

“Gambling: Indian Perspective and the Intangible Loophole”

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Abstract

There has been a drastic change in contemplation of the term 'gambling' which in the present measures is regarded as 'gaming'. India has been in the regulation of British bylaws for many decades and even after Independence we are yet been regulated by them only, specifically speaking, the Gambling Laws. In modern society, the whole notion of Gambling has shifted itself from just a physical illegal act to an online immoral loophole. This paper analyzes the statutes that restrict, regulates and support gambling laws in India. The paper also deals with the loopholes in the Indian Legislature and Judicial Decision as to outlining the plethora of Gambling Laws in India concerning Online Gambling. The paper lastly confers various consequences which consults a necessity of prerequisites for regulating Gaming in India.

Introduction

The BCCI of India which indirectly controls ICC internationally has recently been allowed and supported the new and contemporary idea of including 'Fantasy Cricket' on its pedestal. Morally speaking, it creates a great plethora of controversies from different minds as to if it is wrong or right. The idea- positivists rely on the pros of State income growth and legalization of gambling that would eventually lead to the decriminalization of various acts. On the contrary, the anti-affirms believes that the entry of gambling and cash flow to sports in this fallacious way would lead to an increase in crimes of different nature and also it would deter and destroy the line of control which may lead to acceptance of some other subsequent act that eventually may hurt the society at large.

But when at the stance of legality, India is a country that was once ruled by Britishers and some Acts which were propounded at that time are still incorporated in the base of India legal system. Thereby, the act of gambling and all other related performances are governed by 'The Public Gambling Act, 1867'¹.

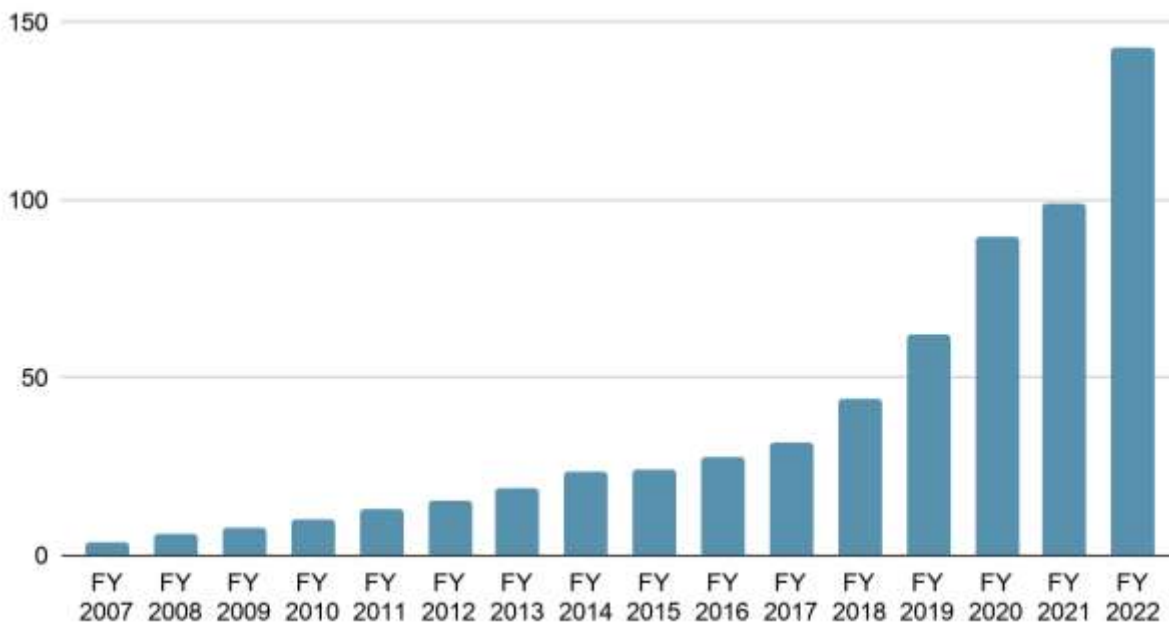
The Constitution of India² gives powers to State to make their regulatory laws for the ordinance of Gambling but India has not yet been that much diligent over Gambling laws and this not only puts a negation of regulation but sometimes may come as a positive aspect for the state government, as seen Goa, Diu-Daman, and Sikkim have their State laws for the tuning of laws

¹ The Public Gambling Act, 1867

² The Constitution of India, 1950

regarding Gambling, which thereby makes the game of Gambling a legal one and hence obtain taxes and other monetary ways of income arising out of it.

According to SRD³ in the financial year 2020, the gaming industry in India had a market cap of about 90 billion Indian rupees. By 2022, it is expected that this number will have risen to over 143 billion rupees. The industry has been rapidly expanding in the region, with observers predicting that over 40 thousand new employment openings will be available by 2022. Thus, understanding the concept of gaming and gambling legislatures in India is an important part. The Constitution's seventh schedule, List-II, gives state governments the right to legislate on gaming and betting issues.



