risk for developing internet gambling problems is likely to change as this mode of gambling will go mainstream and will be followed by many. Studies have shown that the level of physical and mental health comorbidities are high as well as alcohol and smoking consumption and with it substance abuse and change in mood pattern is found more in people addicted to internet gambling as compared to non internet gambling problems. It can be suggested that the clinical characteristics of the symptoms of Internet problem gamblers are similar to offline gamblers. Researches indicate that people who are involved in Internet gambling are also involved in activities which are usually high risk taking like drug abuse which is due to similar high level of impulsivity requirement for both the activities. Heterogeneity in both the group of Internet and offline gambling activities makes specific risk factors very difficult to identify.

Gambling online on unregistered sites and using many different accounts and online activities have been found to be predictive of higher levels of gambling problems. Internet gambling or betting is a medium for some individuals which has significantly contributed to the way gambling is done and has added to their addiction and gambling problems and internet gambling is more common among seasoned gamblers. It is a heterogeneous group of people where the mode of access of gambling which is usually internet and applications and other factors moderated by range of variables which can vary from individual to individual and with environmental and social factors. As the medium is evolving and fast growing, the youths who are now very much familiar with the new technology and other forms of e-commerce is likely in



the risk group where problems will emerge. Researches are to be initiated which can understand the impact of the internet as a medium by documenting the occurrence of the disorders and experiences around it. It is very important now to theorize new conceptual model to understand the trends of pathological gambling which are depicted by internet gamblers , and to understand what all new variables and relationship which can be predicted from this emerging gambling problem. New researches, are to be made towards understanding the characteristics and factors which can be used to identify those internet gamblers who are at the risk of getting caught in gambling researches are to be made towards understanding the characteristics and factors which can be used to identify those internet gamblers who are at the risk of getting caught in gambling related severe problems which is important way to understand comprehensively how people develop gambling problems.

## **2.7 Models to Understand online gambling behaviour**

The three perspectives, i.e., “**gambling theory, the availability heuristic, and repeated behaviour**”, will be taken into consideration to understand online gambling and betting, which the result of daily risk is taking activities which eventually becomes routine. To understand, the behaviour of the person involved in online gambling one has to understand that the probability that the person while continue the behaviour will highly depend on the previous outcomes, whether they have made profit or not and brought cumulative profit or loss.

- **Gambling theory**

The core characteristics of gambling is wagering of money with expectation to earn more money. Prospect theory is one of the theories which can be used to describe how individuals make decisions when they are feeling under conditions of risk .This theory states that people tend to avoid risks when they are winning but also tend to take risks when they feel they are losing the stakes. Thaler and Johnson (1990) proposed the extended version of prospect theory that intends to describe behaviour in the light of history of win or losses. They termed house-money effect which means that the prior gains will act as a cushion against a future loss, which makes people become moderate in spending and satisfy the urge to earn more and with it “break-even effect” attempts to say that people attempt to break even if losses are more and always attempt is made

to make the loss square with profit in next move. People, tend to avoid realizing that they are losing and thus they become risk takers in the domain of losses.

- **Availability Heuristic**

Immediate Gains and Losses is the main principle of the availability heuristic is that the individuals reach a decision which is based on what one can easily remember and that memory is biased on only those events which were stimulating and are understood as complete information and not those who are judgmental.

The availability heuristic implies that recent experiences which the individual face has a powerful influence on the decision-making process in various domains, which also includes gambling behaviour which refers to the situation that individual will have powerful influence from what he feels and experiences now. Croson and Sundali (2005) found from the study that winning a bet will significantly increase the probability of subsequent betting activities. The findings of such gambling or betting studies focuses that the gamblers respond as the availability heuristic predicts. Like offline gamblers, online gamblers are also sensitive to recent gains and losses. After winning, online gamblers will gamble more because fresh memory of success will lead them to overestimate the probability of winning in the next round. In contrast, online gamblers are presumed to play less after they lose because they assume their failure as a painful reminder of little chance of winning. It is important to note that the availability heuristic and gambling theory do not coincide in the domains of losses where one propose more bets after one loses but opposite in domain of availability heuristic. The researchers think that both the situation will work, but in different situation. Availability heuristic will work for short term losses and gambling theory on long term losses. General decision, making process are to be researched to get to the conclusion on how people make the general decisions in gambling or otherwise.

- **Repeated Behaviour**

Current Behaviour, Regular Use, and Extended Use Researches have shown that the past performance influence the subsequent performance of the event. As with many activities like

coffee drinking, shoplifting, lying etc. the Information system literature has pointed out that gambling is also found to follow a pattern where future behaviour of the person is predictable on the basis of his past behaviour. Online gambling is form of gambling which has all the characteristics of becoming a part of daily routine, because of its presence in exact same environment of daily lives of the individual and thus is easy to become routine and researches show that the highly predictable behaviour can be inferred from the past behaviour. Researchers say that the stable environment makes behaviour repetitive while in unfamiliar situations the probability is less. Regular and frequent online gambling can initiate a strong mental link with the routine and eventually into stronger relationship between the ongoing and subsequent gambling.

## 2.8 What is Betting?

Betting the part of gambling. Gambling is a general term and includes betting. Betting as a term validates the activity of gambling. It is a structured agreement and is most often used in areas of sports gambling. In the modern day and age, betting had become an agreement between two persons, where one predicts an outcome and places a bet and the other person forfeits the bet or pays up the agreed money to the other person.



There are no federal laws that prohibits online betting in India. A few states have made recently explicit laws against online betting. Ancient regulations like the Public Gambling Act of 1867 are still in place.

The Public Gambling Act has declared that any gambling which involves the act of putting money or betting for money or any other equivalent act as illegal. However, games, where skill is needed, are the only exception to the above rule and are legal in India.

- **Online Betting**

With many bookmakers constantly entering the Indian betting market, finding the best site for you can be hard. Sports betting is extremely popular, and finding the best platform to participate in is essential. With big sports like cricket being the most wagered in India players will be looking for a betting site with the best bonuses and software to give them the best online gaming experience. We have compiled a list of the best brands where players can bet on their favourite sports and potentially earn some excellent prizes.



When looking for the best betting site for sports betting users can expect to find generous bonuses and promotions and various game types to suit every player through the brands featured in this article. To find out more about each brilliant brand as well as their fantastic bonuses, keep reading.

- **Betting Sites**

Choosing the best betting site can be tricky, with so many fantastic sites to choose from. Players should be sure to look out for valid licensing as well as a range of great bonuses and game to ensure a top user experience. Players can rest assured that all listed sites are secure and reliable, offering only the best to their users. With these, you can learn how to bet on cricket, amongst other sports, too. Below is list of the top betting sites in India, so keep reading to learn more about each.

Top 10 Australian Bookies

Sports Bookie	Rating	Play Now
<b>WILL</b> THE HOME OF BETTING	★★★★★ Review	<a href="#">Bet Now</a>
<b>UNIBET</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>TAB</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>Ladbrokes</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>bookmaker.com.au</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>bet365</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>CENTREBET</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>CrownBet</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>betfair</b>	★★★★★ Review	<a href="#">Bet Now</a>
<b>betstar</b>	★★★★★ Review	<a href="#">Bet Now</a>

**Betway:** Betway is a well established betting site that offers both an online sportsbook and casino where players can access their comprehensive collection of betting markets in India,

including the most popular of them all, cricket. Founded in 2006, Betway is fully licensed by the Malta Gaming Authority and UK Gambling Commission, so users can rest assured that they are in good hands.

**Bet 365:** Bet365 boasts a ginormous sportsbook with popular sports across India, including cricket, football and basketball, various betting options and many other fantastic qualities to keep players enticed. Being one of the world's most popular bookmakers, bet365 offers its players a great selection of bonuses where users have the potential to earn some brilliant prizes.

**Rajabets:** As one of India's fastest-growing betting sites, Rajabets offers various sports betting platforms, including football, cricket and wrestling. Rajabets is one of the best cricket betting sites. Furthermore, users can expect to find some generous bonuses and rewards at the site as well as variety of payment methods to suit every player, including transactions and bets in rupees.

**1XBet:** Operating in over 134 countries, including India 1XBet is the destination for sports betting, casino and much more. The site itself is well-optimized and can suit mobile devices too if players wish to play on the go.

**Melbet:** Melbet is a top rated betting site in India. It has gained a high reputation by providing users with a vast range of betting options for all players, whether novice or expert. Some of the sports betting options it include like cricket, teen patti and esports.

**Pairmatch:** As one of the leading online bookies in India, Parimatch prioritizes its user's experience at its betting site by providing the best range of bonuses and betting markets with excellent rewards. Some sports like cricket, tennis and football.

**22Bet:** Is a popular choice amongst Indian Bettors, specifically those who favour gambling in rupees, as 22Bet accommodates this. It is bursting with sports betting markets for players to choose from, including tennis, horse racing and the extremely popular cricket. 22Bet is one of the best cricket betting sites in India.

**BetWinner:** It is one of the most prominent destinations for sports betting. BetWinner is a highly versatile site and flaunts various markets, including sports, online casino and bingo, so there is something for every player.

- **Legal Betting Sites In India**

Before players get stuck into their favourite betting site, checking the legalities before they begin gaming is essential. To avoid unsecured sites that may put a player at risk of fraud, it is necessary only to use legal betting sites in India. Players can rest assured, however as all sites featured in this article and recommended by us are entirely legal understanding of the gambling laws in India, we have explained them further below.

The laws surrounding gambling in India may appear complex, so it is important to understand what kind of betting is legal. Following the Public Gaming Act of 1867, gaming within a public houses is completely illegal and is therefore forbidden. This act is widely followed by many states in India apart from a select few. However, this act does not refer to online gaming of any kind, and therefore players in India can enjoy online gambling as, according to Indian law, it is not illegal.

Firstly, legal sites must be based off shore only, meaning they are outside the confines of any Indian laws. Another requirement to ensure a betting site is legal in India is that it must accept Indian rupees. The reason for this is so the site respects the guidelines of the Foreign Exchange Management Act. If you bet on the result of a horse race, football game, or other event, you give someone a sum of money which they give you back with extra money if the result is what you predicted, or which they keep if it is not.

- **Punishment for Online Betting**

The person who is services of online betting and gambling like cricket betting, horse race betting etc or online games like poker, teen patti, rummy with money or other stakes shall be punished with imprisonment for a term which may extend to 3 years or with fine which may extend to ten lakhs or both.

Further those persons violate the provision on advertisement for promotion or encourage people to play online gambling or betting or games of chance face punishment with imprisonment up to 1 year or with fine, which may extend to 5 lakh or both.

According to new law, in Tamil Nadu, any person who is indulge in online betting , gambling or game of chance with money or other stakes shall be punished with imprisonment for a term which may extend to 3 months or with fine up to 5000 or both.

## **2.9 Constitution of India**

In accordance with our Constitution, every citizen of the country can take up profession of their choice or engage in any occupation, trade, or business. It goes without saying that every career, trade, or industry that is considered as legal is granted this freedom. After the declaration of the Constitution of India and its passing on 26 January 1950, the issues relating to gaming were separated. Wagering and betting comes under the entry 34 of the State list (List II of the 7<sup>th</sup> Schedule). Entry 62 of the State list to make laws related to tax collection from betting and wagering. However, while the subjects of "betting and gambling" and their taxation fall under the purview of the states, as codified in the Constitution, there are some important Central laws on the topic of "betting and gambling."

Gambling (and only certain sorts of gambling) is legal in only a few of India's 28 states and eight union territories today. The lottery, horse racing, some card games, and casinos are the only authorized forms of gambling in India. Lotteries are legal in 12 states and 5 union territories, but illegal in the others; horse racing is legal in six states, and casinos are legal in two. In India, festivals and fairs provide popular opportunities for both legal and illegal gambling. Before the declaration of the Constitution, horse racing in India was authorized in the Bombay Presidency under the Bombay Race Courses Licensing Law 1912. Apart from this the British government in India used to run lotteries.

## **2.10 Laws Governing Gambling in India**

Some states moved toward banning online gaming activities within their territories, including Tamil Nadu. In February 2021, the state passed an amendment that made online gambling in the state illegal.

According to the High Court, this was unconstitutional as it violated and has fallen foul of Article 19(1)(g) of The Constitution. This part of the law states that people have the right to practice any profession or carry on any occupation, trade or business. The court also found that this wide ranging ban which includes the prohibition of online sports betting, online poker, online teen patti, and online rummy is extravagant and disproportionate to what the state desired to achieve, which was to lessen the rising gambling and betting related problems in the state.

Most of the gambling activities in India are under strict control. However, a few categories like horse racing and lotteries are an exception to this. Gambling in India is a state subject which means that only the state governments are entitled to formulate and govern such activities for their own states.

The Public Gambling Act 1687 also known as the Gambling Act is the general law that governs gambling in India. However, since the state legislatures as per the Constitution of India have been entrusted with the regulatory leeway to form State subject gambling rules, it is the State that formulates such laws as per the requirements of such State.

The Gambling Act is the central enactment that has been adopted by certain states in India and other states have formulated or enacted their own legislations to regulate and govern gambling activities within their own territory. Since most of the gambling legislations which have been enacted were done prior to the advent of online or virtual gambling or betting thus, the gambling legislations primarily refer to gambling activities in physical form. Since the times of British rule, many states in India have enforced the gambling act, thus prohibiting all forms of gambling and betting in their respective states. Goa and Sikkim were the only states that allowed gambling and betting subject to regulations made by these respective states.



- **Information Technology Act, 2000- An Analysis**

The information Technology Act, 2000 also known as ITA-2000 or the IT Act is an Act of the Indian Parliament notified on 17 October 2000. It is primary law in India dealing with cybercrime. Indeed, the IT Act is intended to "provide legal recognition for transactions effected through electronic data interchange and other forms of electronic communication, commonly referred to as electronic methods of communication and storage of information, to facilitate electronic filing of documents with Government agencies, and to amend the Indian Penal Code, the Indian Evidence Act, 1872, and the Banker's Book Evidence Act, respectively."

The Sikkim Online Gambling Act, additionally, regulates online gambling in Sikkim, which was formerly restricted to poker and casino such as blackjack, pontoon, bingo, poker, and baccarat. On August 1, 2009, this Act was enacted to make online sports betting lawful in Sikkim, subject to the operator obtaining a license issued by Sikkim. Hence, online sports betting through websites is now authorized only in Sikkim and nowhere else in India. Indeed, Sikkim hosts the servers for these websites. A similar situation exists in Goa, where the Goa, authorizes, with the prior approval of the local Government, any game of electronic amusement in fancy hotels, as well as table games, as may be notified, depending on conditions as the payment of variable and fixed fees.<sup>7</sup>

The Intermediaries Rules, which have been outlined under section 87(2) and section 79(2) the Information Technology Act, 2000. According to Rule 3(2)(b) thereof requires agents like network specialist, web access suppliers, web crawlers, telecom administrators to send any substance which identifies with or energizes bettings.

- **The Public Gambling Act ,1867**

An Act to provide for the punishment of public gambling (25 January 1867). In this Act- "Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person.

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<sup>7</sup>*Supra Note 5.*

Earlier Gambling was formerly universally recognised as a legitimate kind of entertainment, but now it is being used to make money. While gambling is regarded as a natural part of human nature, it remains a highly subjective matter, with public opinion on the subject fluctuating over time. Despite current laws against gambling, there is widespread underground gambling in India, which is widely known by everyone, including the government. Its industry has enormous potential in our country, and the Indian gambling business is now valued at \$60 billion dollars each year. Casino gambling, online gambling, skill games, and sports betting are all forms of gambling. The PGA is derived from the British Gaming Act and the Betting Act, both of which were passed in the United Kingdom. Wagering contracts were rendered unenforceable by both the British Gaming Act, and the Betting Act, which both repealed the Unlawful Games Act, 1541. The goal of the PGA was largely to penalise public gambling as well as the operation of common gaming-houses in public places. It is specifically stated in Section 12 of the PGA that the limits included therein will not apply to any game of purely intellectual ability.

The Constitution grants the states the authority to enact legislation pertaining to "betting and gaming." The constitutional structure being what it is, there can be no state Legislation on the issue unless and until the Parliament legislates by using its authority under Articles 249 or 250 of the Constitution, as applicable, or by using the power provided by Article 252 of the Constitution.

The Public Gambling Act, as a result of the exclusive power granted to Indian states to enact laws on "betting and gambling," as well as laws relating to their taxation, ceased to be Central Legislation, and as a result, it was no longer a law that applied throughout the entire territory of the country. According to the current regime, the only way that it may still be considered relevant is if it is accepted by state legislatures on their own initiative. As stated earlier, the Public Gambling Act is the main Act that governs public gambling in India. The Public Gambling Act is a Central law that prohibits running or operating public gaming houses. Any violation of the law under this act could attract a fine of Rs 200 or imprisonment of up to 3 months.

Understanding the Concept - Gambling is an activity in which one places a bet on something materialistic or monetary in order to gain something like, such as money or a prize. Gambling, in general, includes three components: 'Consideration,' 'Risk,' and 'Prize.' The Public Gambling Act of 1867 forbids the operation or management of a public gambling house and exempts games of pure skill from the Act's application. Additionally, this Act makes it illegal to enter gaming establishments. Gambling is not regarded a crime unless it is done in a public area or at a common gaming establishment. It is not a common gaming house simply because friends and acquaintances get together on occasion to play cards and sometimes for money.

**Prohibitions of this Act :**

Owing, keeping, occupying, or having care and management of a gaming house/common gaming house.

Gambling in a common gaming house or being present for gambling in a common gaming house.

Furnishing or advancing money for the purpose of gambling to persons frequenting any such gaming house.

