

INTERNET GAMBLING IN INDIA: REGULATION OR PROHIBITION?

*Authored by: Sakshi Anand**

** 3rd YEAR BALLB Student, CHRIST (Deemed to be University), Bengaluru*

ABSTRACT

With the development of technology and mass communications, the internet has opened up many opportunities for online commerce. One such recent development of the internet has been online gambling. This has transformed the nature of gambling and has widened its scope. It is no longer restricted to traditional casinos, as it can now be played from the cyberspace which is accessible 24*7 and for 365 days. A lot of Indians are gambling online as there are so many websites which provide such services to people. But, with such development, there is a need for a regulation too. The legal status of online gambling is quite ambiguous in India due to lack of a central legislation which can regulate such activities. Non-regulation of online gambling has raised many legal concerns both for the government and gamblers like the creation of a parallel market, circulation of black money and fraudulent activities being practiced etc. This has been discussed in the paper.

This paper seeks to highlight the development of internet gambling in India and the issues related to it. It discusses the pros and cons of internet gambling and addresses the question as to why there is a need for regulation of internet gambling in India. The paper gives insights into the international framework for regulation of internet gambling and also reviews the suggestions made in the 276th law commission report on “Legal Framework: Gambling and Sports Betting including in Cricket in India.” It is recommended that further research should be conducted and a proper legislation should be drafted to regulate internet gambling in India.

Keywords: *online gambling, internet gambling, regulation, prohibition, legislation*

INTRODUCTION

Gambling is any gaming behavior involving the risking of money or valuables on the outcome of a game, contest or other events for financial gain. The outcome of the event depends partially or totally on chance¹. The industry of gambling can be categorized into activities which involve random outcomes, such as lotteries and slot machines, and activities which can involve judgement, such as some card games and betting on events.² Gambling has become one of the most globally popular activities on the internet as the scope of the internet has broadened up a lot with the development of information and technology. The scope of internet gambling has changed relatively in the last few years, apart from raising legal concerns; it also raises certain health issues for people who are addicted to gambling. Basically, there are two types of online gambling, one is online wagering and the other one is online gaming. Online wagering involves placing of money on happening or non-happening of a physical event like horse racing etc and on the other hand, online gaming involves placing of money or money's worth on gaming activities which are software generated games and results are determined randomly. The gambling industry has acquired a lot of popularity recently and has a strong market base in many countries. It has become a popular form of gambling among Indians too. But, lack of regulatory measures and absence of a legislation to address issues related to online gambling in India has made it a controversial topic.

THE DEVELOPMENT OF INTERNET GAMBLING

With the advent of technology, the internet has entered into every field of market and one of its potential outcomes has been market for online gambling. There has been a rapid development of online gambling in the past few years, not just because of the development in technology and mass communication but because of the fact that it can be played from anywhere and at any time. Internet gambling is quite different from the traditional form of gambling. It is desirable both from the point of view of consumers and operators. Also, the scope of online gambling was limited earlier but now a lot of people gamble online in India. The gambling industry has widened up its

¹ MacKay, T. (2004). Internet Gambling in Canada Waits in Legal Purgatory. National Policy Working Group: Policy Discussion Document

² Budd, A. (2001)+, "Gambling Review Report (The Budd Report)", United Kingdom Government Department for Culture, Media and Sport.

scope so much that it is hiring “professional gamblers” to gamble online. Nazara, a mobile company, is planning to invest \$ 20 million on Indian e-sports³. It is also estimated that the current market of online gaming in India will rise from \$360 million to \$1 billion by 2021⁴. Also, the prize money which is offered in such tournaments has increased from 3 Lakhs to 1 Crore in the past two years.

There are a number of factors which are responsible for the expeditious growth of this market.