The first part of this paper will deal with the Historical Background backing up by the modern market changes in the pursuant of Gambling. Further, the second part will deal with explaining the term Gaming and Gambling and the difference between them as to which is legal and to what extent providing the in-depth difference of games of skill and chance. The third part will deal with the loophole that the legislature has intentionally or accidentally made in leu with the notion of Online Gaming. Lastly, the pros and cons of Gambling in India are being discussed with a suggestive and critical conclusion.

³ <https://www.statista.com/statistics/235850/value-of-the-gaming-industry-in-india>

History

Gambling in India as cultivated by the minds of various scholars is taken as an award given by Britishers. This does not at all furnish the fact that Gambling was initiated from the time of British rule, but it goes way back from the Ancient Era and is been in place till now, the only thing that has been affected in leu with this is the restriction and control over the act of Gambling. The earliest times when Gambling is discussed is going back to Vedic Periods while contemplating the two texts Ramayana and Mahabharat.

The Introduction to Gambling Boards that included chess and other similar board games and Dice Games were the primary instigations provided by Ramayana. In the Indian proceed with the gambling there was positive conduct relating to Ramayana, it was taken as a casual act that was not regarded as a bad faith nor any forbidden act. The change in this flow was experienced after the epic of Mahabharata (late 120 BC). King Yudhishtira lost all his wealth, his kingdom and his brother and his wife too. Furthermore, Pandavas were exiled for 12 years just for the sake of Gambling and that too when it was based on the pure chance of winning.

Presumably, India since back that time had taken a welfare approach rather than a controlling one. The gambling taxes were the only incomes for some Kingdoms in India, thereby the Kings regulated and enforces these taxes on Gambling Houses and would earn a living out of it. Not only from the nib of tax conduction but also the legislations for following rules about fairness in gambling was also seen by the 15th Century.

Going Back at the time in 300-600 BC the nuts of the Vibhaka Tree was construed as dices and with time, the same dices were replaced by astragali which in existence with the born of the game Passa. In addition to dice, Indians developed a taste for betting on horses. Initially, ram battles and then cockfights were celebrated, but gradually, horse racing became more civilised. According to historical records, Indians have been known to gamble without regard for the future. Although this was forewarned in Hindu script and hymns.

Though India played a significant role in the early history of gambling, European influence eventually overtook it. Cricket began to gain popularity in the 1720s, and by the end of the century, it had established itself as the most popular betting sport. The British will introduce big horse racing activities to India in the following century. The first-class cricket in India began in 1864 with a match between Madras and Kolkatta.

Gambling was widespread in India, as Britain soon discovered. In 1867, they attempted to regulate it by enacting the Public Gambling Act⁴. While the legislation still governs gambling in India as a whole, the Constitution also granted states the authority to establish their betting and gaming rules.

⁴ The Public Gambling Act, 1867

Recent incidents have highlighted the need to protect competitors, but there could be alternatives to outright bans on video gaming. Checks and balances, on the other hand, maybe considered. For example, the Niti Aayog recently released draught guiding principles for fantasy sports games, which include establishing a self-regulating body, ensuring the predominance of talent in games, obtaining permission from an independent committee for pay-to-play games, a minimum age of 18 for entry, fairness and openness in game terms and conditions, regulations etc.

If we recreate the timeline of Gambling Legislation in India, it may form as:



Talking preliminarily about India, Gambling is a very vague term that has a large plethora of interpretation attached to it, to understand gambling we need to first deep dive into the whole profusion of Gaming, as Gambling is a part of Gaming that induces a consideration or more specifically an induced return obligation rather it be monetary or exchange of something else until it is respected with the laws of the Nation. Thus, Gaming is a large base surrounding both legal and illegal obligation which is in direct relation with the regulatory laws of the State. Thereby we need to under the broad concept of Gaming and Gambling and their relations with the Indian legislation first.

Gaming and Gambling: The relation

Indian Gaming Industry or presently called as Indian gaming community is estimated to have been worth US\$60 billion⁵ which includes both the gaming nature i.e., regulated and unregulated gaming. Talking about gaming, as to defined under Public Gaming Act, 'Gaming' 'includes wagering or betting on any figures or numbers or dates to be subsequently ascertained or disclosed, or on the occurrence or non-occurrence of any natural event, or in any other manner whatsoever except wagering or betting upon a horse-race when such wagering or betting upon a horse-race takes place'.

Games are improving in terms of gameplay and consumer privileges in the digital era. To use the entire site's gaming, you'll need to switch to a membership. Real money can also be used to purchase prizes and lives on online gaming platforms. It's still unclear whether it's gaming or gambling because money is spent on things. However, within the gaming community, this topic is still debatable. Gaming needs expertise, but gambling is a game of chance. You don't need money to play games with your friends, so you can choose to play for cash when you're having fun. Since there is a cash exchange, the latter would be referred to as gambling. It describes a condition in which the winner is certain to benefit financially. In a nutshell, it is directly related to the concept of Skill and Chance, i.e., Gaming can be said to be an act that covers up under the purview of 'Game of Skill' and Gambling on the other hand results to be interpreted under 'Game of Chance' which is subject to be legal or illegal based on State wise different legislations.