Many kinds of gambling are prevalent in India and have been practiced in India for many years. Casino gambling, sports betting horse racing, lottery, online gambling, school games et cetera are some of the kinds of gambling practiced in the country. The legal position on gambling in India has been divided into two diverse categories that is games that involve skill and games that involve chance.

Landmark cases which set the legal precedents and defined gambling in India are:

1. <sup>8</sup>RMD Chamarbaugwala vs. Union of India, 1957 –

The case hearing resulted in the Supreme Court drawing a clear distinction between games of skill and games of chance, and holding that games requiring a certain level of talent would not be considered gambling. "Competitions where success depends on a substantial degree of skill are not 'gambling,' and despite the

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<sup>8</sup>AIR 1957 SC 699

presence of an element of chance, if a game is preponderantly a game of skill, it would nonetheless be a game of mere skill," according to the Court; thus, skill games are exempted from the definition of gambling and are not prohibited.

2. <sup>9</sup>Dr. K.R. Lakshmanan vs. State of Tamil Nadu, 1996 –

The Supreme Court recognised that horse racing was a skill-based activity and did not fall under the ambit of gambling, which explains why betting on horse races is not forbidden while other forms of gambling are. The three-judge bench went on to say that a horse's ability to win is decided by a number of circumstances, including the horse's training and those of his rider (a jockey), the horse's lineage, the nature of the race, the horse's health, and so on. As a result, the topic of illegitimacy has been removed from the equation, and the legal status of horse racing has been clarified.

3. <sup>10</sup>State of Andhra Pradesh vs. K. Satyanarayana, 1967

The Supreme Court's decision in this case distinguished rummy from other "three-card" games, recognising rummy as a game of skill rather than a game of pure chance, regardless of the format, venue, or stakes involved. There are some state betting and gaming statutes that take precedence over the Public Gambling Act of 1867. As a result, the Assam Game and Betting Act, 1970, the Orissa (Prevention of) Gambling Act, 1955, the Telangana State Gaming (Amendment) Ordinance, and the High Court Judgment in Gujarat, 2017 all prohibit games with financial stakes, with the exception of skill and karma rounds. As a result, residents of Assam, Gujarat, Nagaland, Odisha, Sikkim, and Telangana are not allowed to play.

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<sup>9</sup>AIR 1153, 1996 SCC (2) 226

<sup>10</sup>AIR 825, 1968 SCR (2) 387

- **The Indian Contract Act, 1872 (“CA”)**<sup>11</sup>

"The consideration or goal of an agreement is legitimate, unless it is prohibited by law; or is of such a type that, if granted, would undermine the requirements of any law," reads Section 23 of the Contract Act, in part. Section 23 expresses that “the thought or object of an understanding is legitimate, except if it is prohibited by law or is of such nature that , whenever allowed it would overcome the arrangement of any law”. The Contract Act further stipulates that a wagering arrangement is "invalid and unenforceable" under Section 30 of the Contract Act it is not prohibited by law and it can't be named illegal. Additionally, contracts like these are not prohibited by the state and, as a result, if they are engaged into, they should not be considered criminal." However, no action may be filed to enforce to make such contracts rule of law in court.

- **The Foreign Exchange Management Act of 1999 ("FEMA")**<sup>12</sup>

The Foreign Exchange Management Act,1999 is an Act of the Parliament of India “ to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments”. According with FEMA remittances of revenue derived from activities such as lottery prizes, horse racing, and sweepstakes are forbidden under the Foreign Exchange Management Act. FDI and "investment by a person living outside India" in organisations engaged in the business of "lotteries, including online lotteries, gambling and betting, including casinos" are prohibited under the FDI. The Foreign Exchange Management Regulations, 2017 and the consolidated Foreign Direct Investment policy, 2017 issued by the Government of India, Clause 5.1(a) prohibit both, “Unfamiliar Direct Investment” and “venture by an individual occupant outside India” in substance leading lottery business including government or private lottery, online lotteries and so on and betting a lot including gambling clubs etc. Similarly, cooperation in foreign technology, in whatever form, for the aim of

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<sup>11</sup>Act No. 9 of 1872

<sup>12</sup> Act No. 42 of 1999

gambling and betting operations are illegal under all circumstances. This act includes offences related to foreign exchange civil offenses.

- **Sports' Business- Country's Development**

Throughout the history of our country, sports have been a source of immaculateness and have reached the pinnacle of popularity and affection in the hearts of the people. Sports have a long and illustrious history in India, and they have always taken an inherent role in the culture of the country. Sports have long been a part of Indian monarchy, dating back to the period when kings and emperors controlled the country. Chess, hockey, cricket, football, and a variety of other games were a regular part of their daily schedule, which they really liked.

There are reports that illustrate how individuals used to participate in sports in order to earn money by demonstrating their abilities in front of the ruling class. They had no idea what they were getting themselves into when it came to launching their individual careers in this industry. Federations were formed in order to promote talent and inspire young people to pursue a career in this industry. They treated it as if it were a recreational pastime, and they went with the flow.<sup>13</sup> The attitude of this country has a significant part in influencing the thinking of a youngster who want to pursue a sporting career. Until the contemporary era, parents have placed a more emphasis on academic intelligence, overlooking the significance and chances that sports may provide. Sports have seen significant growth in recent years, but a lack of government backing and an insufficiency in the development of appropriate sports-related legislation have prevented the sport from achieving the level of success it deserves.

The necessity of the hour is to bring all of the authorities together under one roof under monitoring. With the expansion of sports in India to a worldwide stage, the need for appropriate legislation that can be followed and executed, as well as legislation that can control the sports business, has become critical to the country's development.

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<sup>13</sup>*Supra Note 6.*

- **Central Goods and Services Tax Act, 2017**

The new act, 2017, has set up in a coordinated unitary framework, for example IGST, CGST, SGST or UGST unforeseen on the area of the provider and the spot of supply of services. Actionable cases as an opportunity to win in betting, wagering, gambling or horse race clubs, being in the form of administrations are likewise available under the new GST framework, it guaranteeing the both, the states just as the centre obtain income from the same.

### **2.11 Online Betting, Is It Legal in 2023?**

Before the passage of the federal Public Gambling Act of 1867 (hereafter referred to simply as "The Act"), each state was in charge of enacting and enforcing its own set of laws and rules pertaining to the gaming industry. This includes the legalization and regulation of online betting. The Act then differentiates between games of skill and games of chance and declared all types of gambling to be unlawful in India. However, the Act did not prohibit games of skill. This indicates that gamblers are able to place wagers on games of skill; yet, there is still a great deal of confusion around the definition of a game of skill. Even though cricket is not considered a game of skill, lotteries and betting on horse races can still be conducted legally. This quite clearly that there are no substantial standards to distinguish between games of skill and games of chance.

The Act, however, does not include online gambling as a term. Sikkim and Nagaland were the first states to integrate provisions relating to internet gambling in their legislation. A few states have made the Act their primary gaming legislation, but the majority of states continue to use their own regulations. In addition, the states of West Bengal, Nagaland, and Sikkim make it possible to play poker both online and offline after obtaining a license from the state administration. Goa, which has authorized casinos to carry out gambling activities, is also included in this category.

To answer the question of whether online betting is still legal in India, the answer for now would be yes. There is no law explicitly stating that online gambling is illegal, and even though the Act

tries to put a blanket ban on all kinds of gambling, there is not enough substantial material to know what a game of skill is and what is a game of chance to declare online gambling illegal.

The government has announced new rules of online gaming it has prohibited games which involve wagering and betting in some much needed clarity for the online gaming industry, it entail a framework of multiple self-regulatory organizations or sources as they are called to determine whether a real money game is permitted or not the government believes online gaming presents a huge opportunity for start-ups but there has been an ambiguity around what was permissible which the new rules aim to address the center also added that new rules were not just focused on gaming but also on the issue of misinformation industry voices are healing the new rules calling it the first step in the right direction now let's listen into a reaction that is coming in from Rajiv chandrashekhar started with which was restricted to real money game has now evolved into the entire online gaming ecosystem and we have carved out what is prohibited and therefore whatever is not prohibited and therefore whatever is not prohibited is allowed and the need to regulate in a very small segment of gaming which is a gaming that involves wagering, everything is unregulated as far as the government fact checking that consultation was done with all the intermediate and to give us more information on this.

There is regulatory framework as far as what is permissible for the world of online gaming now the aim of the amendment actually is to impose greater due diligence by online gaming and the social media because the fear with the government till now was that there was a lot of false information that was being spread especially as far as a young youth is concerned so even as you rightly pointed out the government believe that there is a lot of potential in this industry but regulation was always needed so quickly so what are these amendments and what is going to be role of these sources so as per the amended rules it is now been made mandatory on the part of the intermediaries to make a reasonable effort of not publishing or sharing any online game that can cause harm or that has been verified as a permissible online game essentially meaning that now no wagering or betting will be allowed as far as these notifications are involved they will be complete ban on any kind of advertising of this presence if any company or organization is found indulging in it that will be categorized as Foul Play quickly what are these sources. These sources are the cells regulatory bodies which essentially will begin with three and then they can rise in number as well they have been designated by the central government and they in fact will



determine whether a real money gain is permitted or not also satisfy itself that the online game as we pointed out does not involve majoring or any outcome the reason the fear with the government was because a lot of suicides were increasing especially as far as the younger generation was concerned so one to curb misinformation and all so to put out these rules for these online gaming bodies this regulation was needed it has happened all of this has happened just in the span.

The government of India ordered the states to take steps against outdoor advertisements promoting Online Betting and Gambling platforms. The government had earlier issued an advisory to the media in June 2022, directing them to abstain from publishing such advertisements in the larger public interest. The government has noticed that some of the betting and gambling sites are using external media such as posters, banners, hoardings and auto rickshaw branding to promote their apps and websites. Such advertisements were found to be deceptive and not in accordance with the Consumer Protection Act 2019.

Since gambling and betting are illegal in some states of the country, they pose social, economical and financial risk for the consumers especially youth and children. The government opposed to the promotion of a specific betting and gambling platforms that attract people to watch a sports on its website in prima facie violation of the Copyright Act.

## **2.12 Latest Updates regarding Online Betting and Gambling in Different**

### **States of India.**

- The active legislative steps taken by the Tamil Nadu government on several people died due to suicide over the loss of money in online gaming. As Ultra Vires the constitution betting in cyber space, wagering has been banned by Madras High Court earlier struck down the Tamil Nadu Gaming and Police law (Amendment Act 2021).
- Minister K Lakshminarayan in the legislative assembly of Puducherry has proposed to pass a special bill to online gambling (Union Territory). Puducherry prohibition of online Gambling and Regulation of Online Games bill 2023 and submitted the draft bill to the

home department (presently the draft bill is pending for the concurrence of the finance department ascertain financial implication).

- From online lottery and Kolkata fatafat games on whatsapp to satta and other illegal lottery games some of which are even run on the back drop of selling government lottery ticket. Kolkata cops has stumb mushrooming gambling dens in Baguiati .

## CHAPTER-3

### **3. LEGAL FRAMEWORK GOVERNING CYBER OFFENCES IN INDIA**

Some states moved toward banning online gaming activities within their territories, including Tamil Nadu. In February 2021, the state passed an amendment that made online gambling in the state illegal.

According to the High Court, this was unconstitutional as it violated and has fallen foul of Article 19(1)(g) of The Constitution. This part of the law states that people have the right to practice any profession or carry on any occupation, trade or business. The court also found that this wide ranging ban which includes the prohibition of online sports betting, online poker, online teen patti, and online rummy is extravagant and disproportionate to what the state desired to achieve, which was to lessen the rising gambling and betting related problems in the state.

Most of the gambling activities in India are under strict control. However, a few categories like horse racing and lotteries are an exception to this. Gambling in India is a state subject which means that only the state governments are entitled to formulate and govern such activities for their own states.

The Public Gambling Act 1687 also known as the Gambling Act is the general law that governs gambling in India. However, since the state legislatures as per the Constitution of India have been entrusted with the regulatory leeway to form State subject gambling rules, it is the State that formulates such laws as per the requirements of such State.

The Gambling Act is the central enactment that has been adopted by certain states in India and other states have formulated or enacted their own legislations to regulate and govern gambling activities within their own territory. Since most of the gambling legislations which have been enacted were done prior to the advent of online or virtual gambling or betting thus, the gambling legislations primarily refer to gambling activities in physical form. Since the times of British rule, many states in India have enforced the gambling act, thus prohibiting all forms of gambling and betting in their respective states. Goa and Sikkim were the only states that allowed gambling and betting subject to regulations made by these respective states.

### **3.1 Information Technology Act, 2000**

The information Technology Act, 2000 also known as ITA-2000 or the IT Act is an Act of the Indian Parliament notified on 17 October 2000. It is primary law in India dealing with cybercrime. Indeed, the IT Act is intended to "provide legal recognition for transactions effected through electronic data interchange and other forms of electronic communication, commonly referred to as electronic methods of communication and storage of information, to facilitate electronic filing of documents with Government agencies, and to amend the Indian Penal Code, the Indian Evidence Act, 1872, and the Banker's Book Evidence Act, respectively."

The Sikkim Online Gambling Act, additionally, regulates online gambling in Sikkim, which was formerly restricted to poker and casino such as blackjack, pontoon, bingo, poker, and baccarat. On August 1, 2009, this Act was enacted to make online sports betting lawful in Sikkim, subject to the operator obtaining a license issued by Sikkim. Hence, online sports betting through websites is now authorized only in Sikkim and nowhere else in India. Indeed, Sikkim hosts the servers for these websites. A similar situation exists in Goa, where the Goa, authorizes, with the prior approval of the local Government, any game of electronic amusement in fancy hotels, as well as table games, as may be notified, depending on conditions as the payment of variable and fixed fees.<sup>14</sup>

The Intermediaries Rules, which have been outlined under section 87(2) and section 79(2) the Information Technology Act, 2000. According to Rule 3(2)(b) thereof requires agents like network specialist, web access suppliers, web crawlers, telecom administrators to send any substance which identifies with or energizes bettings.

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<sup>14</sup>*Supra Note 5.*

### **3.2 The Public Gambling Act**

An Act to provide for the punishment of public gambling (25 January 1867). In this Act- "Common gaming-house" means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person. Earlier Gambling was formerly universally recognised as a legitimate kind of entertainment, but now it is being used to make money. While gambling is regarded as a natural part of human nature, it remains a highly subjective matter, with public opinion on the subject fluctuating over time. Despite current laws against gambling, there is widespread underground gambling in India, which is widely known by everyone, including the government. Its industry has enormous potential in our country, and the Indian gambling business is now valued at \$60 billion dollars each year. Casino gambling, online gambling, skill games, and sports betting are all forms of gambling. The PGA is derived from the British Gaming Act and the Betting Act, both of which were passed in the United Kingdom. Wagering contracts were rendered unenforceable by both the British Gaming Act, and the Betting Act, which both repealed the Unlawful Games Act, 1541. The goal of the PGA was largely to penalise public gambling as well as the operation of common gaming-houses in public places. It is specifically stated in Section 12 of the PGA that the limits included therein will not apply to any game of purely intellectual ability.

The Constitution grants the states the authority to enact legislation pertaining to "betting and gaming." The constitutional structure being what it is, there can be no state Legislation on the issue unless and until the Parliament legislates by using its authority under Articles 249 or 250 of the Constitution, as applicable, or by using the power provided by Article 252 of the Constitution.

The Public Gambling Act, as a result of the exclusive power granted to Indian states to enact laws on "betting and gambling," as well as laws relating to their taxation, ceased to be Central Legislation, and as a result, it was no longer a law that applied throughout the entire territory of the country. According to the current regime, the only way that it may still be considered relevant is if it is accepted by state legislatures on their own initiative. As stated earlier, the Public Gambling Act is the main Act that governs public gambling in India. The Public Gambling Act is a Central law that prohibits running or operating public gaming houses. Any

violation of the law under this act could attract a fine of Rs 200 or imprisonment of up to 3 months.

Understanding the Concept - Gambling is an activity in which one places a bet on something materialistic or monetary in order to gain something like, such as money or a prize. Gambling, in general, includes three components: 'Consideration,' 'Risk,' and 'Prize.' The Public Gambling Act of 1867 forbids the operation or management of a public gambling house and exempts games of pure skill from the Act's application. Additionally, this Act makes it illegal to enter gaming establishments. Gambling is not regarded a crime unless it is done in a public area or at a common gaming establishment. It is not a common gaming house simply because friends and acquaintances get together on occasion to play cards and sometimes for money.

Owing, keeping, occupying, or having care and management of a gaming house/common gaming house.

Gambling in a common gaming house or being present for gambling in a common gaming house.

Furnishing or advancing money for the purpose of gambling to persons frequenting any such gaming house.

Many kinds of gambling are prevalent in India and have been practiced in India for many years. Casino gambling, sports betting horse racing, lottery, online gambling, school games et cetera are some of the kinds of gambling practiced in the country. The legal position on gambling in India has been divided into two diverse categories that is games that involve skill and games that involve chance. The Indian Contract Act, 1872 (“CA”)<sup>15</sup>

"The consideration or goal of an agreement is legitimate, unless it is prohibited by law; or is of such a type that, if granted, would undermine the requirements of any law," reads Section 23 of the Contract Act, in part. Section 23 expresses that “the thought or object of an understanding is legitimate, except if it is prohibited by law or is of such nature that , whenever allowed it would overcome the arrangement of any law”. The Contract Act further stipulates that a wagering arrangement is "invalid and unenforceable" under Section 30 of the Contract Act it is not prohibited by law and it can't be named illegal. Additionally, contracts like these are not

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<sup>15</sup>Act No. 9 of 1872

prohibited by the state and, as a result, if they are engaged into, they should not be considered criminal." However, no action may be filed to enforce to make such contracts rule of law in court.