Gamblers are driven by this market because of:

- (i) **Accessibility:** it can be played from anywhere and anytime. With the easy accessibility of these gambling sites, the numbers of gamblers are increasing day by day and as such, the market for internet gambling is also expanding.
- (ii) **Privacy:** some gamblers like to play in private because of the social stigma attached to gambling and they won't have the fear of being judged even if they lose while playing
- (iii) **Equality:** internet gambling endorses equality as everyone is treated equally on the internet regardless of his or her status unlike in traditional casinos.
- (iv) **Abhorrence towards the ambience of a casino:** some gamblers don't like to visit casinos because of loud music, crowded and smoky environment. So, online gambling is convenient for them.
- (v) **Event Frequency:** online gambling allows gamblers to play many games at once through multiple screens.

Even companies prefer to invest in the market for online gambling rather than traditional casinos because:

- (i) **A Substantial amount of profit:** Online gambling companies face much lower administrative and overhead costs compared to traditional casinos. For instance, online casinos substitute technology for human labour; instead of hiring and training casino

³ Shalina Pillai, “Now, online gaming is a career for some”, (May 7, 2018) available at:

<https://timesofindia.indiatimes.com/india/now-online-gaming-is-a-career-forsome/articleshow/64056984.cms>

⁴ Study by KPMG and Google, online gaming in India: Researching a new Pinnacle, May 2017. See also

<https://www.stoodnt.com/blog/career-in-online-gaming/>

- employees (e.g. dealers, croupiers, gaming attendants, and supervisors), computer algorithms are used to run the games⁵
- (ii) **Less investment required:** online gambling doesn't have to invest in setting up a physical based casino which is quite expensive. Also, they don't have to spend money maintaining it and getting insurance.

The market for online gambling is proving to be beneficial both for the consumers as well as service providers as it provides a lot of opportunities and scope for development. But, corollary to this, it has given rise to many issues like problem gambling, criminal behavior. Problem gambling is defined as 'participation in gambling to the point where it causes serious harm to oneself and others.'⁶ Online gambling causes two types of problems: severe ones like depression, thoughts of suicide, debt, poverty, crime, divorce, and more moderate ones like chasing debts, guilt, concealment, depression, high expenditure.⁷ Another problem is that online gambling can induce criminal behavior in the society and can increase the number of organized crime like money laundering and fraud etc. For example, many internet websites which claim to provide gambling services are not authentic and there are no regulatory measures to check the legitimacy of these sites which, makes it really easy for these sites to defraud the consumers and raises a lot of security and privacy issues.

NEED FOR REGULATION

The reason internet gambling is becoming an issue of concern is because of the rapid growth in its market and there is a lot of ambiguity regarding the legality of this online market for gambling due to lack of a comprehensive law to deal and address the issues related to it. Therefore, it becomes immensely important that the laws relating to online gambling and betting should be reviewed.

It is quite evident that there is no stop on these activities in the future and it is impossible for the state to curb these activities entirely. Even if the government imposes a ban or prohibits online

⁵ Morse, E.A. (2006). Extraterritorial Internet Gambling: Legal Challenges and Policy Options.

⁶ Ranade, S., S. Bailey, and A. Harvey. 2006. A literature review and survey of statistical sources on remote gambling

⁷ Ranade, S., S. Bailey, and A. Harvey. 2006. A literature review and survey of statistical sources on remote gambling

gambling, it won't help as it is very difficult to monitor all these activities online due to the vast nature of the internet. So, the least which government can do is to regulate them instead of banning it completely. India is a welfare state and it is the duty of the state to protect its citizen from any malpractices which will affect them. As, there are many problems which are associated with the unregulated framework of online gambling like:

Unethical practices: There are high chances that a lot of unethical practices are being practiced in this business which puts the interest of consumers at stake. For example, some of the fraudulent gambling websites can tamper with the results generated online by fixing it which increases the potential for consumer loss. Also, these websites inculcate different kinds of software which manipulates the result and reduce the chances of winning which is against the interest of gambler. Moreover, because these activities are unregulated the gambler always has the fear of not receiving the payments of his winnings and also there is no provision for legal framework which will enable the consumer to initiate a suit against the fraudulent website for the recovery of the due payment. These websites also collect the information of the consumer who gamble online and creates a database which stores all the information of the consumer regarding how long he gambles and what do they usually gamble upon etc. Then these databases are sold to different companies who come up with even more appealing websites which induce consumers to gamble even more.