A related concept of a "common gaming house" has been drafted in Indian gaming laws. The Public Gambling Act of 1867 ('Public Gambling Act') states: "Common gaming-house" refers to any house, walled enclosure, space, or place where cards, dice, tables, or other gaming instruments are stored or used for the benefit or advantage of the person who owns, occupies, uses, or keeps such house, enclosure, room, or place, whether by charging for the use of the instruments of gaming, or the house, enclosure, room, or position, or in any other way."⁶ From the concepts above, it is clear that a game of chance, reciprocal consideration, and prize must be present for it to be called gambling. If all of these items are missing, it's possible that the crime isn't gambling.

Games of skill are excluded from the criminal prohibitions against gambling under Section 12⁷ of the Public Gambling Act. As a result, it is clear that playing games in which chance plays little to no part and the outcome is solely decided by the player's intelligence and ability is legal, as there is no other law that criminalises or punishes such skill games. This Industry covers a whole lot of broad classification that deals from legalized-ensured gaming to restricted unregulated

⁵ <https://assets.kpmg/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>

⁶ The Public Gambling Act, 1867, §1

⁷ The Public Gambling Act, 1867, §12

gaming. The Court in *Manoranjitham Manamyil Mandram v State of Tamil Nadu* [AIR 2005 MAD 261] held that “As a result, although the appellant has the freedom to engage in non-prohibited leisure practises, the Act also protects the respondent's right to pursue legal action against illicit games of gaming, wagering, and the like. As a result, a blanket order, as requested by the appellant, is not possible. The details and conditions in each situation must be considered when determining if a game is a game of talent or chance. When legal proceedings are taken against the appellant, the appellant has the right to appeal or contest the respondents' actions if they are not legal.”⁸

Game of Chance:

In India, the gambling community has been seen as being divided into two natured groups professing skill and the other resembles chance. Contemplating provisions of The Public Gaming Act, section 12 deals with the proviso of what is to be legalized and what should be duly rejected. It says that ‘Nothing in the preceding provisions of this Act shall be construed to refer to any game of pure talent, regardless of where it is played.’⁹, which in the affirmed site accepts the gambling for skill games but thereby rejects the idea of gambling for games involving chances except the states of Sikkim and Goa. Under the right conditions, games of chance such as casino games can be provided in Goa and Sikkim with proper attainment of license from the state government. Commercial companies in these states have also been granted licenses for the sake of gambling.

Therefore, it is accepted generally in India that the game of chance is been barred by law and no gambling can be done in the games involving the nature of ‘Chance’. The only State of Goa and Sikkim have made the exception for legalizing all sorts of Gambling which constitutes both games of skill and game of chance. The Goa, Daman, and Diu Public Gambling Act, 1976¹⁰, made gambling legal in the state of Goa. The Goa, Daman, and Diu Public Gambling Act, 1976 was amended to authorise card rooms on offshore vessels and slot machines in five-star hotels, subject to the State Government's prior permission and authorisation in exchange for a periodic fee. Further through enacting the Sikkim Regulation of Gambling (Amendment) 2005¹¹, the state of Sikkim has also legalised gambling. The Sikkim Regulation of Gambling (Amendment) 2005 empowers the State government to announce the areas in which approval for the operation of casinos can be given for a fee.

Statutorily talking, except the above-mentioned statutes, the gambling, resembling a game of chance is strictly banned in all other states of India and the personal states acts bar the playing of games of chances except the states of Goa and Sikkim where for the sake of ‘State Income’, the

⁸ *Manoranjitham Manamyil Mandram v State of Tamil Nadu* [AIR 2005 MAD 261]

⁹ The Public Gambling Act, 1867, §12

¹⁰ The Goa, Daman, and Diu Public Gambling Act, 1976

¹¹ Sikkim Regulation of Gambling (Amendment) 2005

gambling for all sorts have been legalized except if it is not in the preview of other penal provisions.

There is also another exception to this which is called 'Lottery', Gambling is a contested subject in India, with various states disagreeing on its legalisation. Each of India's 28 states decides whether or not to legalise various types of gambling for its citizens. The Public Gambling Act of 1867 was a federal statute that made it illegal to enter or operate a public gambling house.