### **3.3 The Foreign Exchange Management Act of 1999 ("FEMA")<sup>16</sup>**

The Foreign Exchange Management Act,1999 is an Act of the Parliament of India “ to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments”. According with FEMA remittances of revenue derived from activities such as lottery prizes, horse racing, and sweepstakes are forbidden under the Foreign Exchange Management Act. FDI and "investment by a person living outside India" in organisations engaged in the business of "lotteries, including online lotteries, gambling and betting, including casinos" are prohibited under the FDI. The Foreign Exchange Management Regulations, 2017 and the consolidated Foreign Direct Investment policy, 2017 issued by the Government of India, Clause 5.1(a) prohibit both, “Unfamiliar Direct Investment” and “venture by an individual occupant outside India” in substance leading lottery business including government or private lottery, online lotteries and so on and betting a lot including gambling clubs etc. Similarly, cooperation in foreign technology, in whatever form, for the aim of gambling and betting operations are illegal under all circumstances. This act includes offences related to foreign exchange civil offenses.

### **3.4 Sports’ Business- Country’s Development**

Throughout the history of our country, sports have been a source of immaculateness and have reached the pinnacle of popularity and affection in the hearts of the people. Sports have a long and illustrious history in India, and they have always taken an inherent role in the culture of the country. Sports have long been a part of Indian monarchy, dating back to the period when kings

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<sup>16</sup> Act No. 42 of 1999

and emperors controlled the country. Chess, hockey, cricket, football, and a variety of other games were a regular part of their daily schedule, which they really liked.

There are reports that illustrate how individuals used to participate in sports in order to earn money by demonstrating their abilities in front of the ruling class. They had no idea what they were getting themselves into when it came to launching their individual careers in this industry. Federations were formed in order to promote talent and inspire young people to pursue a career in this industry. They treated it as if it were a recreational pastime, and they went with the flow.<sup>17</sup> The attitude of this country has a significant part in influencing the thinking of a youngster who want to pursue a sporting career. Until the contemporary era, parents have placed a more emphasis on academic intelligence, overlooking the significance and chances that sports may provide. Sports have seen significant growth in recent years, but a lack of government backing and an insufficiency in the development of appropriate sports-related legislation have prevented the sport from achieving the level of success it deserves.

The necessity of the hour is to bring all of the authorities together under one roof under monitoring. With the expansion of sports in India to a worldwide stage, the need for appropriate legislation that can be followed and executed, as well as legislation that can control the sports business, has become critical to the country's development.

### **3.5 Central Goods and Services Tax Act, 2017**

The new act, 2017, has set up in a coordinated unitary framework, for example IGST, CGST, SGST or UGST unforeseen on the area of the provider and the spot of supply of services. Actionable cases as an opportunity to win in betting, wagering, gambling or horse race clubs, being in the form of administrations are likewise available under the new GST framework, it guaranteeing the both, the states just as the centre obtain income from the same.

India imposes an indirect tax known as the Goods and Services Tax (GST), which is imposed on all actions that fall under the purview of the word "Supply" and is either imposed on the

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<sup>17</sup>*Supra Note 6.*



provision of products or services. According to Indian law, any lottery, betting, or gambling-related activities fall under the purview of actionable claims. Furthermore, the concept of "goods" includes claims that are actionable. As a result, every transaction involving betting or gambling is a supply of commodities subject to GST, which is charged at a rate of 28% on the total amount wagered.

Skill-based game-related actionable claims are exempt from GST. Services like tickets to entertainment events, entry to casinos, etc. are subject to a 28% tax. Online information and database access or retrieval services include online gaming and are defined as services delivered through an online platform (over the internet) that are primarily automated, require little to no human intervention, and cannot be guaranteed without the use of information technology.

### **3.6 OVERVIEW OF SOME STATE ENACTMENTS**

Many states have enacted laws to implement the PGA, while others, like “Andhra Pradesh, Delhi, Gujarat, Maharashtra, Jammu and Kashmir, Meghalaya, and Goa”, have turned to passing their own laws on the topic of gaming and betting, among other things. Despite the fact that most jurisdictions have made an exception for games of skill in their legislation, some states, such as Telangana, Andhra Pradesh, Tamil Nadu, Orissa, and Assam, have taken an entirely parochial strategy and have taken a blanket approach to all gaming, whether it be games of skill or games of chance. Other states, on the other hand, have taken a different tack and supplied their own interpretation of the law through their gaming legislation:”

### **3.7 The Nagaland Online Games of Skill Act of 2016 regulates online games of skill.**

As the scope of online gaming expands in the Indian market, legislation is being drafted to manage this sector in order to ensure that it operates in accordance with the law. According to the criteria given down by the Supreme Court of India in the case of State of Bombay vs. RMD

Chamarbaugwala<sup>18</sup>, the legitimacy of the game is to be determined based on the degree of skill required to play it successfully. Game of skill and game of chance are the two major classifications established by Indian law for games of skill and chance. Following a series of court decisions, it was determined that games requiring some degree of skill were allowed, but games requiring merely chance were not.

Betting and gambling are covered within the exclusive competence of the state legislatures since they are included on the state list. As a result of numerous causes, the various state legislatures have drafted their respective pieces of legislation in this regard. While gambling in all forms is prohibited in the states of Orissa and Assam, the state of Telangana has just passed an ordinance that, along the same lines, expressly prohibits internet gambling. The Government of Sikkim has taken a different route, and has decided to authorize certain types of internet gaming. This will be discussed in depth in the next chapter.

Using a novel approach, “the Government of Nagaland is issuing licenses for online skill games under the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act (2016) and the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Rules (2016)”. This is the first time that such a license has been issued in the country. It is specifically prohibited under the aforementioned legislation to engage in gambling, which includes games involving wagering or betting based on chance rather than skill. The legislation applies to any games of skill in which there is a preponderance of talent over chance, regardless of whether or not the games involve the making of wagers or bets.<sup>19</sup>

#### Requirements for Obtaining a License

1. Following are the requirements that must be met in order to receive a license in the area of online skill-based games:
2. The Applicant is a person or company that is incorporated in India and that has a significant holding and controlling stake in the country of incorporation.

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<sup>18</sup> AIR 1957 SC 699

<sup>19</sup> S.S. Rana & Co. Advocates, India: Nagaland Online Games Of Skill Act, 2016, 25 October 2017, <https://www.mondaq.com/india/gaming/640102/nagaland-online-games-of-skill-act-2016>

3. The candidate should not have any felony histories on his or her record.
4. India will hold the majority of the controlling holdings and make all of the decisions.
5. The application in the required format, together with the application fee of INR 50,000, must be provided with the application.
6. Applicant must provide supporting documentation such as Random Number Generation (RNG) Certification, Software Certification, Certificate of Company Incorporation, and tax-related documentation along with the application.
7. Payment of Fees The Applicant is needed to pay annual fees of INR 1,000,000 for each game or INR 2,500,000 for a range of games totaling INR 2,500,000.

### **Do You Know.....?**

The Director of Nagaland State Lotteries examines the application and supporting documentation submitted by the applicant before issuing a license to the applicant. The license is issued to the applicant by the Nagaland State Lotteries within 6 months of the date of acceptance of the application, following a successful examination by the Director as described above, and after the applicant has completed the necessary procedures and paid the required costs.<sup>20</sup>

### Applicability

The licensee has the ability to provide their services in any state or union territory where skill-based games are legal. Additionally, the license enables the online gaming companies to market their services and games in any of the jurisdictions where games of skill are excluded from the definition of gambling. In order for the authorities to monitor the actions done by the licensee on a real-time basis, the government access must be allowed to the licensee.<sup>21</sup>

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<sup>20</sup> Trupati Daphtari, Gambling And Betting Laws In India, [chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.hariani.co.in/newsletters/August\\_7\\_2013.pdf](https://www.hariani.co.in/newsletters/August_7_2013.pdf)

<sup>21</sup> Casinos And Gambling Laws In India, <https://www.legalserviceindia.com/legal/article-4123-casinos-and-gambling-laws-in-india.html>

### **3.8 What are the Concerns Related to Online Gambling ?**

- **Financial and Social Trouble:**

Online gambling can be highly addictive, leading to severe financial and social problems. As it is easily accessible, players can spend hours playing games without realizing the amount of time and money they are spending.

- **Unregulated:**

Online gambling is often unregulated, making it easy for fraudulent activities to take place. This can lead to players losing their money or their personal information being compromised.

Gambling has complex laws in India and is not available in most of the states. Each state has its own jurisdiction over gambling.

- **Means for Money Laundering:**

Online gambling can be used as a means for money laundering, where players can deposit large amounts of cash into online accounts and then withdraw the money in a legitimate form.

- **Prone to Cyber-Attacks:**

Online gambling sites can be vulnerable to cyber-attacks, which can lead to the theft of sensitive personal and financial information of the players.

- **Socially Detachment:**

Online gambling can lead to social isolation, as players can spend hours playing games online, leading to attack of social interaction with family and friends.

### **3.9 Conclusion**

The aforementioned new regulation represents a clear and methodical approach to the laws governing online skill games in general. Many state statutes have been enacted in the past, and they govern the gaming and gambling industries in various states throughout India. However,

there has continued to be controversy with regard to the games that are played online, since the legislation typically remains confused with regard to this new way of gambling. Despite the fact that some new law has been introduced to regulate internet gaming, it is only the Nagaland Act that expressly grants permission to play online skill games. This establishes a legal framework for monitoring and managing the operation of online skill games. This statute, which recognises skill-based games as legitimate under the law, offers certainty to the gaming sector about the legality of their operations, so boosting their morale and promoting their growth.<sup>22</sup>

### **Gambling in the union territory of Goa**

The state of Goa began issuing gaming licenses to luxury hotels in 1992, and the establishments that received these licenses were permitted to operate slot machines in their facilities.<sup>23</sup> They were even given permission to begin offering table games such as poker and roulette in 1996, under the condition that such games would only be available on cruise ships and would not be authorised in land casinos.<sup>24</sup>

Despite the fact that Goa is the most popular gaming destination in India, the state has the smallest population in the country. The fact that Goa is a coastline state is crucial to its ability to be successful in the casino industry. As a result, it permits the operation of offshore vessel casinos in addition to land-based casinos. There are a total of 15 casinos operating on the island of Goa, as well as many offshore gambling establishments.

According to estimates, the state's 15 casinos, five of which are located on ships anchored on the Mandovi river and five of which are on land, draw around 15,000 visitors every day. The cover

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<sup>22</sup> Stratage, Gaming Laws In India, /<https://www.stratage.in/wp-content/uploads/2020/12/Gaming-Laws-In-India.pdf>

<sup>23</sup> Why Is Gambling Legal In Goa But Not In Other Indian States?, 05 May 2021, <https://www.incrediblegoa.org/feature/why-is-gambling-legal-in-go-a-but-not-in-other-indian-states/#:~:text=Gambling%20is%20illegal%20in%20India,Diu%20Public%20Gambling%20Act%2C%201976.>

<sup>24</sup> Legal status of gambling in Goa, 15 March 2021, <https://blog.ipleaders.in/legal-status-gambling-go/>

costs (an alternative to the admission fee in which you may use the entry fee you paid for) can range from anything between INR 2500 and INR 5000, depending on the venue.<sup>25</sup>

From the lucrative casino industry, the state government earns more than 1.35 billion rupees (\$22 million; £13 million) in taxes each year, officials say. This revenue stream, they say, is particularly valuable at a time when government revenues have been declining since India's Supreme Court banned mining in Goa last year, depriving the state of tax revenue.

Goa's tourist industry is heavily reliant on the success of its casinos. The amount of money collected in taxes from gambling has grown in recent years. According to the financial link between the centre and the state, the government of Goa is collecting gaming taxes. "In the 2018-2019 fiscal year, the Goa government earned Rs 411 crore from offshore and land-based casinos, putting them at the top of the tax categories with a rate of 28 percent compared to other businesses."<sup>26</sup>

The state government of Goa has ambitious intentions to take the gaming sector to a whole new level of sophistication. The model for these ideas is Macau, which is one of the world's most prominent gaming locations and serves as the inspiration for them. The mega-casino proposal is intertwined with the construction of a new airport in Mopa. However, there was a negative impact on this endeavour as a result of the Covid-19 epidemic. Several experts predict that the internet gambling business will be controlled, and that this will have a positive impact on the government's budget in other ways.

The tax money earned by gaming in Goa casinos contributes significantly to the state's tourist industry. The amount of money collected in taxes from gambling has grown in recent years. According to the financial link between the centre and the state, the government of Goa is collecting gaming taxes. Casino revenues brought in by the Goa government during the 2018-2019 fiscal year were Rs 411 crore from both offshore and land-based establishments. The casinos are in the highest tax band, with a rate of 28 percent, which is the most of any industry. In addition, the number of licenses for both land-based and offshore casinos was expanded in the

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<sup>25</sup> Maple Capital Advisors, Online Gaming – India Story, Investment Trends: [http://www.mapleadvisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20\(1\).pdf](http://www.mapleadvisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20(1).pdf)

<sup>26</sup> The Goa Public Gambling (Amendment) Act, 1992.

year 2018. While the government of Goa has likewise established an application fee of \$32,000, the amount is not refundable. All of these activities can generate a significant amount of cash, which will be extremely beneficial in easing the economic crisis created by the Covid-19 epidemic.<sup>27</sup>

Maharashtra: The Maharashtra State Legislature enacted the Maharashtra Casino (Control and Tax) Act, 1976, but the law has yet to be implemented or officially announced by the government.

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<sup>27</sup> KPMG India's Digital Future: <https://assets.kpmg/content/dam/kpmg/in/pdf/2019/08/india-media-entertainment-report2019.pdf>

## CHAPTER -4

### 4. CYBER OFFENCES RELATED TO ONLINE BETTING

#### 4.1 Gambling in Casinos

Gambling in a casino is said to be outside the legal ambit of illegal “gambling” and is regulated by the Public Gambling Act. However, only two states: Goa and Sikkim have legalized casino gambling to a limited extent, where only five-star hotels can acquire licenses approved by the state. Goa has also allowed casino gambling on the board of an offshore ships.

#### 4.2 Sports/Horse Race Betting

The Supreme Court has held that betting on horse racing was a game of skill. Most of the Gaming Enactments have carved out an exception for betting money or wagering upon horse racing. However, certain conditions are levied upon horse racing for it to be exempted under the gaming enactments. These conditions include that such betting shall take place on the specific day when the horse has run and in an enclosure sanctioned by the state governments etc.



Turf clubs regulate betting on physical horses within their premises. Apart from the rules set by the Government and Enactments, independent turf clubs set their own rules as well.

Online betting on real horses would also require the conditions prescribed under horse racing exemption to be met. Bengaluru and Calcutta turf clubs has recently (during the COVID-19), received permission from their respective state governments to offer online betting on horse races conducted in turf clubs.

As far as sports betting is concerned, only the state of Sikkim permits it. Under the Sikkim Act, an operator must obtain a license to offer such games in the State. These games can be offered through the internet only within the state of Sikkim.



### **4.3 Cricket Betting**

No gambling laws strictly and outright prohibit Indian from betting on cricket, however, the Central Government looks at betting as a game of chance and not that of skill (like in horse racing). After post-2013 spot-fixing scandal it was recommended by the law commission to the central government to legalize betting in India but, under control. The main reason for this was



to curb money laundering. However, since internet gambling is a global business and the Indian laws do not have jurisdiction over foreign websites, the government has set certain practices in place in order to make the use of these websites difficult.

### **4.4 Poker**

It is generally argued that certain types of variations of poker are games of skill and not of chance, for the purpose of the Gaming Enactments. Therefore, such games are and should be permitted as per the Indian States ( to the extent that they fall under games of skill).

The Nagaland act specifically categories poker as a game of skill. Similarly, the State of West Bengal has specifically excluded poker form the ambit of “gambling” under the West Bengal Gambling and Prize Competition Act 1957. When poker is played as a game of skill, a license is not required under the Karnataka Police Act, 1963, as per the Karnataka High Court. However, the High Court of Gujarat has held that poker is a game of chance and is thus currently prohibited in the State.

### **4.5 Bingo**

Bingo may or may not fall under the category, or within the ambit of lottery or betting / gambling under most Gaming Enactments, since these are considered a game of chance and thus banned in most states in India.

## **4.6 Lotteries**

The Central Lotteries Regulations Act 1998 governs government lotteries. State governments are authorized under this act to hold lotteries and to frame rules and regulations that should not intervene or contradict the central lotteries act. The drawing of lotteries is restricted to one draw of lottery a week . However many Indian states have been permitted to open lottery terminals in abundance where draws take place even every 15 minutes Sikkim is one such popular state known for its gambling terminals and its regulatory framework. Sikkim has a constitutional right under the seventh schedule allowing it to create its own laws for all kinds of gambling and is thereby permitted not to follow the Central Lotteries Act.

The State governments have the right to authorize lotteries within the jurisdiction and also lay down the tax clauses for the same, as per the lotteries regulations act of 1998.

For example: when a person plays poker online in India, tedious may be automatically deducted if they win, from their winning amount.

## **4.7 Factors Accelerating People towards Gambling**

There are several factors which are attracting people towards gambling, it may be external or internal factors. These factors may lead people to unjustifiable decision making and addiction to gambling. The Government and society need to take steps to maintain the financial stability of people. The people should be trained and educated to make rational decisions and also develop an ability to assess the probability of winning a gamble or bet. The main point due to which person attracts towards gambling or betting is his commitment towards the cause or product. Except lottery, lottery is an exception from all forms of gambling. There are major factors attracting people towards gambling or betting, like addiction, greediness, selling style, government policies, insecurity factor etc.