Regulating these online websites would ensure a minimum standard of ethical practices being practised as these websites would be monitored and would comply with the fair and ethical standards. Also, it is really important for consumers who gamble online to have a sense of trust in the same manner, as they have in the traditional form of gambling where they can check the fairness of the game which is not in the case of online gambling due to lack of a physical connection.

Creation of Illegal parallel economy: A complete ban on these activities leads to the creation of black market making regulation even more difficult. It also leads to creation of various alliances that will benefit from these unregulated illegal practices. Moreover, these illegal gambling activities creates a severe impact on the economy as the profits generated from these are unaccountable and also goes unnoticeable because of which, they don't come within the ambit of taxation which leads to increase in dissemination of the black money in market. In precise, such illegal activities would damage the economy of our country; hence there is a need for regulation.

Money laundering: Online gambling has been one of the major reasons for the commission of economic crime relating to money laundering which is a three-stage process involving placement, layering, and integration. In this, the individual first physically moves the illicit money from the market, then disguises the audit trail of the money and then brings it back into the economy appearing to be legitimate.

BENEFITS OF REGULATION OF ONLINE GAMBLING

As we have seen that there a lot of consequences of unregulated gambling so it becomes the need of the hour that such activities should be monitored and regulated as the market for online gambling is increasing day by day. The various benefits of regulating online gambling are:

- If the government opts to regulate this market of gambling activities then the fairness of these activities can be ensured, and unethical practices being practised can be curbed too. Consumer protection can also be increased and as such, they will have a sense of trust that they won't be cheated. Also, in case of a fraud being committed upon the consumers, they can always have recourse for legal action.
- A proper age identification check can be done in order to ensure that minors are not allowed to gamble online. Security provisions would be there on every gambling website which means that individuals have to provide documents for age verification while logging in which will prevent underage individuals from gambling online.
- Regulation would ensure that all the industries involved in providing online services for gambling would be monitored and as such all the revenues generated can be traced by the government and can be taxed which will generate revenue for the government and the same can be used for public welfare.
- The rights of the gamblers who go online to gamble can be protected as they will have a legal protection and wouldn't be left at the hands of loan sharks.

- Regulation of online gambling would also see that online websites are following responsible gaming which allows consumers to set an upper limit for the amount they want to place a wager and can also decide the maximum amount of loss they can bear which serves as a protection to those who are addicted to gambling.
- Regulation of online gambling would allow the government to monitor all the transactions, so it will also help in curbing money laundering.

CURRENT STATE LEGISLATION ENACTED

There is absolutely no central law that can regulate online gambling in India. There are only two states in India who have enacted legislation regarding online gambling i.e. Sikkim and Nagaland.

The Sikkim Online Gaming (Regulation) Act, 2008 is the first legislation to be enacted to regulate online gambling. The Act read with Sikkim Online Gaming (Regulation) rules, 2009 allows for certain games that can be played and operated by obtaining a license from the state government. Such games includes bingo, black jack, roulette, poker, baccarat, keno, super plan 9, sports betting etc. The Act provides for playing of these online games and sports betting in the licensed gaming parlors within the territory of the state. Nagaland has also enacted Nagaland Prohibition of Gambling and Promotion and Regulation of Online Gaming Act, 2016 which seeks to provide for licenses by providing pan India applications. Section 2(1) of the Act states that:

“Once a license has been obtained under this act, wagering or betting on online ‘games of skill’ or making profit by providing a medium for playing ‘games of skill’ shall not amount to gambling so long as they are being provided by players and being accessed by players operating from territories where ‘games of skill’ are exempted from the ambit of gambling.’