Although gambling in a game of chance is said to be illegal by Gambling Legislature and Supreme Court too, the game of lottery commences its existence in the later chance part which is calculated to be legal, only when is assembled and been played by the State itself while experiencing the intake of profit out of the incomes and taxes emerging from the lottery game. In a simple sense, the lottery has to be exercised by only State-Government authorities or to be precise the authorities whose profit and loss intake is controlled by the state i.e., by any private parties on behalf of the Government

The Kerala State Lottery¹² was founded in 1967 as the first state-run lottery. Around the same time, all private or unlicensed lotteries in the state became outlawed. The Kerala State Lottery was a huge hit, and many other Indian states have since adopted the business model to raise revenue from organised gambling. After the successful outcome of it, the government proposed and enacted 'The Lottery Act' in the year 1998 that regulates the Activity of Gambling. Section 2(b) of the Lottery Act of 1998¹³ describes "lottery" as "any system, in whatever manner and under whatever name, for the allocation of prizes by lot or chance to all individuals who participate in the chances of winning a prize by buying tickets.". In India, money earned in lotteries is treated as a separate taxable income under section 115BB of the Finance Act of 1986 and Chapter XII of the Income Tax Act. Other sources of extra cash include winnings from horse races, poker, crossword puzzles, and game shows. Lottery winnings are levied at a fixed rate of 30%, with no deductions or tax brackets.

In India Lottery is legal in 13 states out of 26 which includes; Arunachal Pradesh, Assam., Goa, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Punjab, Sikkim, West Bengal. There is also a provision for the online lottery that is been regulated both from the National server and also International server too, but there is a major loophole when the international-online part is taken into consideration, we will understand it in the latter part of the paper.

¹² Kerala State Lottery Act, 1967

¹³ The Lottery Act, 1988

Game of Skill:

Gambling can be described in two ways: in its conventional form and its current incarnation. Traditional gambling is interpreted in terms of physical space, brick and mortar, and mechanical format, whereas modern gambling includes machines linked offline or online, cell phones, the internet, and other electronic devices. But at the base level if we interpret the gambling act in India as restricted to the only inclusion of skill-based gaming i.e., 'Game of Skill'. Section 12 of The Public Gaming Act symbolizes 'Nothing in the preceding provisions of this Act shall be construed to refer to any game of pure talent, regardless of where it is played'¹⁴. Hence it is seen that the Gambling Legislations exclude 'games of ability from the definition of gambling because they are not subject to the penalties.

The same provisions can be interpreted with Apex Court's landmark judgment in *Dr R. K. Lakshmanan v. State of Tamil Nadu* [AIR 1996 SC 1153], which proposed the definition of 'game of skill' as "one in which the player's superior intelligence, preparation, concentration, experience, and adroitness are the primary determinants of performance"¹⁵. Further, the court held that 'A game of chance is one in which chance takes precedence over experience, while a game of skill is one in which skill takes precedence over chance. The game's true character is determined by the dominant aspect – "skill" or "chance."¹⁶. This judgment interpreted the term skill in a very wide plethora and this significantly raised the question of including various games in 'skill' part rather than 'chance' one, which would thereby chance the whole acceptance of some games as illegal to a legal way of gambling when interpreted in 'skill' realm. It is self-evident that for an action to be called gambling, it must include chance, reciprocal attention, and a reward. If all of these items are missing, it's possible that the crime isn't gambling.¹⁷

The question as to which game should be included in the plethora of skill or chance many judgements for different games have been passed that made some illegal gambling as a legal game of skill, which includes:

- (a) Rummy
- (b) Poker
- (c) Horse Racing
- (d) Prize Competitions
- (e) Fantasy Sports

¹⁴ The Public Gambling Act, 1867, §12

¹⁵ *Dr. R. K. Lakshmanan v. State of Tamil Nadu* [AIR 1996 SC 1153]

¹⁶ *Ibid*

¹⁷ *Legality of Poker And Other Games of Skill: A Critical Analysis Of India's Gaming Laws - Jay Sayta**

(a) Rummy

Different High Courts have reached differing conclusions about whether poker is a talent or chance game. While the Gujarat¹⁸ and Bombay¹⁹ High Courts have ruled that poker is a game of chance and therefore illegal, the Calcutta High Court²⁰ has ruled that poker is not protected by the state's gaming rules (meaning that it is not restricted). The Supreme Court²¹ ruled in 1967 that the thirteen-card game of rummy was a game and that it could be played in clubs if the stakes involved did not result in a profit or advantage for the organisation. Although encouraging the game of rummy to be played in clubs, the division bench noted: "Unlike the 'three-card game described in the Madras case to which we were referring, the game of Rummy is not solely based on chance. The three-card game, also known as "flush," "brag," and other variations, is purely a game of chance. Rummy, on the other hand, necessitates some ability since the card's dropping must be memorised, and the game's construction necessitates great skill in handling and discarding games. As a result, we can't assume that Rummy is a completely random game. It is primarily and predominately a skill-based game."²²

While reading the case of State of Andhra Pradesh v. K Satyanarayana²³, the Andhra Pradesh High Court recently allowed rummy games to be played, even though stakes are involved and the organisers are profiting from the game.²⁴

The Supreme Court²⁵ has also stated that games such as poker double up, blackjack, and Pacman do not allow for the use of talent (meaning they are prohibited). However, based on the conclusive conclusions of the lower court, which categorised these games as games of chance, this seems to have been a passing observation. This implies that there is no definitive ruling on poker.