- **Greediness:**

If someone is craving for more than actually what they deserve is termed as greedy. This characteristic of human beings arises because of selfishness, this may be detrimental to society because of the scarcity of resources. A man may show greediness to any resources, like food, money, power, position, sex. Greediness towards money leads a person towards gambling. In the

questionnaire, GF1 to GF4, measures the greediness factor of people. The agreement to these statements revealed the respondent's expectation or desire for monetary gain and intention to make easy money.

- **Reference Group:**

The buying behaviour of people is influenced by their reference group. Gambling attraction of friends, family, relatives, colleagues and society may influence the buying behaviour of people. These influencers can also act as a factor that attract people toward gambling and betting. If the reference group is showing a positive approach towards gambling by adopting gambling products by themselves or on recommendation of any person or group gambling products with positive statements, those people who refer to this group will get attracted to these gambling products.

- **Selling Style:**

The selling style of any product is directly linked with the selling attitude of buyers and sellers. They have selling skills and they are selling hope and not a real product or service. The selling approach adopted by the selling agents of gambling products, attract people towards gambling or betting. These strategies act as a motivational factor for gambling or betting. Persuasion, recommendations, size of the shop, the volume of sales in a shop, displaying style of gambling products, promotions and news through media, success stories of winners, the goal of charity and social responsibility, specialized selling style of gambling products are various factors accelerating people towards gambling.

- **Government Policies:**

!According to All India Federation of Lottery Trade and Allied Industries (AIFLTAI), Kerala Government collected GST of Rs 908 Crores, sales of Rs. 9276.23 Crores and a profit of Rs.1673.15 Crores during the year 2018- 2019. Kerala state lottery reported a incredible hike in profits generation since its beginning One of the main reasons for this is the integrity of the source of gambling. Most people add up on Kerala state lottery because of their faith in the state government. They think that the government will not do anything risky to the public. The public neither thinks negative nor questions the steps taken by the government regarding gambling

products because of this faith. The majority of the people of Kerala accepts the fact that revenue from Kerala State Lottery is utilized for the development purpose, it also helps to reduce the problem of unemployment to some extent. Social responsibility through charity is another reason that is used by the customers of gambling products to justify their buying behaviour. Even though the prize amount of Lottery is not permissible with the revenue, people believe that the government is utilizing the profit for the development of our state. Gambling source integrity that is the dependability with government policies is one of the main reasons behind this. The people do not have any ill feeling even when the state government promotes lottery and related business, because of the precedent reasons.

- **Perception/Attitude:**

Gambling has widely appears as a public health issue. It was observed that 1/3rd of the gambling candidate was reported as at the risk of problem gambling. One among five of the gamblers are doing it frequently Thomas et al, (2017). Even though the attitude and perception of people towards gambling varies in different aspects, there is a thought in our society, that gambling is a negative activity. The understanding of people towards gambling especially towards the lottery has cautiously undergone a drastic change. The increasing lottery turnover can be stated as an evidence for this. One's understanding and attitude on anything is developed from one's own beliefs. It is deep rooted in us. The culture inculcate in us is to respect our society, and indulge in those activities which help us to discharge our social responsibility. Today government's policy is to present gambling or betting , as a part of discharging social responsibility towards the destitute section of society. Factors attracting people towards gambling department can also claim that it is a civilized solution to the problem of unemployment. The Government can also use the Sales turnover from the lottery department for the development as well as promotion of the deprived section. This has brought a great change in the attitude of people towards gambling, especially among the educated and professional segments of society. While considering the poorer sections of society they also have a positive perception towards gambling, and the reason for this is obvious that they expect an improved status in society. They believe that lottery or any other gambling products could bring easy money to them and this will improve their standard of living. Even though various religions are presenting gambling as a sin, gradually people are trying to develop an attitude that could justify their affinity towards gambling.

- **Addiction:**

Another factor which attracts people towards gambling is addiction. This is an internal factor. This is also considered as a gambling disorder. Addiction in different stages leads to problem gambling, irrational gambling and pathological gambling. When we research the causes of addiction to anything, we cannot pinpoint a specific reason, there will be a combination of genetic, biological and environmental reasons behind this. There are several reasons for gambling addiction; financial difficulties, excitement, concern, interest, social status of gamblers etc. Once we are trapped, it will be difficult to escape from there. The addicted gamblers never even break even. Some of the common symptoms of gambling addictions are, doing gambling activities secretly, irrepressible gambling frequency, gambling when you are not financially fit to afford it, your family and friends express worry about your gambling. If one feels anxiety, when trying to stop or withdraw from gambling, it is high time that they are suffering from problem gambling.

As a result of gambling addiction people exhibit several features, like winning number prediction, unmanageable buying habits, consumption of more proportion of disposable income for gambling activities, excitement in small winnings, ambiguous opinion regarding the legalization of gambling and interference of government in gambling activities.

- **Insecurity factor:**

Some people consider gambling as a source to overcome from their debt trap. It is an nature of the human mind to believe in one or other source if he feels that his problem is not under his control. Financial trap or debt, uncertainty in the job, low salary all these may create ambiguity in life. During this crisis period the human mind searches for some alternative gambling may identify as an option by people to escape from all problems of life. So, this insecurity feeling with regards to life can act as a factor that attracts people towards gambling.

- **Entertainment Factor:**

Many people consider gambling or betting as an pleasurable activity. They are indulging in gambling or betting for enjoyment or as a pastime. The reviews reported that those who are starting gambling as a free time activity later end up with problem and compelling gambling. At the initial stage gambling may be a stress reliever, or the surprise element in gambling may create curiosity and anxiety among the people. If it goes on uncontrollably, it will lead to financial problems. Responsible gamblers are those who consider gambling purely as entertainment. They spend fixed time and money on gambling or betting activities. Gambling or betting is really a form of entertainment but when people pass through tough times in life, they may find this entertainment as a reliable source to overcome their issues in life.

- **Escapism:**

Those who are interested in gambling may identify a number of justifications to get away from the blames of gambling. They justify gambling as a solution to all financial crises, and people will try to influence family and friends that gambling is a good source to make easy money. Even if they lose at first, still they believe that they could regain more than what they have lost in gambling. Some people have used gambling to get away from several problems in life, later they find out a number of reasons to justify their gambling behaviour and escape from the blames of gambling.

- **Advertisement:**

This is an important strategy adopted by business houses to attract people towards their products. Advertisement is a 'Pull Strategy' because it pulls people towards the products in the advertisement. Now, we can see a lot of government advertisements as well as publicity for the gambling-based sales promotion tools. Regular updates and information about gambling are countable factors attracting people towards gambling. *India Consumer Protection Act (1986)*, *Prize Competition Act (1955)* and *Competition Act (2002)* are some of the laws existing to monitor and control the sales promotions and advertisements offered in this area. Advertisement is an important factor in motivating people to gamble Cornish (1978). Advertisement plays a very significant role in motivating a decision to gamble for the first time. Lottery and lottery-based promotion tools are enjoying special freedom to advertise their products compared to other

forms of gambling. Government lottery advertisements give special assurance to public for buying lottery products.

- **Prize Amount:**

The amount of the prize money is also a factor that attracts people towards gambling. Bumper lotteries and heavy prized lottery based promotion tools attract buyers towards gambling. The basic nature of human beings towards money is the main reason which made this an important factor. People are very much attracted to improve their living standard and quality of life. They believe lottery and gambling or betting products could help them to achieve their goals in life. High prized or jackpot gambling products are in great demand in comparison to low prized gambling products.

- **Exploratory Factor Analysis (EFA)**

Exploratory factor analysis is a traditional official measurement model. When both the observed and hidden variables are expected to be present in the interval level, then we utilized Exploratory Factor Analysis. This is implemented as a correlation matrix between the variables. Here the latent variable is considered as factors and the relationship between an observed variable and latent variables is expressed in the form of factor. Factor loadings are consistent failure weights. Exploratory Factor Analysis has no probable distribution of factor loadings, so there is no possibility to check whether the factor loadings are same across the cultural groups. This can also be used to analyses structural equivalence. To measure more than one latent variable all together Exploratory Factor Analysis is applied. Before doing these factors should be rotated to target. An Exploratory Factor Analysis (EFA) is a statistical method used to uncover the elementary structure of a comparatively large group of variables. Exploratory Factor Analysis is a technique of factor analysis, its main aim is to identify the fundamental associations between measured variables. While researching a particular topic, researchers may develop a series of questions to measure the impacts and influences. EFA is mainly used while designing this scale and to recognize the hidden constructs of measured variables. It is also used by the researcher where there is no pre-determined hypothesis related to the factors or forms of measured variables. Measured variables are any one of the numerous character of individuals that may be detected and measured. In research there may be several measured variables that are expected to be

associated with some other unnoticed factors. While selecting the measured variables, the researcher must be cautious. To make the results of Exploratory Factor Analysis more accurate, all factors should be signified by several measured variables. The common factor model is the basis for the Exploratory Factor Analysis. Here obvious variables are stated as common, unique and errors of measurement. A single evident variable is influenced by a unique factor, it fails to explain the associations between evident variables. More than that single evident variables were affected by common factors. The effects of the common factor on manifest variables are called factor loadings. Exploratory Factor Analysis adopts the indicators or the measured variables which were related to any factors. Exploratory Factor Analysis is used to regulate the factors against a bunch of measured variables.

These factors are correlated, with each other and equally they can be termed as ‘Social Gambling’ because majority of the factors specify that people are attracted to gambling because of their nature to socialize with society. The insecurity feeling made them doubtful about their future, and they may feel that they will be kicked away from the main stream of society. Entertainment factors which attract people towards gambling, shows that the nature of people to enjoy their life by spending time with a social group, that’s the main entertainment people identified with gambling or betting. In escapism also people want to save their image in front of the society, by escaping from the debt trap, here also to get relief from the stress and to find relaxation, at least for some time they are moving towards gambling. Advertisement possesses a pull effect among the public, it jointly pulls the large group of audience to the socializing gambling point. As an advertisement, the prize amount also has some, pull impact. People are getting attracted towards this prize amount because they are expected to gain an image in society. Media are providing a gallant image to the jackpot winners; this also attracts people towards gambling or betting. So, factors have a socializing nature so, these can be grouped and termed as Social Gambling Factors.

#### **4.8 IMPACT OF ONLINE BETTING ON SOCIETY AND THE ECONOMY**

Long before the word “online” even existed, the casino sector was the source of a relatively large amount of revenue for the world’s governments.



An evening of betting can mean an unexpected windfall or perhaps a lousy hand.

This, of course, contributes to your own personal home economy but also to the economy of the world at large. We don't often think about how the little things that we enjoy impact the world around us.

According to recent reports on the gambling sector, the industry has reported a growth of 5.9%, which equals plus minus \$ 565 billion in revenue worldwide.



#### 4.9 Outline of the concept of social problem

Traditional social work has focused on assisting the deserving poor, such as single mothers with children and elderly people in their last years of life. In most cases, this type of assistance has been reserved for specific categories of poor and excluded people who are frequently characterized as being unable, or even unwilling, to merge into social and economic structures, and who are thus the target of a wide range of social control mechanisms. In other words, in economic terms, social distance is a critical aspect in the creation of social policies and actions that may determine whether a disease is considered to be or is not considered to be a public health concern.<sup>28</sup>

The process of defining a social problem is difficult and far from being objective. A significant issue, because the ability to define is, to some extent, the most important tool for shaping social activity within an individual sector of reality (Zuniga, 1978, p. 380). Managing deviance in the broadest sense is only one aspect of a social problem. It is also critical to distinguish between social problems and problems that affect the entire society (Otero Sc Roy, 2013). Considering this element began as early as 1965, when Durocher emphasised that a social fact is deemed a problem inasmuch as it indicates an interruption or break in the order of things that a society

<sup>28</sup> Amnon J. Suissa, GAMBLING AND CYBER-ADDICTION AS A SOCIAL PROBLEM : Some Psychosocial Benchmarks, Canadian Social Work Review / Revue canadienne de service social , 2013, Vol. 30, No. 1 (2013), pp. 83-100.

believes to be normal and valid. It is appropriate to consider social dislocation as a gap between the norms of a specific society and the actions of a minority of persons in that community.

Consequently, Laskin (1965) argues that for a circumstance to be classified as a societal crisis, a large proportion of residents must believe their basic values are being threatened, and these same persons must describe the situation as a problem in their opinion. Blum (1970) agrees with Laskin's observations, although he emphasises the importance of a social crisis resulting from a specific problem that affects all members of a group or society rather than values.<sup>29</sup>

There are many different modes of control and social reaction that can live side by side in the method of organizing social problems. This is due to the nature of the problems involved, their effect on the social order, the power relationships that exist between organisations with conflicting interests, and the strategies that are implemented to fix these issues (Dorvil Sc Mayer, 2001). A set of norms that define what is appropriate and what is not, and as a result, every social activity is filtered by normative features that signal how to behave in a given situation (Horwitz).<sup>30</sup>

#### **4.10 Gambling on the internet as a societal problem**

When the term “online” was not even existed, the casino sector was the source of large amount of revenue for the world’s governments.

The evening of betting use to bring an unexpected windfall or perhaps a lousy hand. This contributes to your own personal home economy but also to the economy of the world at large. We don’t often think about how the little things that we enjoy impact the world around us. According to recent reports on the gambling sector, the industry has reported a growth of 5.9%, which equals plus minus \$ 565 billion in revenue worldwide.

Gambling has been for as long as there have been human beings, whether it is organized or not, legal or illegal. Gambling, according to certain retrospective research on the history of the game, has been a part of the human condition for as long as recorded history has existed, and it is

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<sup>29</sup> Becker, H. (1963). *Outsiders*. New York: Free Press.

<sup>30</sup> Adams, P.J. (2008). *Gambling, freedom and democracy*. New York: Taylor & Francis.

among the earliest known human behaviours (Castellani, 2000; Gabriel, 1996; Papineau, 2000; Suissa, 2005). Since about 40,000 years ago, evidence of gambling has been discovered in all civilizations and communities across the world. A 2,500-year-old representation of the shell game was discovered in an Egyptian grave, and Moses divided the region west of the Jordan River by lot. The ancient Romans continued the habit of wagering on dice, animals, gladiatorial combats, and other sporting events, among other things.<sup>31</sup>

In general, history shows us that, in the presence of uncertainty conditions and occurrences, so-called "primitive" divinity and justice were frequently determined by chance in the face of such situations and events. It was also possible to give significance to random happenings via the use of religious and magical rites. The divine will was invoked in order to explain the origins of occurrences that were formerly regarded to be undetermined. Recent excavations in London have uncovered the relics of dice games that date back to the year 2000 BC. The Chinese were already playing Keno in the first century BCE, and a variety of cultures, like the Japanese, First Nations, etc, have left similar evidence (Henslin, 1967; Hoffmann, 2000).<sup>32</sup>

In spite of the fact that gambling has been played forever, the contemporary obsession for this type of games defies all reasonable sociological explanations. What was formerly considered a sin, a vice, deviant behaviour, and an unlawful business is today recognised as an illness, a mental pathology characterised by lack of control, and an impulsive disorder (also known as an impulse disorder). As a lawful form of entertainment, gambling is promoted as a stimulus for financial growth, a stream of income for multiple levels and departments of the federal government, and an instrument for making more jobs. In reality, we are watching a mass reform. Aspect of this discourse, which is currently prevalent in North America and across the world and which links gambling to sickness or pathology; this was not the case prior to 1980, when gambling was classified as a mental hazard and included in the DSM-IV.

As an alternative, there exists a social and institutional process that is resulting in the legalisation of games of chance, which has emerged as a key vehicle of ideological legitimization for politicians and the private gaming sector. In addition, we find government

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<sup>31</sup> Durkheim, E. (1966). Social control: The concept. International encyclopedia of the social sciences. New York: Free Press.

<sup>32</sup> Griffiths, M. D. (2000). Internet addiction-Time to be taken seriously? *Addiction Research*, 8, 413-418.

officials attempting to reconcile the inconsistencies in the managing of this "social problem," such as how to rectify the advancement of gaming, which generates income for the government and private sector, with the reality of an increasing number of psychiatric problems among citizens, particularly among young people and those from disadvantaged backgrounds with weak social ties.<sup>33</sup>

#### **4.11 Social impact**

In the development of gambling practices technology has always played a vital role and continues to provide new market opportunities. Internet gambling is one of the fastest growing areas in modern day.

The impact of such technologies should not be accepted uncritically, particularly as there may be areas of potential concern based on what is known about problem gambling offline. It would appear that internet gambling will take off for several reasons.

For example, it is easy to access and participate in an activity that comes into the home via television many other development that look likely to facilitate uptake of Internet gambling services, including

- 1.Sophisticated gaming software
- 2.integrated e-cash systems (including multi currency)
- 3.multilingual sites
- 4.increased realism (e.g, “real” gambling via web cams, players, and dealer avatars)
- 5.live remote wagering (for gambling with others)
- 6.improving customer care systems.

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<sup>33</sup> Castellani, B. (2000). Pathological gambling: The making of a medical problem. Albany, NY: State University of New York Press.