Section 2 (2) of the Nagaland Act defines the term “territory” for the purposes thereof as “any territory in India in which ‘games of skill’ are permitted and are recognized as being exempted from the ambit of ‘gambling’.”

When we read both the clauses together then the Act says that a license, when obtained through Pan India application, can be used to offer games of skills throughout the country provided that

such “games of skills” are exempted from the preview of gambling under the current state legislation concerned and are seen as a game of skill.

On the other hand, Telangana has provided for a complete opposite approach where it has amended The Telangana Gaming Act, 1974 and brought The Telangana Gaming (Amendment) Act, 2017 which provides for zero tolerance policy against any kind of betting whether it is offline or online leading to major consequences on the wellbeing of the common public of the state.

INTERNATIONAL PERSPECTIVE

Different kinds of measures are adopted by different countries to regulate online gambling activities. Countries who give prime importance to religion and morality have chosen to completely ban and prohibit these activities and gambling in those countries is considered to be an illegal activity. On the other hand, some countries have permitted online gambling and see it as a source of revenue. While some countries choose to operate between two of these extremes where they regulate these activities in a controlled manner by which they earn a substantial tax revenue which can be used for promoting sports, cultural, charitable activities or any other activity aimed at the economic growth or development.⁸

United Kingdom: The UK decided to regulate online gambling and passed an Act for the same in 2005. Within, this legislation was the provision to establish an investigatory body composed of around 100 investigators and a Gaming Commission who together would be responsible for regulating the industry.⁹ In making their decision, the United Kingdom recognized and accepted the “inevitability of Internet gambling” and moderated its policy to reflect this view.¹⁰ The Act provides the requirement of a license in order to run remote gambling services and the commission is associated with various organizations that deal with problem gambling issues. Finally, the site

⁸ Regulating Sports Betting in India: FICCI available at :<http://blog.ficci.com/sports-bettingindia>

⁹ Heydary, J. (2005). Advertising for Online Gambling – Is It Legal? Accessed from www.heydary.com/publications/online-gambling-laws.html

¹⁰ McMillen, J. (2000). Online gambling: Challenges to national sovereignty and regulation. *Prometheus*, 18(4): 391-401.

would need to include safeguards that protect the privacy and security of online gambling consumers.¹¹

South Africa: They enacted a new legislation for the regulation of internet gambling which is known as interactive gambling under section 2 of the National Gambling Act 2004 and is defined as: “ a gambling game played or available to be played through the mechanism of an electronic agent accessed over the internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of such premises is authorized to make such a game available for play”.

The prime objective of the Act is to provide for licenses and regulate online gambling by National Gambling Board. The board also ensures that internationally recognized standards are observed so that their reputation is not jeopardized.

United States of America: USA has enacted many laws regarding the regulation of online gambling like Illegal Gambling Business Act of 1970¹² and The Unlawful Internet Gambling Enforcement Act, 2006¹³ (UIGEA). The UIGEA Act regulates internet gambling in the USA. Unlawful Internet Gambling is defined to mean “to place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made”.¹⁴ Violations of its provisions are punishable by imprisonment and/or fine.¹⁵

Canada: Regulation of interactive gambling in Canada occurs through a mix of federal and provincial legislation. While federal legislation prohibits the provision of online gambling under the Criminal Code of Canada, provinces have the power to regulate interactive gambling within their province.¹⁶ Canadian federal law has been interpreted by provincial governments as allowing

¹¹ MacKay, T. (2004). Internet Gambling in Canada Waits in Legal Purgatory. National Policy Working Group: Policy Discussion Document

¹² 318 U.S.C. 1955

¹³ 531 U.S.C. 5361 et seq.

¹⁴ 31 U.S.C. 5362

¹⁵ 631 U.S.C. 5366(a), 18 U.S.C. 3571.