But as it is based on State consideration, few states have allowed poker. West Bengal considerably excludes 'Poker' from the ambit of 'Game of Chance' and thereby legalise the act of Poker within the ambit of legalised gambling. Further, in the state of Sikkim and Goa, the game of poker is been legalised as to with the regulation of license and can be played in the casinos that adjudicates this licence.

¹⁸ Dominance Games Pvt. Ltd., v. State of Gujarat (2018 1 GLR 801)

¹⁹ Nasir Salim Patel v. State of Maharashtra & Ors., WP (Criminal) 427 of 2017

²⁰ Indian Poker Association v. State of West Bengal, W.P.A. No. 394 of 2019

²¹ State of Andhra Pradesh v. K Satyanarayana, AIR 1968 SC 825.

²² Ibid

²³ AIR 1968 SC 825.

²⁴ D. Krishna Kumar v. State of Andhra Pradesh, 2002(5) ALT 806.

²⁵ M. J. Sivani v. State of Karnataka (AIR 1995 SC 1770)

(b) Poker

The current form of poker can be traced back to the early nineteenth century, where comments from writers and columnists on a card game known as "poker" could be found.²⁶ Poker's popularity has exploded since 1970, making it one of the most popular card games in the world, with billions of dollars wagered per year. Around forty million players enjoy poker daily around the world, with fifteen million of them being American citizens.²⁷ Though teen Patti, or flush, has long been one of India's most successful card games, the explosive growth of poker in the United States has resulted in the emergence of a poker cult among India's youth. Poker was first played in Goa's licenced casinos in 2000, four years after the state's legislature approved the establishment of casinos.²⁸

In the absence of a clear ruling by the Supreme Court or either of the High Courts on the legality of poker, any review of the game's legality for any state in India will have to be based on the subjects of various state actions, international case law, and statistical analysis. Card games are expressly removed from the concept of gambling in West Bengal, which is the only state in India to do so. Poker, rummy, and other card games are expressly removed from the ambit of gaming under the West Bengal Gambling and Prize Competition Act, 1957²⁹ ('the West Bengal Act').

As a result of the exception of poker from the concept of gambling in the West Bengal Act and the Supreme Court decisions mentioned above, it is reasonable to infer that playing poker and other related card games for money or other means of consideration will be allowed, possibly because of the high level of ability involved in these games. It should also be noted that in the absence of any clear exemption of card games from the scope of gambling under any state gaming acts, the Supreme Court is likely to look to the West Bengal Legislative Assembly's concept of gambling in determining the degree of ability involved in card games like poker.

In conclusion, even though there has not been any clear debate on the legality of poker in India, the Supreme Court's decisions classifying rummy as a game of skill and comparative proof on the preponderance of skill in poker, combined with the specific exemption of poker from the West Bengal Gambling and Prize Competition Act³⁰, suggest that even though there has not been any specific discourse on the legality of poker in India and the present should assist the Indian judiciary in recognising poker (particularly the tournament form of Texas Hold 'em poker, one of the most common and difficult variants of poker) as a game of skill distinct from gambling.

²⁶ Cardplayer Magazine, The Story of America's National Pastime, December 6, 2006, available at <http://www.cardplayer.com/cardplayer-magazines/65649-linda-johnson-19-24/articles/16384-poker-the-story-of-america-39-s-national-pastim>.

²⁷ See Poker Player's Alliance, Statistics about Poker in the U.S.A, available at <http://theppa.org/resources/facts/>

²⁸ Arindam Mukherjee, Grinders in the ATM, June 18, 2011

²⁹ West Bengal Gambling and Prize Competition Act, 1957

³⁰ Ibid

(c) Horse Racing

Since the time of Britishers, the game of Horse racing is in fame and although Britishers were the inventor of horse racing competitions in India, we took a step forward and built the perspective of gambling around it and hence the horse racing betting came into existence. As in India Gambling is a wrongful concern for society but we have made horse betting an exception to it. In India any types of Gambling acts are thereby banned except the lottery and betting on the game of skill and Horse betting comes under the purview of Game of Skill as prominently suggested by SC in the case of *Dr KR Lakshmanan v. State of Tamil Nadu*³¹, in which it was held that horse racing, football, chess, rummy, golf and baseball are games of skill. Further, it went on to say that horse racing betting was a talent game because it required judging the shape of the horse and jockey, as well as the quality of the track, among other things, therefore the betting on horse racing was thus been legalized, and hereby no reasonable restrictions are made under horse betting from the perspective of online or offline ways of betting.