In concluding remarks, the number of persons impacted by the ailment has an influence on its acknowledgment as a public health concern, but how? Have "credible" individuals and groups accepted responsibility for the situation? Where does it fall on the social desirability or desirability scale, and how does it compare to other options? Is there a general agreement among authorities that the problem is one of social equality? Is it reasonable to anticipate some types of social judgments and reactions? Without claiming to be able to provide comprehensive answers to all these problems, it is important to note that identifying these social problem is not dependent on the value of the problem to the individuals who are affected by it; rather, it is dependent on the position it occupies in the ladder of social questions and power dynamics. To put it another way, the phenomena must pose a dilemma for public authorities.<sup>34</sup>

Is it possible for an industry to be socially accountable if its services cause harm to consumers?

What is the Situation under Online Gambling?

Organizations that provide online gambling services claim to be morally correct suppliers. CSR initiatives that are focused at limiting the damage connected with their activities appear to be a priority for them. In a empirical study, a sample of 209 students was used who were active online gamblers and who participated in an online research. The findings imply that the prevalence of online problem gambling is significant, and that it has bad results for the gambler's mental and physical health, as well as for his or her social connections and academic achievement.

An association has been shown between gambling on the internet and the amount of time spent online and betting online, as well as parental/peer pressure and excessive drinking. Because our data demonstrate that internet gambling has negative consequences, we believe that firms in this problematic area will be unable to achieve the high levels of corporate social responsibility (CSR) obtained by companies in other industries.<sup>35</sup> Although they cannot earn credibility based of their CSR participation at a transactional level, they may do so by following their legal and moral obligations and acting in a open and fair manner, so ensuring the honesty of the firm.

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<sup>34</sup> Griffiths, M. D. (2002). The social impact of internet gambling. *Social Science Computer Review*, 20, 312-320.

<sup>35</sup> Griffiths, M. D. (2010). More problems from online gambling.

As well as this, it is contended that failures as seen in the modern times in implementation and moderating of CSR policies, reliance on income from problem gamblers' monetary losses, and problematic marketing activities appear to be the most significant obstacles to the preventative measures or reducing the issues associated with online gambling. In light of the fact that online gambling companies must be held accountable for the harm caused by their activities, we recommend that corporate social responsibility policies be fully implemented, monitored, and clearly reported; that all forms of advertising be reduced significantly; and that unfair or misleading promotional techniques be prohibited. The gambling business should neither depend on the revenues generated by problem gamblers, nor should their behaviour be encouraged by marketing activities in order to survive.

We acknowledge, however, that expecting the internet gambling sector to prioritise damage avoidance above income maximisation is unreasonable. The involvement of policymakers and regulators is consequently required if the steps outlined above are to be carried out successfully. In this industry, CSR is critical to minimising harm and providing a healthy user experience, but it also presents marketing challenges. We favour a worldwide coordinated strategy for the internet gaming business, as harm associated with gambling is a public health issue that must be solved.<sup>36</sup>

Gambling is becoming increasingly socially acceptable in many parts of the world. Despite the fact that it is huge and enormously successful, the gambling sector has ties to both political and financial organisations of the state, and it is pushed as legal and used by most of the people. Gambling on the internet has become increasingly popular as a form of entertainment as a result of the proliferation of the Internet, and it has experienced spectacular growth over the past decade. In 2009, there were over 2,500 online gambling sites in the globe, which were controlled by 600 organisations. Although there is rising worry that this sort of behaviour may provide a major risk of harm to some individuals and society as a whole, this is not the only source of concern. Current laws may be insufficient or ineffective in safeguarding problem gamblers and those who may be at danger, such as juveniles, young adults/university students, and others who are at risk of becoming addicted to gambling.

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<sup>36</sup> Henslin, J. M. (1967). Craps and magic. *American Journal of Sociology*, 73, 316-330.

In response, some intellectuals have urged for an outright restriction on the use of online gambling websites, while others believe that online gambling should be exposed to more regulation (Smith and Rupp 2005). Monaghan (2009) contends that, in light of recent attempts to prohibit internet gambling in the United States and China, a ban on online gambling may be futile. But, she believes that the activity should be codified in order to provide a better foundation for customers and to safeguard them from unscrupulous operators, which would result in more tax income. While some argue that the cash generated by the activity is desirable to governments, others argue that the long-term societal costs of the activity may outweigh the financial rewards.<sup>37</sup>

To modernize gambling legislation in the United Kingdom and to oversee various kinds of gambling, including internet gambling, the Gambling Act 2005 was enacted. The new regulation was completely implemented by 2007, and it provided online gambling operators with higher duties while also providing them with greater freedom. As a condition of obtaining a license, the legislation required the execution of corporate social responsibility programmes additionally another is that, it created a lawless structure, which has led in a growth of marketing efforts in the industry. Without a doubt, the CSR principles adopted in the Gaming Act 2005 recognised the potential



harm that gambling may cause and aimed to safeguard the public interest while still enabling gambling companies to thrive in the marketplace.<sup>38</sup> Carroll (1999, p. 292) explains how this dual purpose is derived from the fundamental idea of corporate social responsibility (CSR): “*at its core, it [CSR] addresses and captures the most important concerns expressed by members of the public regarding business and society relationships. There have been several previous studies that have drawn attention to these societal concerns. Because online gambling is not a passing fad, but rather a long-term phenomenon,*” according to Monaghan, current regulations must be

<sup>37</sup> Horwitz, A. (1984). Therapy and social solidarity. In D. Black (Ed.), *Toward a general theory of social control*, Vol. 1 (pp. 21 1-249). New York: Academic Press.

<sup>38</sup> Laskin, R. (1965). *Social problems: A Canadian profile*. Toronto: McGraw-Hill.

revised, and a moratorium on further expansion should be recommended, allowing for the implementation of harm-minimization strategies to be implemented instead.

The authors of Smith and Rupp point out that, despite the fact that "the online gambling industry provides superior Internet-based customer service with outstanding interfaces and a variety of games and promotional activities people in general perceive the industry as a global problem and an ethical hazard".<sup>39</sup>

The rise of gambling on the internet has prompted a variety of issues about the moral ramifications of the practice, as well as the marketing strategies that have been employed to promote it.

#### **4.12 ECONOMICAL IMPACT**

The most accordant economic impacts across all forms of gambling tends to be increased government revenue, increased public services, increased regulatory costs and either positive or negative impacts on non gambling businesses.

There are different impacts as a function of type of gambling. Formats that generate the most revenue (casinos, EGMs) and that are the most likely to be delivered by governments (lotteries) have the most reliable positive impacts on government revenue. Destination casinos have the eminent potential to bring in revenue from outside the local area, and thus , the eminent potential to create broad economic benefits to other local businesses in terms of revenue, business starts, and employment. EGMs and lotteries have a greater potential to divert money away from other local businesses and thereby negatively impact them.

As per recent reports on the gambling and betting sector, the industry has reported a growth of 5.9 %, which equals plus minus \$ 565 billion in revenue worldwide. Lets look the impacts that the online gambling and betting industry has on the economy.

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<sup>39</sup> Kent, A. (2011, March 11). Online gambling soars to \$1 billion. The Western Australian.



### **4.13 Loss of Revenue from Native American Casinos**

In USA Native American land is separate from the rest of the USA, the revenue from these casinos goes straight into the tribe’s economy. This is very helpful to the poor peoples and most marginalized communities in the US. These Profits go straight into job creation for those who live on Native American reservations. For example: the Cherokee Nation has put more than three quarters of the profits from its



casino into a scheme to fund assistance in helping its sons and daughters gain meaning and steady employment. Online casinos will need to be run from a location on Native land for them to fall under the tribes jurisdiction. Many tribes are expanding into the online gaming industry. This definitely a plus for the economy of the First Nations involved but takes away cash flow from the US economy overall.

### **4.14 Europe-Adding to Income**

The European online gambling industry is currently worth about \$53 billion. Experts says that the industry can expect to see a growth rate of approximately 11.5% every year until 2027, which means that by that time, the industry will be worth \$100 billion. All of this revenue in taxable and , as such, brings an incredible amount of money into the countries. People who win in online casinos or in betting are taxed on that amount as well, it increases the revenue. Given the advancement of technology and online gambling or betting sites, as well as people’s increased desire to stay home rather than venture out into public to gamble, the industry’s growth is not expected to slow down any time.

### **4.15 Worldwide**

There are many costs and fees involved with the online gambling or betting industry, wherever you are in the world. Like Paying out bonuses- a bonus is an amount offered to a new player in

credit or in some other form, to persuade them to play with the casino. More players persuaded to gamble means more income for the casino which means more taxes to support the economy.

Software licensing fees- for an online casino, this is an inevitable cost. Casino operators need to hire providers who specialize in the kind of software that runs casino games, online betting or gambling and the websites. These providers are taxed on their income which in turn contributes to the economy.

Hosting fees: The domain that an online casino or online betting or gambling will operate on some cost, server hosting is also same. These! services provides contribution to the economy through tax as well.

Taxes and licensing fees- casinos itself pay taxes on its income. The! Economy is strengthen by the license fees that all online casinos, online gambling or betting sites must pay, which vary from country to country and state to state.

There is less risk implicated in operating an online gambling , betting , casino than there is in running a physical establishment. No need to pay large amount of rent for huge casino location and there is only setup cost which is much lower. In online gambling or betting there is less financial burden means that casino operators will have less chance of going under when times get tough.

Casinos have the eminent potential to increase property values. EGMs are the least intensive form of gambling and are most likely to decrease overall employment, whereas horse racing and casinos have the greatest potential for increasing employment.

Internet gambling is the only form of gambling that may not be economically regressive. EGMs and internet gambling have greater potential for negatively impacting attitudes towards gambling.

Internet gaming is growing popular in the present time due to its variety of products and its market share. The market of online global gambling was valued at €6.1 billion in 2013, with the estimated annual growth of 10.1 % in 2018. !An increasing number of jurisdiction internationally

have started to regulate and legalize online gambling which is difficult because of less known ways to implement prohibition without harming taxation revenues which are earned from the games and attempt is made to reduce the risk on customers. Internet gambling or betting is likely to grow as people are increasingly participating in several online platforms which are usually used for leisure and entertainment purpose and can be accessed on mobile phones or another wireless networks. Most commonly reported factors which motivates and considered as advantages of Internet gambling is the convenience and accessibility of this mode for gambling and disadvantages which are also cited by the stakeholders is that the concern about their account's safety when it gets easier to spend money online.

#### **4.16 The Influence of Online Gambling Environments on Self-Control**

Online gambling has risen to become a rapidly expanding, yet divisive, business. This chapter highlights two research points that look into the aspects of online gambling settings that might lead to difficulties with self-control and impulse control. Survey with both online and casino gambling participants suggest that their experiences are classified differently in an online setting, leading some participants to spend less time tracking their expenditure. They also use the physical environment to set limits on each other and themselves. In the next section, an experiment is carried out to study two aspects of online gambling environments: the use of intangible currency and the use of quick sequential selection. These two characteristics have a detrimental impact on people's capacity to keep an accurate, in-the-moment account balance throughout a series of gambling sessions. Several policy and consumer welfare implications have been suggested by these investigations.<sup>40</sup>

People have been weighing the pleasure value of gambling against the societal problems that appear to be associated with the pastime for more than 200 years. Because of the origins of the Internet, this discussion has been placed into an online setting. Online casinos and bookies

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<sup>40</sup> Jennifer Christie Siemens and Steven W. Kopp, The Influence of Online Gambling Environments on Self-Control, *Journal of Public Policy & Marketing*, FALL 2011, Vol. 30, No. 2 (FALL 2011), pp. 279-293.

generated over \$15 billion in revenue globally in 2006, according to conservative projections. By 2024, this figure is predicted to nearly double to about \$100 billion.<sup>41</sup>

The act of gambling on the internet may be carried out in virtually any traditional fashion. In addition to online casinos and sporting wagering, the most popular types of betting are horse racing wagering and horse racing wagering. There are many of online casinos and sportsbooks to choose from. But, because of the ease with which these websites may be accessed, as well as the moral stigma attached to gambling, a slew of international, federal, and state rules have been enacted in an attempt to regulate the availability and access to these sorts of links.<sup>42</sup>

Studies and public opinion have shown that electronic mediated gambling, such as that seen in video games and online, may be more damaging or harmful to players than basic casino gambling. Consumer fraud, compulsive behaviour, and underage gaming are all issues that warrant government control, according to the National Consumer Fraud Center. The results of a recent research of 30 online and casino gamblers revealed that consumption is less restricted in online contexts, leading some to argue that gamblers are drawn to online gambling because it constitutes a sort of transgression. They also discovered that online gambling is more accessible and leads in more time spent playing, resulting in online gambling becoming incorporated into everyday consumption, resulting in "more thoughtless consumption of gambling and resulting losses," according to the researchers.<sup>43</sup>

#### **Do You Know.....?**

Despite this, only a small amount of study has been conducted to determine if the mental processes that underpin involvement in casino gambling vary in a computer-mediated, virtual environment.<sup>1</sup> Due to the continued growth of the internet, as well as the increase in online expenditure, it may be tempting to simply adapt what has been learnt in offline surroundings to computer-mediated ones. Researchers have discovered that the characteristics of computer-mediated surroundings differ from those of typical face-to-face consuming situations.

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<sup>41</sup> Duval, Shelley and Robert A. Wicklund (1972), *A Theory of Objective Self-Awareness*. New York: Academic Press.

<sup>42</sup> American Gaming Association (2008), *Responsible Gaming Statutes and Regulations*, 3d ed. [available at [http://www.americangaming.org/assets/files/Statutes\\_and\\_Regs\\_FINAL\\_022009.pdf](http://www.americangaming.org/assets/files/Statutes_and_Regs_FINAL_022009.pdf)]

<sup>43</sup> Antonoides, Gerrit (1994), "Mental Accounting in a Sequential Prisoner's Dilemma Game," *Journal of Economic Psychology*, 15 (2), 351-75.

<sup>44</sup> Baumeister, Roy F. (1994), *Losing Control: How and Why People Fail at Self-Regulation*. New York: Academic Press.

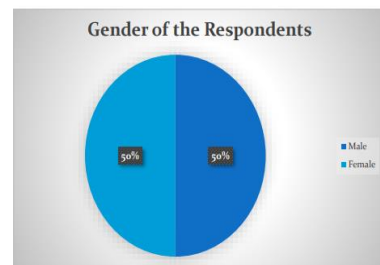
computer-mediated ones. Researchers have discovered that the characteristics of computer-mediated surroundings differ from those of typical face-to-face consuming situations.

As a result, this cross-contextual translation should be approached with caution. Because of its ease of access and ease of usage, the internet magnifies the negative consequences of certain behaviours. Even in the context of online gambling, it has therefore been a continuing problem for policymakers to balance the frequently conflicting ideals of online safety and freedom with one another.

#### **4.17 Demographic Variables of Customers**

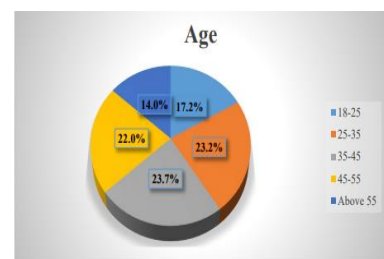
- **Gender:**

The gender wise classification of the respondents. Out of 600 respondents selected, half of the respondents belongs to the male category. 300 males and 300 females were analysed for the research, in order to identify the gender differences in gambling similarity.



- **Age**

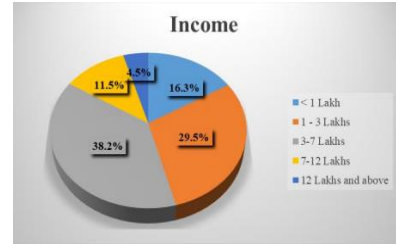
The age-wise classification of the respondents. Out of the selected customers 17.2 % belong to the age group '18-25', 23.2 % belong to the age group of 25-35, 23.7 % belongs to the 35-45 age category, 22 percent belong to an age category of 45-55 and 14 % of the respondents belong to an age category of above 55.



People starts to earn their own income at the age of 25 and they may start to spend their income according to their wants. This age group may also have a curiosity to spend on products. In this middle age group, there may be more risk lovers and may take risky decisions in their purchase.

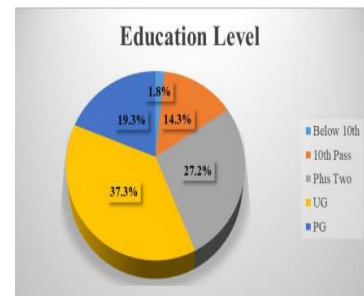
- **Income Level**

The Income level of the respondents has a major impact on the decisions of the people, in case of any products or services. In gambling-based products purchasing power of the individual plays a major role in involvement in gambling activities. The gambling activities have an addictive nature so even if they lack income, they may not withdraw themselves from such activities, they may depend on borrowed funds to indulge in the gambling activities. The income wise classification of customers shows the majority of the customers 38.2 % of the respondents belong to the income group of 3-7 lakhs, followed by them comes 1-3 lakhs income group i.e. 29.5 %. 16.3 % of the respondents belongs to the income category of ‘less than 1 lakh’. Income category of 7-12 lakhs and ‘above 12 lakhs’ have 11.5 % and 4.5 % respective.



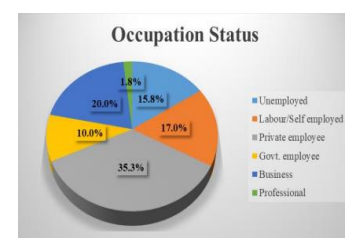
- **Education Qualification**

Education has an impact on the decisions of an individual. We expect sensible buying decisions with the increase in educational qualification. Absurdity in decision making can be assumed when educational qualification is less. Those who have a low level of education are more liable to the marketing strategies as well as the selling tactics of marketers. The educational qualification of the respondents. The majority of the respondents 224 (37.3%) belong to the Undergraduate level. Followed by this 27.2% of the respondents belong to plus two level, 19.3 % of respondents belong to the Post Graduation level of education, 14.3 percent and 1.8 % of the respondents belong to the 10th pass and below 10th category of education.