¹⁶ Review of current and future trends in interactive gambling activity and regulation, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009, p. 38.

them to legally operate an Internet gambling website as long as patronage is restricted to residents within that province.¹⁷

PROHIBITION V. REGULATION

There have been many arguments both for and against for prohibiting and regulating internet gambling. Individual who argue against the regulation of internet gambling usually states that internet gambling is an immoral activity and is against the societal morals as seen in Indian ancient history too where Yudhishtir in Mahabharata lost not only his kingdom but also his wife and brother. As such, society doesn't support gambling and regulating it will induce people to gamble more which is detrimental to our values. Also, people argue that regulation or legalisation of internet gambling is against public policy and will also lead to many problems like problem gambling, addiction, criminal behaviour etc.

On the other hand, people who argue for regulating it has stated that it is impossible to completely prohibit internet gambling due to technological development and vast nature of internet which will allow gamblers to access gambling sites online. So prohibiting such activities would not prove to be effective. Instead, the government should regulate these activities as this will help in taxing such transactions which will generate revenue for the government and the same can be used for public welfare. Also, regulation will ensure that the online websites are monitored and no unethical activities are being practiced like fraud and money laundering. Regulation will also place provisions in check which will not allow minors to gamble online. It has also been argued that prohibition will not completely eliminate such activities instead lead to the creation of a parallel economy which will generate black money and would be harmful to the country's economy. Regulating online gambling would also ensure licensing which will ensure fair practices and also see that consumer's security and privacy are not jeopardised. Also, consumers would be provided with a legal mechanism in case of infringement of their rights or if they are victims of fraud, they can always seek legal protection which cannot be done in case of prohibition

¹⁷ Williams, R.J. & Wood, R.T., Internet Gambling: A Comprehensive Review and Synthesis of the Literature, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007, p. 38.

276TH LAW COMMISSION REPORT

The law commission recently gave a report on “Legal Framework: Gambling and Sports Betting including in Cricket in India” which has been drafted on the direction received by Supreme Court in Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.¹⁸ The report recommends for legalization of gambling in India as banning such activities have proved to be futile. The report also suggests that it has become impossible to curb these activities and is really difficult to monitor it online and regulating it would ensure in curbing illegal activities.

The report provides for certain measures to regulate gambling activities like:

- (i) Gambling services should only be provided by licensed operators by obtaining a license from game licensing authority.
- (ii) The report has also suggested that an upper limit should be decided by the law for the amount that can be wagered while gambling depending upon the deposits, wins, and losses of an individual.
- (iii) The commission has distinguished between proper gambling and small gambling on basis of their income status. People belonging to higher class would be allowed to gamble according to their own desires whereas people belonging to lower income group would have a restriction on the amount which they can stake.
- (iv) In order to ensure transparency in the system and to monitor all such transactions, it is required that both operators and gamblers should link their PAN/ Aadhar Card.
- (v) People belonging to Below Poverty Line and from other vulnerable sections would not be allowed to gamble online. Also minor i.e. children below 18 years won't be allowed to gamble online.
- (vi) The commission has strictly stated that no pornographic content should be there on the websites.
- (vii) All the transaction should be cashless so that the state can keep a check on it and also all the profits made out of such activities would be taxable under the tax laws of the country.

¹⁸ (2014) 7 SCC 383,

- (viii) Section 30 of the Indian Contract Act 1872 has to be amended which makes all the wagering contracts void.
- (ix) The commission has suggested criminalising match fixing and sports fraud.