Under ‘The Public Gambling (Himachal Pradesh Amendment) Act, 1976’, ‘Gaming’ or betting on any percentages, numbers, or dates to be determined or revealed later, or on the occurrence or non-occurrence of any natural phenomenon, or in some other manner whatsoever, except wagering or betting on a horse race anytime such wagering or betting takes place.³²

- (a) on the day of the run; and
- (b) in every enclosure where the race is to be conducted, with the approval of the Provincial Government set aside for the reason, but not including a draw.

Gambling is still a state concern in India, and nearly all of the country's 29 states have written exceptions for horse racing in their gaming rules. The West Bengal Gambling Rules³³ of 1958 are an example of how states include exceptions to their gambling laws to expressly exclude horse racing. Other states, such as Maharashtra, may have established independent horse track licensing laws from their general gambling regulations. The Bombay Race Course Licensing Act³⁴ of 1912, for example, required the state to expressly discuss the rules and conditions of gaming within its boundaries. The West Bengal Gambling Rules and the Bombay Race Course Licensing Act are equivalent or the same in both states. Most horse race licensing regulations outline how operators can secure a license, as well as the fines for breaking the regulation, exemptions, and general guidelines they must obey.

Watching the practicality of the Act, 11 states of India have legalised the Act of betting on horse racing which includes Andhra Pradesh, Assam, Delhi, Haryana, Karnataka, Maharashtra,

³¹ *Dr KR Lakshmanan v. State of Tamil Nadu*

³² The Public Gambling (Himachal Pradesh Amendment) Act, 1976

³³ The West Bengal Gambling Rules, 1958

³⁴ The Bombay Race Course Licensing Act, 1912

Meghalaya, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal and cities in which betting is transpiring on regular basis and taking place at turf clubs are Bangalore, Chennai, Delhi, Hyderabad, Kolkata, Mumbai, Mysore, Pune and Ooty.

(d) Prize Competition

The general acceptance of Prize Competitions has been considerably made in India with the correlating concept of Lottery. The only difference it confers is of the type of game that opposes the nature of chance, thereby the prize competitions are based on the concept of the game of skills and therefore they are legal.

The game of Prize is regulated by Prize Competitions Act 1955, which explains Prize competitions as: ‘any competition (whether it's called a crossword reward competition, a missing-word prize competition, a photo prize competition, or something else) in which prizes are awarded for solving any puzzle’³⁵

At the time of operation of the Act, the obligation of its enforcing was interpreted on States and therefore this act is currently regarded for Andhra Pradesh, Bombay, Madras, Orissa, Uttar Pradesh, Hyderabad, Madhya Pradesh, Patiala and East Punjab States Union, and Saurashtra, both former Part C states, as well as Pondicherry, Dadar and Nagar Haveli, Goa, Daman and Diu, and Pondicherry, Dadar and Nagar Haveli, Goa, Daman and Diu.

There are many other types of games like Sports Betting, Casino Games etc. which are in the struggle of both moral and legal acceptance and that too is varied by legislations of different states. But while elucidating the acquirement of this types of gambling in Indian legislations, the prime question of the nature of the Game is been discussed. Thereby, according to The Public Gambling Act³⁶, the Indian gambling system is divided into two main distinct parts; (1) Game of Skill; and (2) Game of Chance. And according to the same Act and various contentions of the Apex court, the game of skill is been legalized in India whereas the games or gambling provisions supporting games of chance are thereby banned from India. Thus, both the terms involving ‘Chance’ and ‘Skill’ are very varied.

(e) Fantasy Sports

Unlike other online games, Indian courts have traditionally extended fantasy sports games the same care and have allowed them because they require abilities. Both the Punjab and Haryana High Courts and the Bombay High Court have ruled that the games provided by Dream 11 (fantasy cricket, kabaddi, football, and other sports) involve talent, experience, judgement, and

³⁵ Section 2(d); The Prize Competitions Act, 1955

³⁶ The Public Gambling Act, 1867

focus and are not gambling.³⁷ Similarly, the Rajasthan High court³⁸ followed the same contentions.

The preceding decisions provide a reason to believe that fantasy sports games are legal. However, the position cannot be assumed to be resolved quite yet because other courts can respond differently. For example, based on the Supreme Court's rummy ruling, would it mean that a fantasy sports game owner makes money off the game or that a player plays for real money that the game has a gambling character? Regrettably, we will have to wait for a judge to rule on this. But opportunities have been flourishing as talking about applying betting on sports in India. To get a piece of India's \$60 billion (£37 billion) betting industry, Britain's top betting firms are vying for the country's first online gambling licence. In early September, high-street bookmaker William Hill, along with internet players Betfair and Bwin, will compete for an internet licence in the Himalayan state of Sikkim.³⁹ Talking specifically about Cricket the BCI itself supported the idea of gambling in cricket as it is happening illegally in every part of India and making it legal would induce the State's income by the license income boost.