- **Occupational Status**

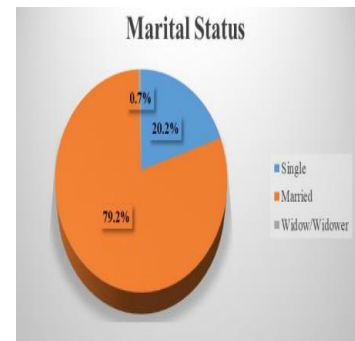
The occupational status of the customers has a major impact on their buying decisions and involvement in decision making. Those who belong to the insecure job category and not with a stable



income may be more attracted to the gambling related products. We can see that 35.3% of the respondents belong to private employment occupational status, 20% of the respondents were doing business, labour/ self-employed category constitute 17% among the respondents, 15.8% of the respondents were unemployed and only 1.8% of the employees belongs to the professional category.

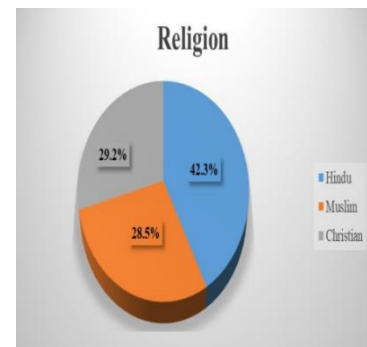
- **Marital Status**

The marital status of an individual may have influenced the attraction of people towards gambling. Family people may have more responsibility and they may consider gambling as a source of easy money, which helps them to dispose of their responsibility easily. Majority of the respondents 475 (79.2 %) belongs to the married category, 20.2% of the respondents are Unmarried. Only a minority of 0.7% belong to the widow/widower and separated category.



- **Religion**

The religion of the respondents may show a major difference in the buying behaviour of the respondents concerning several products. Gambling is entirely different from normal products, because in gambling we are investing money without any guarantee in return. So, the element of risk is present in the purchase of a gambling product. The response towards uncertain products may be diverse for different religions. The majority, 42.3% of the respondents belong to the Hindu religion. Since India is a Hindu Cultured country, it is obvious that the Hindu population will be more in Kerala. The Muslim and Christian categories were 28.5 % and 29.2% respectively.



## CHAPTER-5

### 5. INDIAN JUDICIARY AND ONLINE BETTING

#### 5.1 Introduction

“As a result of this lack of dynamism, the Information Technology Rules, 2011”, were enacted to restrict residents from enrolling at online sports gambling sites by holding Internet Service Providers liable for unblocked offshore activities. This legal genesis is an outgrowth of a previous law known as the IT Act, which expanded the reach of internet betting by designating gambling as a cyber-crime tactic. Furthermore, the FEMA legislates on the concerns of cross-border gambling transactions and the regulation and prohibition of internet betting. However, gambling rules and regulations in the country remain indefinable, since the “Information Technology Act of 2000 no longer prohibits clients from entering into international websites without the protection of national law. Online gambling sites are also often beyond the jurisdiction of Indian courts, making it difficult to execute penalty imposed by Indian authorities.” In the modern context, the mitigating strategy has been the extension of extraterritorial jurisdiction under The Indian Information Technology Act, slowing leading to cross-border litigation involving internet-based gambling operations, similar to the US case of *In State of Minnesota v. Granite Gate Resorts, Inc.*<sup>45</sup>

#### 5.2 Legal analysis of gambling

What Does Indian Law Say About Online Gambling ?

Public Gambling Act, 1867. At present, India has just one central law that governs gambling in all its forms. It's called the Public Gambling Act, 1867 which is an old law, ill-equipped to handle the challenges of digital casinos, online gambling and gaming.



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<sup>45</sup>Lohiya, Naman, and Sakshi Pawar, *A Gamble of Laws: Reconciling the Conflicting Jurisprudence on Gambling Laws in India* 13, NALSAR STUD. L. REV. 27 (2019).



### **5.3 Government's observation**

The government has observed that some betting and gambling platforms are using outdoor media such as hoardings, posters, banners and auto rickshaw branding to promote their websites/apps.

Such advertisements were found to be misleading and not in strict conformity with the Consumer Protection Act 2019.

Moreover, since betting and gambling are illegal in most parts of the country, they pose financial and social economic risk for the consumers, especially youth and children.

The government has objected to the promotion of a specific betting platform that encouraged people to watch a sports league on its website in prima facie violation of the Copyright Act.

Prior to the arrival of technology, draftsmen-controlled gambling only inside the confines of a building or closed structure. On the basis of the decision in *Super Cassettes Industries Ltd. v Myspace Inc. &Anr*<sup>46</sup>, it can be concluded that if there are changes in circumstances or advancements in technology that were not anticipated when enacting or introducing a new law, statutory interpretation suggests that these new changes or advancements in technology can be construed as part of that existing law if they fall within the same genus. Indeed, in that decision, the Court concluded that the term "Place" included "Place on the internet" when interpreting the Copyright Act, 1957.

With the growth of online gaming, the topic of what happens when skill-based games are played on virtual platforms might emerge. Can these skill games be sold for money, or are there any restrictions on accepting stakes in skill games on profit-making websites? This issue was recently before the New Delhi District Court, where a petition was filed under Section 36 of the 1908 Civil Procedure Code, along with several other issues, including the legality of skill games and online games for cash, the constitutional right to establish skill game businesses, penal provisions in connection to online gambling, advertising online gaming, and payment gateways for online skill games. The court concluded that the Constitution does not protect online games,

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<sup>46</sup>2017, (69) PTC1, (DEL)

which fall beyond the scope of trade and commerce. While interpreting the phrase "common gaming house," the court said that online gaming or the provision of online games of skill may come within its purview and so subject the operator to criminal culpability. A clear distinction was drawn between skill games performed on a physical platform and those played on a virtual platform.<sup>47</sup>

Six factors were used to define "skill," which included ability, strategy, physical coordination, technical experience, and knowledge, according to the court's study. To put it another way: even while skill-based games have been pronounced lawful and no restrictions may be imposed on their physical play (i.e., in "common gaming houses" for stakes or profits), courts have found that this does not extend to their online play. This was found to be allowed under Indian law for games of skill performed in an online forum that were not played for stakes or profits.<sup>48</sup>

According to the Court, internet gaming has a higher degree of chance, which raises the likelihood of manipulation, such as unpredictability, cheating, and collusion, compared to playing in person. Playing online games for real money would be no different from playing in a physical casino, according to the Court, which has ruled that playing via a mouse click does not fall within the definition of skill. A further court ruling said that any type of advertising on these online gaming sites is unlawful and not allowed. As a result of the lack of a legal framework for online gaming and the fact that this is the first time an Indian court has delved into the ramifications of online gaming in this depth, the authors believe that this decision is progressive, but that there are still a number of gaps in its interpretation of the existing laws comprehensively. In addition to the court's findings, several more possibilities exist. As a result, this decision should not be seen as definitive as to the legality of online gaming and skill games.

#### **5.4 The Bill: Analysis Introduction**

On December 28, 2018, Shashi Tharoor, the Thiruvananthapuram Member of Parliament, submitted a Private Member Bill, Sports (Online Gaming and Prevention of Fraud), in the lower house of Parliament to regulate sports betting. The Law Commission's 276th Report to the

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<sup>47</sup>*Supra Note 1.*

<sup>48</sup>Mehta, Manav, and Purnima Mathur, *Is Your Dream Team Even Legal: Legality of Fantasy Sports in India and Its Evolving Trends* 1, J. FOR SPORTS L. POL'Y & GOVERNANCE 51 (2018).

Government, titled 'Legal Framework: Gambling and Sports Betting in India,' recommended that fraud and match fixing be criminalised and sports betting be legalised under stringent parliamentary oversight. The bill has been written flawlessly and has been reviewed by high-ranking legal practitioners.<sup>49</sup> The bill intends to legalise sports betting in India and to criminalise sports betting and match rigging.

Additionally, the law proposes the establishment of a seven-member commission to oversee online sports and gambling. The committee will be completely responsible for the rules and regulations, and there is no limit to the number of rules and regulations that may be included. Numerous rules and regulations may be flooded. Additionally, he added that sports betting is a rapidly developing business in India and that legalising it will help the government produce cash. Declaring his enthusiasm for sports, he said that he is a huge lover of them and how the people of this nation revere game like cricket. He added that by legalising sports betting, the government would gain control over the actions of those involved in betting, and match fixing will no longer be a monopoly of criminal mafias.

Additionally, the law is focused on preserving sports' integrity and prohibiting any occurrence, such as manipulations or match fixing, from resulting in the cancellation of any match in any sport. The law defined online sports gambling as "making a wager on the result of a contest in its whole or in part via the use of a telecommunication equipment." Commissions may impose limits such as prohibiting children from playing and capping the largest betting costs that may be bid. Numerous types of sports fraud, including match fixing and spot fixing, are not criminalised under the present legal framework.

By the end of 2021, the sports betting industry is estimated to reach \$515 billion. It now has 30 professional teams, up from 16 in 2016. With such rapid growth, it is clear that this industry has exploded in recent years and shows no indications of slowing down in the foreseeable future. The law was presented to address the gaps that exist in our existing legal system. The bill's purpose was to provide a formal system for dealing with sports fraud.

Additionally, the bill punishes anyone who has knowledge of or is involved in a manipulation or an act of sports fraud such as match fixing, spot fixing, or bribery for providing confidential

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<sup>49</sup>*Supra Note 1.*

information or manipulating a sport fraud with a term of imprisonment of up to five years and a fine of rupees ten lakh or five times the number of economic benefits instilled by the sports fraud, whichever is greater.

The debate over whether gaming should be deregulated or liberalised has gained steam as a result of the LCI's suggestion. Deregulation supporters say that the government will gain significant tax revenue, that it will prevent money laundering linked with illegal gaming, and that it will increase job and tourism prospects. Those who argue that gambling should be strictly regulated contend that if gambling were deregulated, more people would gamble, resulting in greater problematic gambling and gambling-related damages.

### **5.5 Sports (Online Gaming and Prevention of Fraud) Bill**

Sports betting and spot fixing in India, as well as the laws and norms in place to monitor them, were called into doubt after a major controversy involving the Indian Premier League (IPL) in 2013. The controversy has prompted doubts about the MPs' integrity. In India, legalising sports gambling is seen as an effective option. Spot fixing and sports betting have a long history of intertwined relationships. People say the latter is capable of forsaking the former at any time. A full ban on sports betting is very hard to impose, but legalising and regulating it in accordance with government wishes is a major way to look at it.<sup>50</sup> The criminals will no longer be able to profit from the illegal operations of bookmakers if gambling is made legal. In addition, the authorities will be able to depend on reliable sources in the event of suspicions about rigged bets or fixing. In India, sports betting is still illegal.

In one of its rulings, the Supreme Court declared that horse racing comes under the category of a game of skill since it involves assessing the breed of horse, the horse's form, and the jockey's form. Gambling and betting rules and regulations may be established by individual states under the Indian Constitution (Seventh Schedule, State List, Entry 34). The state has jurisdiction over gaming and betting establishments. In the states of Goa and Sikkim, gambling is permitted. Because it is a clandestine market, sports betting on the internet has become difficult to police, leading to a host of other issues. Even if the rookies are carrying this with minors or individuals

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<sup>50</sup> Qtaishat, Ali K., and Ashish Kumar, *Sports Betting: Surveying The Legality Issues And Current Developments* 20, *JL POL'Y & GLOBALIZATION* 42 (2013).

who are hooked to it, there is no room to find answers to the damage it poses to society because of this.

There is no method to keep track of the betting market's cash flow in records or trace its trend. By making it legal, the government stands to make between Rs. 13,000 and 20,000 crores in tax revenue. As soon as sports betting is legalised, it will face a slew of challenges. It will not totally eliminate the issue of match fixing, but it will make it easier to analyse and monitor betting trends and to retain a record of money involved. A record of all transactions including bettors' names and contact information will be kept by the bookies. Because the government will keep track of those who bet on sports, they will be less likely to commit sports fraud because they are afraid of being found and the penalties that would follow. There will be a worry among license holders that their license may be revoked.

All of this will be achievable only if legalised sports betting is adopted. In addition, the monies would be used to keep sporting facilities and equipment in good working order, as well as to help athletes improve their skills.

## **5.6 Public Gambling Act, 1867**

At present, India has just one central law that governs gambling in all its forms. It's called the Public Gambling Act, 1867, which is an old law, ill-equipped to handle the challenges of digital casinos, online gambling and gaming.

## **5.7 7<sup>th</sup> Schedule of the Constitution**

Gambling in India is largely a state subject. This means states are expected to create their own laws to regulate gambling in their jurisdictions.

## **5.8 Laws in Various States.**

States like Delhi, Madhya Pradesh, and Uttar Pradesh have adopted the Public Gambling Act with some amendments.

However, other regions like Goa, Sikkim, Daman, Meghalaya and Nagaland have drafted specific laws to regulate public gambling in their jurisdictions.

## **Way Forward:**

Online gambling poses challenges that need to be addressed by regulators and policymakers to ensure fair and responsible gambling.

The legal landscape in India is complex and varies by state, so individuals should be aware of their state's laws and only participate in licensed online gambling activities.

In India, gaming, including sports betting, has been around for a long time. Physical gaming was more popular before online gaming became a popular and profitable industry. The gaming industry in India is rapidly expanding, with \$350 million in venture capital investing in Indian gaming start-ups being committed between 2014 and 2020. As of December 2019, India has over 500 million smart phone users, and mobile gaming accounted for 85 percent of all online gaming in the country. With growth forecasts of 41.6 % for the year ahead, India is likely to become the gaming industry's largest market.

## **5.9 Game of Poker**

In *Dominance Games Private Limited v. State of Gujarat*<sup>51</sup>, the High Court of Gujarat determined that “the game of Texas Hold'em Poker is a game of chance and so should not be played. stated that, given the nature and character of the game of Poker and the method in which it is played, it is necessary to note that it is a game that has two stages i.e. initial phase of dispersion of cards over which there is no control and later stage of the game, where the cards are opened with batting and it is during the process, the complexion of the game changes with every turn of the card.” The court went on to infer that, in the final analysis, it is possible to conclude that every game has both elements of skill and elements of chance, and that this conclusion is correct.

As a result, the Supreme Court developed and applied the criteria of a "substantial degree of expertise" in its decision. As a result, it is the preponderance of talent over chance that will

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<sup>51</sup> (2018) 1 GLR 801

determine the conclusion of the game and govern its outcome. Using this test to evaluate and apply to the game of Texas Hold'em Poker, the court determined that the game does not meet the requisite criterion of predominance or a sufficient degree of skill in order to be legal.

The Indian Poker Association<sup>52</sup> has filed an appeal 8 against the above-mentioned ruling with the Division Bench of the Gujarat High Court, which is now hearing the case. Given that the issue is now pending before the Division Bench of the Gujarat High Court, the Single Judge ruling described above is deemed legitimate and enforceable in its entirety.

In the case of *M. J. Sivani v. State of Karnataka*<sup>53</sup>, the court ruled that, according to the Supreme Court, the elements of gaming are the presence of rewards or consideration, and gaming is the participation in any game, whether of skill or chance, for money or money's value, and the presence of prizes or consideration. According to the court, there was no room for using one's skill to achieve a desired outcome in the context of games such as poker double up, blackjack, and Pacman because the electronic machines on which these games were played could be interfered with, resulting in the odds of success becoming wholly irrelevant to the skill of the player. As a result, games performed electronically were classified as 'games of chance' and were therefore prohibited.

As stated in *Indian Poker Association v. State of Karnataka*, while assessing whether or not a license was required to organize poker games and tournaments, the Karnataka High Court found "in respect of the game of poker when played as a game of skill, no license is intended." In this case, the court did not specify the elements that must be met in order for it to be determined that Poker was played as a game of skill, which leaves the decision open to interpretation.

Specifically, in *Indian Poker Association v. State of West Bengal*<sup>54</sup>, the Calcutta High Court held that, "*under Section 2 (1) (b) of the West Bengal Gambling and Prize Competitions Act, 1957, poker is not included in either gaming or gambling and, as a result, if a person plays such game without engaging in any other act that could constitute an offence, playing such game does not attract a penalty. Thus, the Calcutta High Court ordered that participation in Poker will not result in harassment of the participants by the respondent organisations or individuals.*"

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<sup>52</sup> Letter Patent Appeal No. 2625 of 2017

<sup>53</sup> AIR 1995 SC 1770

<sup>54</sup> W. P. No. 13728 (W) OF 2015

## 5.10 Rummy

As stated in *State of Andhra Pradesh v. K. Satyanarayana and Others*<sup>55</sup>, the Supreme Court determined that rummy is mostly a game of skill rather than a game of chance. Further, according to the Supreme Court of India, "a substantial level of talent is required since the fall of the cards must be learned, as well as great competence in holding and discarding cards throughout the process of building up the game of rummy." Simply put, the word "mere skill" refers to the presence of skill to a significant degree.

Interestingly, the Kerala High Court in 2019<sup>56</sup> found that "playing rummy for stakes" within the club grounds is an offence under the Kerala Gaming Act, 1960 (hence referred to as "the Act"), and that the police are free to take necessary action if they follow Section 5 of the Act. A review petition (*Play Games 24x7 Private Limited and Others v. Ramachandran K. and Others*) was filed against the aforesaid judgement. "The Kerala High Court dismissed the petition without passing a specific ruling on the legality of online rummy, holding that the issue of whether rummy is played for stakes will constitute a breach of the provisions of the Gaming Act or not must be decided on a case-by-case basis, taking into consideration the manner in which the games are performed."