CONCLUSION

The technology is changing day by day and so are the needs of people. Activities which were considered to be immoral some decades back are not so immoral anymore like gambling. People used to think of gambling as a social evil earlier but now there is a huge demand for it especially on the cyberspace. So, the law has to keep pace with changing values of the society. The argument that gambling is an immoral activity and should be banned completely lacks enforceability due to the transnational character of the internet which will continue to provide opportunities to people for gambling online. The size of the market for online gambling is increasing rapidly and it's high time that the government should take steps to regulate it. Also, the parliament has the power to enact a legislation regarding internet gambling as it played on the cyberspace and uses mass communications which fall under entry 31 of the union list that states "Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication". So I recommend that a comprehensive legislation should be brought which is the need of the hour to regulate such activities on the internet. This will be beneficial both for the consumers and the government. The legislation would aim to protect the interest of the gamblers by protecting them from fraudulent players in the market and would also take steps to curb problems like problem gambling, youth addiction, criminal behaviour, and money laundering activities. On the other hand, the government would also be able to keep a check on such transactions and can tax profits made out of them which will serve as a good source of revenue for the government. It will also help in reducing the scope of the illegal market and circulation of the black market in the economy as regulation will ensure transparency which will curb underground activities. I also recommend that a Gambling Commission should be set up in India which will be given the task to issue licenses to the relevant players in the market and ensure that such operators link up their Aadhar card/ Pan card in order to ensure a free and fair market. No one should be allowed to provide gambling services online without having a license and the same should be made a punishable offence. Also, the recommendations made by the law commission in its 276th report should be kept in mind while

framing a legislative framework. So, the only solution to the problem of internet gambling is to regulate it and provide for a proper legislative framework.



JCIL

BIBLIOGRAPHY*Articles:*

- MacKay, T. (2004). Internet Gambling in Canada Waits in Legal Purgatory. National Policy Working Group: Policy Discussion Document.
- Massimo Manzin Roberto Biloslavo, Online Gambling: Today's Possibilities and Tomorrow's Opportunities, Online Gambling: Today's Possibilities and Tomorrow's Opportunities
- Nair, Abhilash, 'Online Gambling: Gambling with Regulation, European Journal of Law and Technology, Vol. 3, No. 3. 2012
- Morse, E.A. (2006). E Morse, E.A. (2006). Extraterritorial Internet Gambling: Legal Challenges and Policy Options
- McMillen, J. (2000). Online gambling: Challenges to national sovereignty and regulation. Prometheus, 18(4): 391-401
- Review of current and future trends in interactive gambling activity and regulation, Literature Review, Report to the Australian Government Department of Families, Housing, Community Services and Indigenous Affairs, by the Allen Consulting Group, June 2009
- Williams, R.J. & Wood, R.T., Internet Gambling: A Comprehensive Review and Synthesis of the Literature, Report prepared for the Ontario Problem Gambling Research Centre, Guelph, Ontario, Canada, 2007

Online articles:

- Williams, R.J. & Wood, R.T, Internet Gambling: Past, Present and Future, <https://www.uleth.ca/dspace/bitstream/handle/10133/422/internet?sequence>
- Budd, A. (2001), "Gambling Review Report (The Budd Report)", United Kingdom Government Department for Culture, Media and Sport.
- Shalina Pillai, "Now, online gaming is a career for some", <https://timesofindia.indiatimes.com/india/now-online-gaming-is-a-career-for-some/articleshow/64056984.cms>,

- Study by KPMG and Google, online gaming in India: Researching a new Pinnacle, see also <https://www.stoodnt.com/blog/career-in-online-gaming>.
- Ranade, S., S. Bailey, and A. Harvey. 2006. A literature review and survey of statistical sources on remote gambling extraterritorial Regulating Sports Betting in India: FICCI available at :<http://blog.ficci.com/sports-bettingindia>
- Heydary, J. (2005). Advertising for Online Gambling – Is It Legal? www.heydary.com/publications/online-gambling-laws.html

Reports:

- Law Commission Report- 276th “Legal Framework: Gambling and Sports Betting including in Cricket in India”

Statues:

- The Sikkim Online Gaming (Regulation) Act, 2008
- Nagaland Prohibition of Gambling and Promotion and Regulation of Online Gaming Act, 2016
- The Telangana Gaming (Amendment) Act, 2017
- National Gambling Act 2004
- Illegal Gambling Business Act of 1970
- The Unlawful Internet Gambling Enforcement Act, 2006 (UIGEA)