But in India the core legislation i.e. The Public Gambling Act is made that way that would only support games of skill to be gambled with and would reject with some exception the game of chance but with certain restrictions. But here the main loophole comes into existence, the Indian legislatures only talk about legalising or providing penalty over gambling that takes place offline or online when it is hosted by the server which is based in India, but what about servers providing playing of gambling of every kind rather it be of skill or chance when the server is outside or to be more specific when the games are hosted outside the countries jurisdiction but are been played in the country? The answers to this are same simple and complex at the same time.

The Loophole: Online Gambling

As we have learnt from all the above provisions and contentions that Gambling in India is illegal except for lottery and horse racing and various other state laws. But statutorily this is only acceptable to the plethora of offline world, if we talk about the world of online gaming whole scenario just diverges itself into a whole different level of explanations.

In India for Gambling only we do not have an updated specified act, and if it would be linked with the underdeveloped Information Technology legislations of India, it considerably makes it worst and hard to control. Though online gambling is legal in most parts of India, it is not fully controlled in the majority of states. Three other states have banned online gambling, including

³⁷ Gurdeep Singh Sachar v. Union of India and Ors. (2019 75 GST 258 Bombay) and Varun Gumber v. UT Chandigarh (2017 CriLJ 3827)

³⁸ Chandresh Sankhla v. The State of Rajasthan and Ors. (2020 2 RLW 1601 Raj)

³⁹ <https://www.independent.co.uk/news/business/news/betfair-and-william-hill-target-india-1810025.html>

Sikkim, which is aggressively implementing a compliant online gambling system. Telangana, Andhra Pradesh, and Maharashtra are the three states in question. Even though internet gambling is illegal, no one has been charged with any crimes to date.

In India, there have been no signs of online gaming in the Grund norm for gambling i.e., The Public Gambling Act but online gambling is indirectly been regulated by two different acts;

- (a) The Foreign Exchange Management Act of 1999⁴⁰
- (b) The Information Technology Act of 2000⁴¹

Before providing the relations of these acts with online gaming, a general plethora of the individual legislation relating to online gaming is been explained herewith;

(a) The Foreign Exchange Management Act, 1999

The Foreign Exchange Management Act (FEMA), which was enacted in 1999, affects the legality of online gambling in India. It is a form of financial transaction that involves foreign trading and currency exchange. The vast majority of the Foreign Exchange Management Act does not extend to individuals and has little to do with gambling. As a result, we'll just cover the portion that pertains to legal online gaming in India.

Depositing money in a currency other than Indian rupees into an online casino account may be called an illicit currency exchange. Customers of online casino sites have two choices for using their websites without breaching FEMA. The first choice is to allow rupee transactions. Accepting the money, though, would not obligate you to use it in transactions. As a result, geolocation tools can be used by online casinos and betting sites to decide your location. They will limit transactions that start in India to only being performed in rupees. That choice is efficient, but it adds extra work for both the platform and the gamblers.

Most online gaming sites opt for the second alternative, advising Indian gamblers to use mobile wallets rather than credit or debit cards. Electronic wallets have separate foreign exchange laws, so the gambling platform can process the payment without breaking FEMA, regardless of the currency. They also make it very simple for consumers to complete purchases. If you're gambling online in India, your banking options can be restricted. The Foreign Exchange Management Act is to blame for this.

⁴⁰ **The Foreign Exchange Management Act, 1999**

⁴¹ **The Information Technology Act, 2000**

(b) The Information Technology Act, 2000

The Information Technology Act of 2000 is the most recent federal Indian gaming statute. It is comprehensive legislation that covers nearly all online activities. The Information Technology Act makes no mention of online gaming being illegal in India. In reality, the legislation makes no mention of gambling at all. However, the Indian government has the authority to block international websites if it finds them appropriate. The government has the authority to order internet service providers to restrict access to specific websites, as it has done so in the case of certain online poker sites. It's unclear whether those websites have been blocked or whether they'll reappear.

Further many state legislature support online gambling like in the State of Nagaland, the Nagaland Prohibition of Gambling Act takes an unusual approach to online gambling. It outlaws all forms of online gambling in which chance outweighs ability. It does, however, issue licences to businesses who wish to sell online skill games like poker and rummy. Since it is licencing legislation, the act is much more intriguing. The Finance Commissioner of Nagaland is in charge of licences, and any Indian company may apply for one. This is especially intriguing because it means that a company that earns a Nagaland licence would be able to legitimately sell its services to other Indian states. The legislation does note, however, that such companies cannot exist in states where skill games are expressly prohibited. To be eligible for a Nagaland skill-based gaming licence, the company and its technology servers must be based in India. Foreign operators who currently operate online casinos or gaming sites would not be licenced because they do not meet the criteria for a Nagaland Gaming Licence. Corporations that sell games of chance are still ineligible for the skill-based gaming licence, according to another stipulation. As a result, since they only sell poker, online casino operators are not qualified for a licence. The advantage of getting state-licensed online poker sites is that Nagaland will inspect them to ensure that they are running fair games and defending the rights of their consumers. Nagaland's Gambling Act is one-of-a-kind, and it could pave the way for organised poker in India. However, several international operators now offer poker to Indian players without obtaining a licence. These businesses are adamant about not giving up their casino games to obtain a license, since they have already been permitted to work without one.