In *Amit M. Nair v. State of Gujarat*<sup>57</sup>, the petitioner prayed for the holding and declaring that playing online gambling in Virtual Space/World Web/Cyber Space, through Mobile Applications and Computers, more specifically "online rummy," is bad and illegal in the same way that it is in violation of the provisions of Sections 4 and 5 of the Gujarat Preventive Gambling Act, 1887. According to the Gujarat High Court, "There is no need for debate on this issue because Rummy is a game of skill as held by the Supreme Court for the first time, in the case of *State of Andhra Pradesh vs. K. Satyanarayana &Ors.*<sup>58</sup> and later followed in the case of *K.R. Lakshmanan vs. State of Tamil Nadu &Ors* However, it is irrelevant whether what is being played is "Rummy" in the real meaning of the word or whether it is simply plain and simple gambling that is being discussed. "Once again, this would be dependent on the specific facts of the case." The Supreme

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<sup>55</sup> AIR 1968 SC 825

<sup>56</sup> WP(C) No. 35535/2018

<sup>57</sup>WP (C) No. 146/2020

<sup>58</sup> AIR 1968 SC 825



Court of Gujarat issued an order instructing the State of Gujarat to consider the writ application as a representation and to address the problem in the public interest as a whole.

### **5.11 Fantasy Sports**

The High Court of Punjab and Haryana held in *Varun Gumber v. Union Territory of Chandigarh and Others*<sup>59</sup> (Dream 11 judgement) that, “*with any game of skill, greater experience and training in such games provides a user with greater insight into strategies for success as well as a greater sense of the game's dynamics and operating parameters, and in itself magnifies and adapts the element and exhibition of skill on the user's part and thereby has a material influence on the outcome. As a result, the High Court of Punjab and Haryana determined that fantasy sports did not constitute gambling and that Dream 11 was engaging in a commercial activity protected by Article 19(1)(g) of the Constitution.*” The Supreme Court of the United States denied an appeal against this order in 2017.

In *Gurdeep Singh Sachar v. Union of India*<sup>60</sup>, a criminal PIL was filed before the High Court of Bombay, and the court reached a conclusion that was similar to that reached by the High Court of Punjab and Haryana in the previous case. The Court concluded that, in contrast to betting, winning or losing in fantasy sports was not contingent on any particular team winning or losing in the real world, as was the case with betting. Earlier this month, the Supreme Court of India issued an injunction restraining the implementation of the Bombay High Court's judgement in the matter of *Gurdeep Singh Sachar*. The order was issued March 6, 2017. As a result, it remains to be seen how fantasy sports will be classed and categorized in the long run within the legal framework of Indian laws and regulations.<sup>61</sup>

In another PIL, filed before the Rajasthan High Court, in *Ravindra Singh Chaudhary v. Union of India*<sup>62</sup>, the subject of whether online fantasy sports activities offered by the Dream 11 platform constituted gambling or betting was debated by the Division Bench on whether they constituted gambling or betting. The Court determined that the success of a fantasy game is determined by

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<sup>59</sup> CWP No. 7559 of 2017

<sup>60</sup> Judgment dated 30th April 2019 in Criminal P.I.L. No. 16 of 2019

<sup>61</sup> SLP (CrL.) Diary No. 42282 of 2019 Supreme Court of India

<sup>62</sup> D.B. Civil Writ Petition No. 20779/2019

the talent of the player, rather than by chance, and that the winning or losing of virtual teams established by the participant is likewise independent of the outcome of the game or event in the actual world, according to the Court. Various High Courts have frequently found that the structure of Dream 11's online fantasy games is a game of pure skill, and that the business model is protected by Article 19(1)(g)<sup>63</sup> of the Constitution of India, as has been reiterated by the Supreme Court of India.

## **5.12 The Legality of Online Gambling In India: Current Regulations and What's Ahead**

Recent statistics show that around 40% of Indian adults have gambled at least once on online platforms. It's not a secret that Indians are fond of gambling activities like card games and sports betting.

That is why it's not surprising that casino operators see India as one of the countries with a huge potential for market growth. While online gambling activities are significantly growing in the country over the last few years, there are a lot of questions about its legal status.

Is it legal to place online bets in India ? Can online casinos offer their services to Indian players? We'll answer these questions and more .

## **5.13 Current State of Online Gambling in India.**

The truth is that gambling on betting sites is still in the gray area in most parts of India. Before we dive in deeper, understand that gambling is regulated in the country, and the regulations in place are based on the Public Gaming Act of 1867.

Since this is a law passed before the internet ever existed, it has no mention of online gambling. With this alone, online casino and betting activities are then considered neither legal nor illegal.

India also has the information Technology Act of 2000 which is used to regulate online activities in the country. However, this too has no mention anything about online gambling. That's why

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<sup>63</sup>The Constitution of India, 1949

until today, the majority of the country can freely place their bets on offshore casinos and bookies.

Only the states of Sikkim, Nagaland, and Meghalaya have gaming laws and licensing regimes. Sikkim and Meghalaya have licensing authority for online casino gaming and sports betting. However, licensing doesn't include the residents of their states.

Meanwhile, Nagaland has a licensing authority for online games categorized under mere skill. Only Sikkim has a licensing regime for games of skills and chance.

In 2020, Telangana and Andhra Pradesh imposed a ban on any online gambling and real money gaming activities.

That said, even if national laws have nothing on online gambling local governments can still come up with amendments concerning online gambling. They could prohibit or regulate the industry.

In 2021, the states of Karnataka and Tamil Nadu moved towards a blanket ban on online gaming activities. Both states see this as a solution to the rising gambling problems within their territories.

However, the bans both states imposed didn't last long. The High Courts had to strike down the amendments that prohibits online gaming because they deem these unconstitutional. The Karnataka High Court explains that the legislative action on online games of skill violates Article 14 of the Constitution on the ground of manifest arbitrariness.

However nothing in this judgment shall be construed to prevent appropriate legislation being brought about concerning the subject i.e, betting and gambling by the provisions of the constitution.

A Writ of mandamus is issued restraining the respondents from interfering with online gaming business and allied activities of the petitioners the order said.

This is also basically what happened with Tamil Nadu, Kerala also had to go through the same thing. Still these states are free to come up with legislation regarding online gambling. They just need to make sure that it won't violate the constitution.

With the recent happenings surroundings online gaming legislation in the states mentioned earlier, India is still having a hard time deciding what is and isn't gambling.

It's also hard to say whether more states will follow Tamil Nadu and Karnataka in attempting to prohibit online gaming. However, there are also reports that India is ready to embrace it.

Recently, the Ministry of Electronics and IT announced that there is a legislation draft surrounding online gambling throughout India that's ready to be reviewed.

The drafted regulations are geared towards resolving the growing complaints of problematic gambling behaviors among minors. The regulator will also be responsible for checking the content of the games. Any content that violates the sovereignty and integrity of India will not be allowed. Some of the niches or subjects that this includes are violence, addiction, and sexual content. Online gaming operators will also have to be registered with the IT ministry. Since this is still only a draft, the regulations are open for public input, so they can still be revised.

#### **5.14 Law Regarding Online Gambling In India in 2023**

As already stated, there is a lack of clarity and standardization in the laws across the country when it comes to online gambling. There is only one judgement M/s Gaussian networks Pvt. Ltd. V. Monica Lakhanpal and State of NCT which discussed online gambling and stated the following:

If a game that involves game of skills is played with stakes, then it does not constitute as gambling.

If the players are attracted to the game just due to prize money, it is considered illegal.

In virtual platforms, any game of skill played for the purpose of gaming money would not be legal, even though it would be legal in physical world.

Gaming sites cannot join the winning hands as it would promote online gambling.

As a result, there is no longer a precedent that can be referred to that was established by this case because it was dismissed during the closing arguments of the revision petition.

Having said this, Telangana was one of the first states to ban online gambling with a legislation in 2017, which was then followed by Kerala, Tamil Nadu, Andhra Pradesh, and most recently, Karnataka. Karnataka is the most recent state to join the ranks of those states that have banned online gambling. It was then brought to everyone's attention that in order for the ban to be fully implemented, the government of the Union needs to block gambling websites and portals. All of these bans have been contested over time by rummy and poker portals, and the Madras High Court was recently forced to reverse the improvements brought about by the amendments. This has resulted in an enormous outrage in the community that frequently engages in virtual gambling.

Apart from this, the Prevention of Money Laundering Act 2022, Telecom Commercial Communications Customer Preference Regulations 2010. The Prize Competition Act 1955, Foreign Exchange Management Act 1999 and the Cable Television Network Rules 1994 put forth some regulations on the promotion of gambling.

The government has been trying to make a legislation which regulates gambling, as it would not only stop people from losing money but also generate revenue for the economy if it is taxed properly and legally. India being an up and coming market with great potential for gambling there are quite many foreign investors who would be interested in establish operations in the country.

Some states moved toward banning online gaming activities within their territories, including Tamil Nadu. In February 2021, the state passed an amendment that made online gambling in the state illegal.

According to the High Court, this was unconstitutional as it violated and has fallen foul of Article 19(1)(g) of The Constitution. This part of the law states that people have the right to practice any profession or carry on any occupation, trade or business. The court also found that this wide ranging ban which includes the prohibition of online sports betting, online poker, online teen patti, and online rummy is extravagant and disproportionate to what the state desired to achieve, which was to lessen the rising gambling and betting related problems in the state.

Most of the gambling activities in India are under strict control. However, a few categories like horse racing and lotteries are an exception to this. Gambling in India is a state subject which

means that only the state governments are entitled to formulate and govern such activities for their own states.

The Public Gambling Act 1687 also known as the Gambling Act is the general law that governs gambling in India. However, since the state legislatures as per the Constitution of India have been entrusted with the regulatory leeway to form State subject gambling rules, it is the State that formulates such laws as per the requirements of such State.

The Gambling Act is the central enactment that has been adopted by certain states in India and other states have formulated or enacted their own legislations to regulate and govern gambling activities within their own territory. Since most of the gambling legislations which have been enacted were done prior to the advent of online or virtual gambling or betting thus, the gambling legislations primarily refer to gambling activities in physical form. Since the times of British rule, many states in India have enforced the gambling act, thus prohibiting all forms of gambling and betting in their respective states. Goa and Sikkim were the only states that allowed gambling and betting subject to regulations made by these respective states.

### **5.15 LEGAL POSITION OF ONLINE GAMBLING IN INDIA**

Each state has its own gaming laws in place prior to any national legislation. Therefore, behaviours that were illegal in one state can be legal in another. After that, The Public Gambling Act of 1867, a major piece of legislation, was introduced. While some states have their own laws, such as Uttar Pradesh, Madhya Pradesh, or Punjab, several states have accepted this legislation. Online gambling or betting are not mentioned in the legislation. The first states to implement regulations governing online gambling or betting are Sikkim and Nagaland.

If state regulations regarding online gambling are taken into consideration, it might be argued that only the States of Orissa and Assam have made skill-based games a part of their gambling laws. This has not yet been done by any other states. However, according to the state laws of West Bengal, Nagaland, and Sikkim, poker can be played both offline and online with prior authorization in the form of a license from the state government. The government-run

establishments, commonly known as casinos, are permitted to conduct gambling in the state of Goa.

Although the statute forbids all forms of gambling, there is a gap in the law because there is no provision for online gambling. But whether the act is a game of skill or chance determines how the cases are resolved.

Although the statute forbids all forms of gambling, there is a gap in the law because there is no provision for online gambling. But whether the act is a game of skill or chance determines how the cases are resolved.

Online gambling was a topic of discussion in the case of M/s Gaussian Networks Pvt Ltd. v. Monica Lakhanpal and State of NCT (Suit No 32/2012, Delhi District Court). Online gambling was brought up for discussion. The argument was made in accordance with CPC Order 36 Rule (1). The following were in the Court:

If played with stakes, any game that involves a game of skill is not considered gambling.

It would be against the law for anyone to entice players with the promise of a prize.

If any skill game is played with the intention of making money, only in the real world and not online, is it permitted to do so.

Gaming websites are prohibited from joining the winning hands as this would lead to online gambling.

However, the parties withdrew the petition during the Revision Petition's final round of argument.

As a result, there is no decision that can be used as a precedent in online gambling.

A recent internet gambling ring was busted leaving a residential neighbourhood in New Ashoka Nagar, East Delhi, on the eve of September 16, 2018. The manager and the owner of the online casino created a login ID and password and provided it to their patrons. Then, using the computer system that was located on their property, they would play roulette. However, the

police officers detained the owner, manager, and the aforementioned 12 clients for breaking state gambling regulations.

As a result, there is no decision that can be used as a precedent in online gambling.

In the past ten years, the size of the global gaming market has increased significantly. Naturally, this growth in size is accompanied by a rise in revenue generation, which keeps rising yearly. For instance, Europe claimed a 41% GGY (Gross Gaming rate) rate, whereas Asia recorded a yield of about 39%. Due to the legalization of betting on horse racing, cycling, motorbike racing, and boat racing, Japan actually has the largest national betting market. This market is double the size of the United Kingdom. The same is also clear from the quick rise in sales of the state lotteries in mainland China, which peaked in 2013 at \$51.1 billion.

Although land-based casinos and lotteries continue to dominate the gambling industry, experts claim that internet betting and gaming is expanding quickly. If these activities were properly regulated, they would guarantee market transparency and undermine the underworld's ability to control the illegal and unregulated gaming sector. Additionally, the funds raised by taxing and regulating betting and gaming could prove to be a reliable source of funding for the public good.

Therefore, regulation would give the authorised agencies more authority to spot and stop instances of gambling by minors and "problem gamblers," as well as shield the general people from any annoyance at the hands of law enforcement.

Additionally, it would allow the government to successfully combat the problem of illegal gambling's contribution to the production of black money.

The claim that Yudhishtir could not have bet his wife and brothers in a wager if gambling had been prohibited at the time of the Mahabharat has some merit. The 'revenue over morality' argument, however, is unpersuasive. States like Gujarat, Bihar, Manipur, Nagaland, and Lakshadweep have imposed legal restrictions on the sale, storage, and consumption of alcohol due to the negative effects it has on society. These states prioritise societal morality over tax collecting.



Since gambling has always been frowned upon in Indian society due to its destructive potential and poisonous character, it is possible that Indians will also choose morality over profit when it comes to gambling.

Gambling has been shown to cause financial losses, negatively affecting a person's financial situation, personal life, and social life. Such actions have unimaginable and frequently catastrophic effects on society's most vulnerable groups. Additionally, innate greed and corruption lead to an increase in criminal activities in an unregulated environment.

Loan-sharking, or obtaining loans at exorbitant rates to engage in illicit gambling and betting, is one of the main disadvantages of these activities.

Unchecked and unregulated "betting and gambling" frequently results in aberrant behaviour that arises from compromised social and individual ethics, which ultimately erodes the moral foundation of the country.

Betting and gambling are not encouraged by current government policy (National Sports Development Code of India, 2011, etc.), the nation's socioeconomic climate, and prevailing moral and ethical standards. As a result, the Commission comes to the unavoidable conclusion that, given the current situation, legalizing betting and gaming in India is not desirable. Therefore, it is the responsibility of the State to implement a total ban on illegal betting and gaming.

However, the inability to implement a total ban has led to a massive rise in illegal gambling, which has led to a boom in the production and circulation of black money. Since these actions cannot be entirely stopped, proper regulation is still the only practical solution. Therefore, the Commission believes that regulated gaming would ensure the detection of fraud and money laundering, among other things, if Parliament or the State Legislatures decide to move in this path.

A three-pronged approach would be needed to effectively regulate gambling, including revamping the legal gambling sector (lotteries, horse racing), controlling criminal gambling, and enacting strict, all-encompassing laws. The Commission suggests the following in such a case:

1. Due to the fact that online betting and gambling are provided and practised through media (telephones, wireless, broadcasting, and other similar forms of communication) covered by Entry 31 of List I of the Seventh Schedule to the Constitution, the Parliament has the legislative authority to enact a law or laws addressing the subject.
2. Alternatively, the Parliament may legislate in the exercise of its powers under Articles 249 or 252 of the Constitution. The Parliament may also create a model law for regulating gaming that may be adopted by the States. If legislation is created in accordance with Article 252, states that are not consenting States are allowed to adopt it. It goes without saying that State Legislatures are competent to adopt the necessary Law for the State(s) concerned, while duly taking note of the National Policy on gambling, etc., and other legal considerations. This is because gaming is a State topic under List II of the Seventh Schedule to the Constitution.
3. Horse racing, which is seen as a game of skill, has been exempted from the scope of the general ban on "gambling" by both legislators and the judiciary. Other skill-centric games may also be granted similar exception.
4. Operators should prioritise the security and safety of gamers participating in such skill-based games.
5. Only Indian licensed operators from India who have current licenses issued by the gaming licensing authority should offer gambling and betting, if any. There must be a limit on how many transactions any participant may engage in during a given time frame, such as a month, six months, or a year. The type of bets should be limited to monetary bets linked to PAN and Aadhaar cards, and the betting amount should be set by legislation with a maximum amount that can be legally bet, which may be determined by the deposit, profits, or losses.

