

Gambling And Betting Laws In India

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Introduction

The recent betting controversy surrounding India's most popular sport, cricket, has once again brought into public eye the debate regarding legalising and regularizing gambling and betting activities in India. The prohibition on gambling and betting activities by the prevailing legislations and statutes in India reflect that the lawmakers consider the indulgence in games of luck, chance and probability as immoral and pernicious. Here is an overview of the laws governing gambling and betting activities in India:

Central and State legislations:

- The Constitution of India in its Seventh Schedule, List II (State List) ^[1] empowers the State Governments to make laws regarding gambling and betting activities. Pre-independence there was no such distinction and the Public Gambling Act, 1867, governed gambling and betting activities in the country. The Public Gambling Act, 1867, a central legislation enacted during the pre-independence era, prohibits any games of chance and probability except lotteries. The Act prohibits owning, keeping and being found in a common gaming house ^[2], however, the Act excludes "games of skill" from its ambit.
- Post independence, most States have enacted State laws governing gambling and betting that are based on the central legislation i.e. Public Gambling Act, 1867. Some of the State laws that are enacted pertaining to gambling and betting activities are West Bengal Gambling and Prize Competition Act, 1957, Bombay Prevention of Gambling Act, 1887, Punjab Public Gambling Act, 1961, Kerala Gambling Act, 1960, Goa, Daman and Diu Public Gambling Act, 1976, Sikkim Regulation of Gambling (Amendment) Act, 2005 etc. Most of the States have passed enactments prohibiting gambling and betting (other than exceptions like horse racing, some card games etc.) but two States i.e. Goa and Sikkim have legalized many forms of gambling and betting.
- Goa and Sikkim permit the setting up of casinos. The Goa, Daman and Diu Public Gambling Act, 1976, with prior permission of the State Government authorises any game of electronic amusement/ slot machines in five star hotels and such table games and gaming on board in offshore vessels, as may be notified, subject to such conditions including the payment of recurring and non recurring fees.
- The Sikkim Casino Games (Control and Tax Rules), 2002 authorises the Sikkim Government to grant licenses to individuals and businesses that are interested in

operating a casino within the State. Also, the Sikkim Regulation of Gambling (Amendment) Act, 2005 gives the Sikkim Government the authority to authorise gambling on certain days and to make certain gambling houses legal at their own discretion by way of grant of license.

- The Maharashtra State Legislative Assembly has passed the Maharashtra Casino (Control & Tax) Act, 1976 but has failed to enforce and notify the same till date.
- In the year 2008, the Sikkim State Legislative Assembly has passed the Sikkim Online Gaming (Regulation) Act, 2008 which came into force from 1 July 2009. The Act provides for regulating online gaming in Sikkim, which were originally limited to poker and casino games, such as, Black Jack, Pontoon, Bingo, Poker, Baccarat etc. The Act was subsequently amended on 1 August 2009 to make online sports betting in the State of Sikkim legal, subject to the operator holding a license granted by the State Government of Sikkim. Thus, Sikkim is the only State in India that permits online betting in sports through websites whose servers are based in Sikkim.
- Although the State of Sikkim has permitted online betting in sports, there is a grey area whether this step by the State of Sikkim may be affected by the provisions of the Information Technology Act, 2000 ^[3] and the Rules ^[4] (being a central legislation) that prohibit the sharing of any information online that may relate to or encourage gambling.

Game of chance versus Game of skill:

- It is pertinent to note that the Public Gambling Act, 1867 provides that the provisions of the Act shall not be applied to any games of skill. The Legislatures passed in various States on prohibiting gambling and betting wherein certain exceptions were carried out have resulted in divergent views and lead to the interpretation of what amounts to be a "game of skill" and the same was distinguished from a "game of chance".
- A three judge bench of the Hon'ble Supreme Court in the case of **Dr. K.R Lakshmanan vs. State of Tamil Nadu (AIR 1996 SC 1153)** regarded horse racing as a game of skill and observed as follows:
"Betting on horse racing or athletic contests involves the assessment of a contestant's physical capacity and the use of other evaluative skills"; Horse racing is an organized institution. There is nothing illegal in horse racing: it is a lawful sport.
We have no hesitation in reaching the conclusion that the horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post.
In view of the discussion and the authorities referred to by us, we hold that the horse-racing is a game where the winning depends substantially and preponderantly on skill."
Various states such as Maharashtra, Delhi, Tamil Nadu, Karnataka, West Bengal, Assam have exempted horse racing activity from the ambit of gambling activity.
- In the case of State of **Andhra Pradesh vs. K. Satyanarayana (AIR 1968 SC 825)**, the Hon'ble Supreme Court held that, *"The "three card" game which goes under different names such as "flush", "brag" etc., is a game of pure chance. Rummy, on the other hand requires a certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires*

considerable skill in holding and discarding cards. We, cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill."

West Bengal is the only State in India that has exempted poker, rummy and other card games from the ambit of gambling.

- Recently, in Mumbai 17 senior citizens were arrested for playing Rummy and Bridge at the Andheri Gymkhana in a surprise raid carried out by the Mumbai Police. The senior citizens were charged under the provisions of the Bombay Prevention of Gambling Act, 1887 that prohibits gambling. A Writ Petition No. 1006 of 2012 was filed before a Division Bench of the Hon'ble Bombay High Court against the action taken by the Mumbai Police. The Hon'ble Bombay High Court held that playing Bridge and Rummy cannot be termed as gambling since both are games of skill and fall outside the purview of the provisions of Bombay Prevention of Gambling Act, 1887.
- Although Poker, another widely played card game, is not specifically classified as a "game of skill" by any Court ruling, the interpretation regarding the legality of poker will be based on the aforementioned judgments.

Conclusion

In the case of horse racing, the Hon'ble Supreme Court has come to a conclusion that horse-racing is a sport which primarily depends on the special ability acquired by training, and betting on horse racing is not illegal. In respect of other sports, betting is a grey area in India. With the revelation of the recent cricket betting scandal; it is apparent that betting in sports is rampant. However, the issue of betting on the game of cricket has not been adjudicated by the Hon'ble Supreme Court. This has led to people taking positions on the basis that betting on other sports (more particularly cricket), may also involve the assessment of a contestant's physical capacity and the use of other evaluative skills and therefore would not attract criminal liability. The Union Law Ministry is proposing to introduce legislative measures to curb dishonest practices in sporting events. It appears that the laws of the country are not in line with the present social pattern. The same may undergo changes by either the introduction of relevant amendments to the gambling and betting laws in India or in the event the issue of sports betting is adjudicated by the Hon'ble Supreme Court.

1. Entry No. 32 of List II (i.e. State List) deals with betting and gambling. Entry No. 62 of List II (State List) deals with taxes on luxuries, including taxes on entertainments, amusements, betting and gambling.

2. "Common gaming house" under the Public Gambling Act, 1867 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 owning, occupying, using, or keeping such house, walled enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever."

3. Section 67 of the Information Technology Act, 2000, which is a central legislation inter alia, penalises *"publishing or transmitting or causing to be published in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it"*.

4. Information Technology (Intermediaries Guidelines) Rules, 2011 it has been stated that users of computer resources cannot *"host, display, upload, modify, publish, transmit, update or share any information that is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another's privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever"*.

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