Similarly, in terms of gambling laws, Sikkim is one of the most democratic states in India. The state has approved land-based casinos while also establishing a compliant online gaming industry. Sikkim's casino licensing act⁴² was passed in 2008, and the state's first land-based casino opened in 2009. They began accepting applications for three online casino licenses in 2010. The position of the state influenced their decision to establish a casino industry. Sikkim is a tiny state in India's northwestern corner, sandwiched between Nepal and Bhutan. Many Indian

⁴² **Sikkim Online Gaming (Regulation) Act, 2008**

gamblers used to fly via Sikkim to reach casinos in Nepal before 2009. The state needed to keep the money in the nation, so land-based casinos in five-star hotels were approved. Adding two land-based hotel casinos to Sikkim's tourism sector was a great way to support the state's economy. Travellers flock to the state to see the stunning Himalayan ranges. The majority of casino patrons are visitors, but Sikkim locals enjoy the ease of having two casinos to choose from. In 2010, Sikkim became the first state to legalize online gambling. Sikkim has India's most advanced online poker laws, but it doesn't help anybody because there aren't enough competitors to lure the biggest casinos.

It does not suffice to interpret only that online gambling is not regulated in India but also in some states the notion of online gaming is banned. A few states have made it illegal to gamble online within their territories. In 2017, Telangana became the first state to enact such legislation. In 2020, Andhra Pradesh and Tamil Nadu will follow. An event in Andhra Pradesh led legislators to pass legislation prohibiting online gaming. A young man committed suicide as a result of the pressures he was experiencing as a result of outstanding debts he had accumulated while gambling online. Following the attack, the state legislature determined that internet poker was too risky because it attracted a younger demographic of gamblers. In September 2020, they passed a bill banning it. The rules of all three states are strikingly close. They all make nearly all forms of online gambling illegal, including sports betting, lottery sales, and even rummy. For your first offence, you could face up to six months in prison and a 5,000-rupee fine if you are found gambling online in either of these states. Operators and repeat offenders could face up to two years in prison and a fine of 10,000 rupees. The enforcement of online gaming rules is difficult for law enforcement. They don't have the equipment or money to constantly monitor everyone's machine and mobile operation. Andhra Pradesh is seeking to circumvent this problem by persuading India's government to pass the Information Technology Act. They've urged the government to close down more than 132 betting websites in the state by requiring internet service providers to ban them. According to Chief Minister Reddy, anybody who supports online gambling sites in their operations could be held responsible for breaching the Gaming Act of Andhra Pradesh. This involves internet service providers that do not restrict access to online casinos and gaming sites.

But to still play Gambling without the interference of State the last exception which makes the largest loophole in the Gambling Legislation on India, Overseas Gambling Sites i.e., the gambling sites which are been hosted by the server that is based on foreign countries not in the jurisdiction of India. None of India's federal gaming laws excludes foreign sites from running and accepting Indian matches. Players must exercise caution when conducting financial transactions with international sites. Instead of using a foreign currency, you can conduct all purchases in rupees or use an electronic wallet. If an online casino takes credit card deposits in a currency other than Indian rupees, they are breaking Indian foreign exchange rules. These websites are open and usable for everyone in India. Three states, however, have made online

gaming illegal i.e., Telangana, Andhra Pradesh, and Tamil Nadu. In these states, you could face criminal prosecution, but the government is more interested in prosecuting the owners than the people.

Therefore, it can be described that online gambling can be played at any part of India except states of Telangana, Andhra Pradesh, and Tamil Nadu until and unless one is contemplating all the provisions of FEMA and IT Act i.e. is not dealing with foreign currency or gambling for illegal means that are prohibited under IT Act. Thereby gambling of anything except that which are barred under the online presentation of IT Act is legal to induce with.

Conclusion

Gambling in India is a GREY area to be discussed. Legislatures dealing with gambling are significantly old and the Act that governs gambling in India i.e., The Public Gambling Act which was propounded by Britishers, but in England, at the present instance the legislation regarding gambling have been significantly developed and the legalization of many games involving gambling have been thereby pronounced.

The plethora of Online gaming has a serious loophole as to providing various questions on the validity of other laws such as FEMA and IT Act. Thereby a grey area is seen when generalizing the online gaming notion of India. However, recent technological advancements have opened up the sector and encouraged the general public to engage in practices that are on the edge of Indian gambling laws. In India, these practices are yet to be scrutinized and checked by the judiciary. Before engaging in any gambling operation in India, it is advisable to seek sound legal counsel to prevent any unwanted legal ramifications.