6. Similar limitations should be established for the purpose of the maximum amount that can be wagered when using electronic money services like credit cards, debit cards, net banking, venture capital, etc.
7. 'Proper gambling and small gambling' are the two categories into which gambling must be divided. Higher stakes would be indicative of "proper gambling." As a result, only those with higher income levels are allowed to participate in this type of gaming. However, people from lower socioeconomic backgrounds will only be allowed to engage in "small gambling" and not be allowed to place large bets (which would be considered "proper gambling").
8. All betting and gambling transactions should be linked to the operator's Aadhaar Card/PAN Card as well as the participant's/player's Aadhaar Card/PAN Card in order to safeguard the public from the negative impacts of these activities and to have more transparency and state monitoring.
9. The law(s) enacted to control gambling and betting activities must make sure that the most vulnerable members of society are shielded from the potential negative impacts of these activities. In particular, individuals who are under the poverty line and to whom Central / State Governments send subsidies to their Jan Dhan Account for sustenance, including youngsters and children under the age of 18 (who may or may not be posing as adults), and those. This limitation must be put in place to prevent the money granted by the government for their support under the Direct Benefit Transfer Scheme from being used for gaming and betting and the gambling and betting vices are kept away from these vulnerable folks. In other words, anyone receiving subsidies or not covered by the Income Tax Act or the GST Act should not be allowed to use online or offline gaming sites.

10. The websites that promote gambling are legally required to make sure that there is no offensive or pornographic material available on their portals or platforms.
11. All gambling and betting websites and platforms must prominently show information on the risks associated with gambling and betting, as well as tips for playing responsibly.
12. It should be mandatory to make all transactions "cashless" between and among operators, players, and participants in these activities. This would significantly improve the ability of the proper authorities to closely monitor each and every transaction done. The appropriate law(s) should have the necessary provisions, with penalties for improper cash transfers.
13. The Income Tax Act of 1961, the Goods and Services Tax Act of 2017, and any other applicable laws that are now in effect and apply to such activities in India should be used to tax any income obtained from such activities.
14. The Foreign Exchange Management Act of 1999, the Rules that it created, as well as the Foreign Direct Investment (FDI) Policy<sup>213</sup>, may be appropriately amended to promote FDI in the casino and online gaming industries by legally allowing technological partnerships, licensing and brand-sharing agreements, etc. Allowing FDI in this sector will attract significant investment to States who choose to allow casinos, spurring the development of the tourism and hospitality sectors and allowing those States to increase their revenue and employment prospects.
15. A strict law or laws must be in place to control foreign direct investment and stop money laundering at the same time.

16. The Information Technology (Intermediary Guidelines) Rules, 2011<sup>214</sup> prohibit intermediaries from hosting, transmitting, or promoting gambling in any way. However, when a State decides to regulate or permit gaming, this clause creates an anomaly. For instance, it is uncertain whether the Rules of 2011 would apply to licensed online gambling and betting firms, despite the fact that the State of Sikkim has legalised online gambling and betting. In order to hold intermediaries who transmit or host content related to illegal gambling—that is, gambling activities not licensed by any State—responsible, it is suggested that the Intermediary Guidelines Rules be appropriately amended to add the word "illegal" before the word "gambling."
17. If betting and gambling are to be regulated, it will also be necessary to revise or modify the "National Sports Development Code of India, 2011"—which prohibits such activity—to make an exception for it.
18. According to Section 23 of the Indian Contract Act of 1872, a contract may be void if the consideration is illegal, immoral, or contrary to public policy. Additionally, wagering contracts are void but not unlawful<sup>215</sup> per section 30 thereof. These clauses are harmful to the interests of players and participants who engage in gambling transactions but are not guaranteed to receive rewards since they make it impossible to assert such a claim in court. Therefore, it is recommended that Section 30 be appropriately changed to exclude from the definition of "wagering agreements" transactions that are conducted legally with licensed gambling operators or casinos.
19. In order to investigate and stop "problem gambling" and "gambling by minors," comprehensive protections, including those for casino staff, minors, internal control requirements for casinos (such customer due diligence), account maintenance, audits, etc., must be put in place.
20. Sports fraud and match-fixing should be specifically made illegal offences with harsh penalties.

21. Amend any other existing laws that prevent the implementation of the regulating mechanism in question. Accordingly, the Commission advises.

The Commission would like to end the Report by quoting Justice D P Madon, who said that "the law exists to serve the needs of the society which is governed by it" and that "the law cannot remain immutable as the society changes." *Brojo Nath Ganguly and Others v. Central Inland Water Transport Corporation Limited & Anr.*, AIR 1986 SC 1571.

In the case of *State of Bombay v. R. M. D. Chamarbaugwalal*[6], the Supreme Court ruled that games in which winning requires the application of a significant level of skill cannot be classified as gambling. Regardless of whether there is a component of luck, a game that is primarily reliant on skill will be a game of skill.

Furthermore, it was found in the case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*[7] that a game of chance is decided by pure luck and that, although a game of skill may involve some aspect of talent, it should rely mostly on the player's better knowledge, coaching, attention, and experience. The game's true nature is determined by the predominating factor, whether it is skill or chance.

The courts decided that whether a game is a game of skill or game of chance would depend on the facts and circumstances of each case in the instances of *Manoranjithan Manamyil Mandram v. State of Tamil Nadu*[8] (2005) and *M.J. Sivani & Ors. v. State of Karnataka*[9].

## **5.16 Conclusion**

Because India is such a large nation, states with the authority to act on state topics have adopted a variety of approaches to the legislation governing gambling. In addition, the Indian courts are divided in their understanding of what activities constitute a game of skill and what activities constitute a game of luck. Online gaming legislation in India is still uncertain and in the early stages of development. With the exception of the State of Nagaland, which specifically enables internet gambling across India, subject to the acquisition of a license, there is no other national or state legislation in this area.

*“As long as there is no state prohibition or court ruling forbidding online gaming platforms from functioning in a particular state, and as long as a particular game involves substantial skill, requires strategies and experience, and is not simply a game of chance and is conducted in accordance with the principles of fair play, one should be able to legally operate online gaming platforms, subject to certain restrictions”.*

## CHAPTER-6

### 6. ONLINE GAMING AND GAMBLING LAW IN SIKKIM

Given its geographical isolation, lack of industry, and tiny population, the state of Sikkim must rely on other sources of money to meet its financial obligations. Gaming and gambling are two of the most successful industries in which it is now operating. The Himalayan state boasts one of the most permissive gambling regulations in the country, allowing casinos in five-star hotels as well as online and paper lotteries to operate legally. With the passage of the Sikkim Online Gaming (Regulation) Act, 2008, the state became the first in the world to regulate online gaming and sports betting. These games include any games of chance or skill, such as poker, roulette, blackjack, card games, machine games, and so on. Poker, roulette, blackjack, card games, machine games, and so on are examples of these games.<sup>64</sup>

Interested parties can apply for licenses to install, operate, and maintain 'online gaming servers' under the terms of the Act, which should be read in conjunction with the rules enacted thereunder. Initially, the Act anticipated that these licensees would distribute the games throughout India via websites and other online services, but this was later changed. Because of concerns about potential violations of the Information Technology Act, 2000 and overarching legislation that would cross into other states' jurisdiction, the Act was amended in 2015 to restrict online gaming opportunities to only those located within its territorial borders – as a result, online gaming services were restricted to intranet terminals located within gaming parlours. As a result, Sikkim has found itself in an unusual situation where even sports games of chance are permitted, but online fantasy sports (such as Dream11), which have been deemed to be games of skill, are prohibited because they do not take place on the intranet or within the state's territorial boundaries.

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<sup>64</sup> Maple Capital Advisors, Online Gaming – India Story, Investment Trends: [http://www.mapleadvisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20\(1\).pdf](http://www.mapleadvisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20(1).pdf)



## **6.1 Are the regulations governing internet gaming in Sikkim valid outside of the state?**

As stated in the Act's terms and conditions, the license entitles the holder to engage in the business of conducting online games and sports games solely inside the state of Sikkim.

Sikkim intended to expand the services throughout India, however this would be in violation of some provisions of the Information Technology Act of 2000, which prohibit internet service providers from hosting gambling-related content.<sup>65</sup>

In April 2014, the Union home ministry granted permission to the government of Sikkim to control internet betting activity, provided that no other states or union territories in the nation were harmed as a result of the decision. As a result, the platform is exclusively accessible via intranet, preventing access from the rest of India.<sup>66</sup>

Online casino gamers in India are hoping that the state of Sikkim would not restrict its online casino services to citizens of the state of Sikkim only. As a result of its tiny population, Sikkim may not be able to reap significant benefits from imposing such restrictions on itself.

For Sikkim to reap the benefits of its online gambling sector, the state must first and foremost make its online gaming services available to gambling aficionados from all across India, as well as from outside.

- **Taxes and Bank Guarantee** — Operators licensed by the government of Sikkim are subject to a monthly tax of one percent of their gross gaming output, which is collected monthly. It is necessary to make this payment by the 15th of the next month, and if it is not made on time, a 20 percent penalty will be assessed. Aside from that, all operators are obliged to deposit a bank guarantee in the amount of Rs. 5 crore (about \$1 million US) in favour of the Indian government. This guarantee is valid for one year, after which a fresh guarantee in the same amount must be presented in the same amount.<sup>67</sup>

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<sup>65</sup>Sushil Agarwal, ARE ONLINE BETTING SITES LEGAL IN SIKKIM?, 07 January 2021, <http://www.sikkimexpress.com/news-details/are-online-betting-sites-legal-in-sikkim>

<sup>66</sup> CWP No. 7559 of 2017.

<sup>67</sup> Directorate of State Lotteries, <https://sikkim.gov.in/department/departmentmenudetails?url=Menu%3Dfinance-revenue-expenditure-department%2Fdirectorate-of-state-lotteries>

- **Website Requirements** - All gaming websites that are regulated by the Government of Sikkim are required to show the following information on their websites:

This information includes the “company's full name and registered office address; the number of licenses under which the Online game is conducted; the date on which the license was originally granted; a statement that the Online game is regulated in Sikkim State; hyperlinks to the websites of the Government and players Anonymous; and one or more hyperlinks to a page or pages outlining the terms and conditions”.

People who are under the age of eighteen are not authorised to register or play in the game, and debts incurred through online games are legally enforceable in Sikkim, according to the rules of the game.

- **Advertising Regulations** – The Sikkim On-line Gaming (Regulation) Rules, 2009 establishes stringent guidelines for the conduct of advertisements. A website's URL must be prominently displayed in every advertisement, and the commercial itself must not be obscene, insulting, or include sexual material. It must also be based only on factual information and not contain any false, dishonest, or misleading statements or information. The legislation itself goes on to include a slew of duplicate provisions, including prohibitions on marketing to minors, prohibitions on promoting forbidden games, and prohibitions on making any statements concerning the legality of gaming in any country.<sup>68</sup>
- **Strict Rules & Regulations for Safe, Secure, and Fair Games** – The final three pages of the Sikkim On-line Gaming (Regulation Rules) 2009 outline “stringent rules and regulations for everything from random number generation to security systems to auditing to publishing house advantage, among other things”.

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<sup>68</sup> SIKKIM ONLINE GAMING AND BETTING LAWS, 26 February 2021, <https://www.onlinebetting.in/laws/sikkim/>

## **6.2 Sikkim Online Gaming (Regulation) Act, 2008**

There have been various more additions and adjustments to the Act, the most notable of which are as follows:

On this date in 2009, the government published two brief memorandums on a variety of topics. On the first of July, 2009, “the Sikkim On-line Gaming (Regulation) Act, 2008 takes effect, according to the first of July, 2009. The second section indicates that the State Government has appointed a Secretary to the Government of Sikkim in the Finance, Revenue, and Expenditure Departments by virtue of this order”.

Among the modifications made by the Sikkim On-line Gaming (Regulation) Amendment Rules, 2009 were the addition of sports betting. There were also a number of additional amendments. The most notable change is that the licencing duration has been extended to five years, with accepted candidates required to pay a 5 lakh rupee (about \$10,000 US) fee.

20 August 2009 – The original Sikkim On-line Gaming (Regulation) Act, 2008 was amended to include Sport Gaming as a new section in the legislation. Additionally, a second memorandum was published in order to explain all gaming regulations in order to make it apparent that sports betting is now permitted in the state. However, in order to provide "sport gaming," a license is once again necessary.

As of the 30th of March 2011, the tax on land-based casinos was increased to the greater of ten percent of gross gaming output or one crore rupees (about \$200,000 US). The extent to which this extends to online gaming sites is yet unknown; however, Indian media sources have suggested this is likely to be the case.

During a session on August 19, 2015, the government amended the Sikkim Online Gaming (Regulation) Act, 2008 to restrict the provision of "online games and sports games" through intranet gaming terminals to physical premises of gaming parlours within the geographical boundaries of the state of Sikkim under licenses issued under the said Act.

As envisaged under the Sikkim Online Gaming Act<sup>69</sup>, licensees would be able to offer their games to players all across India through their websites, rather than just in the state of Sikkim, if they obtained a license. In contrast, when the go-live licenses were issued, the terms included certain restrictions, one of which was that “such online gaming services could only be provided within the state of Sikkim through an intranet connection, thereby limiting the service to people who lived within the geographical territory of Sikkim. There was a mismatch between the terms and conditions of the licenses awarded and the language of the Sikkim Online Gaming Act”, which led to the introduction of this amendment. Due to the significant investments that have been made in obtaining licenses and establishing necessary infrastructure with the assumption that they will be able to offer the games to players throughout India, this amendment is bound to have a significant impact on the business plans of the licensees.

Additionally, the Sikkim Government has recently clarified that the "online gaming levy" payable by “a licensee company to the Sikkim Government will remain at the current rate of 10 percent of the gross gaming yield or INR 50,000,000 (approximately USD 767,690).”<sup>70</sup>

In July 2016, the Government of Sikkim issued a statement prohibiting its citizens from participating in casino games in casinos located within the state.<sup>71</sup>

### **6.3 COVID-19 Regulation and Its Implications for the Gaming Industry**

The epidemic has resulted in many people staying at home as a result of the lockdown, with many people resorting to the internet and online gaming as a source of amusement and to pass the time. This has resulted in a significant increase in online traffic to gaming portals and websites. Visits to online gaming websites or apps climbed by 24 percent between the weeks of February 10th to 16th 2020 and March 16th to 22nd 2020, while engagement, as defined by the amount of time spent on gaming websites or apps, increased by 21 percent over the same period.

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<sup>69</sup>Sikkim Act no. 23 of 2008.

<sup>70</sup> Sikkim Online Gambling Licenses, 13 October 2021, <https://sportsbetting.net.in/gambling-laws/sikkim/>

<sup>71</sup> S.S. Rana & Co., Online Gaming and Gambling laws in Sikkim, 06 December 2021, [https://ssrana.in/articles/online-gaming-gambling-law-sikkim/#:~:text=The%20Himalayan%20state%20has%20one,\(Regulation\)%20Act%2C%202008.](https://ssrana.in/articles/online-gaming-gambling-law-sikkim/#:~:text=The%20Himalayan%20state%20has%20one,(Regulation)%20Act%2C%202008.)

## CHAPTER-7

### 7. CONCLUSION AND SUGGESTIONS

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Having taken into consideration the above, and given the fact that the Internet is continually growing, the legislature will need to move quickly to ensure that new rules and regulations are enacted to combat such acts. It is possible for the Indian government to take a lead from the American Internet Gambling Prohibition Act (Kyl's Bill) and enact special legislation to deal with the problem of online gambling. Having said that, the government is woefully underprepared to deal with internet gambling in light of all the technical improvements and legal issues that have arisen.<sup>72</sup> This may be attributable mostly to the difficulties associated in tracking down and locating gambling enterprises while also exercising authority over these operations at the same time, as previously stated. Because the most majority of gaming and betting sites are hosted overseas, i.e., outside of the jurisdiction of Indian courts, it becomes nearly difficult for the authorities to oversee and control them effectively. It is lawful for such nations to host these websites, and as a result, Indian laws are powerless to prevent them from being taken down.

As a result, in order to effectively address this problem, it is necessary to first draught proper legislation. In fact, at the moment, the Information Technology Act is the only law in India that has the authority to exercise extraterritorial jurisdiction over computer-related crimes committed in the country. According to the Law Commission of India, new reforms to do away with outdated laws such as gambling, betting, and the like are necessary to bring about a systematic regularisation in India. The parliament and legislators should act swiftly and with seriousness to put these reforms into effect, which they should do as soon as possible after the recommendations are made public.

Both betting and gambling, in particular, have existed from time immemorial and have evolved into a societal constant without which no modern civilization can live or prosper, even with the

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<sup>72</sup>*Id.*

toughest and most severe restrictions and bans. The most critical rule would be to prohibit such classes from accessing these sites, and this obligation begins with the parents at home and extends to the site owners as well. Even with a policy in place, parents should make a reasonable effort to prevent their children from accessing such websites and, if required, use suitable software to block them. The government would then need to guarantee that these sites, too, are subject to particular criteria and undergo the necessary due diligence to ensure that they are not readily accessible to them.

It is the government's job, in addition to setting rules, to guarantee that such web sites do not include any inappropriate or pornographic material. These websites often include animated caricatures of real persons into their games, particularly those of the female social class, who are represented in a demeaning and provocative manner. In such cases, the government should outright prohibit the use of such content and severely penalise the websites that distribute it, according to the Constitution.<sup>73</sup>

Stringent tax reforms should also be enacted to ensure that the government does not lose any revenue generated by this dynamic industry, which is primarily lost to overseas operators or the black economy, as the proceeds can be used to fund educational projects, the sporting industry, the regulatory system, and the like. As a result, it is the government's job and obligation to ensure that consumers are given with a safe environment free of all these adversities, for which precise and extensive regularisation must be adopted and executed as soon as possible.

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<sup>73</sup>*Supra Note 6.*

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