



INTERNATIONAL LAW
JOURNAL

**WHITE BLACK
LEGAL LAW
JOURNAL**
**ISSN: 2581-
8503**

Peer - Reviewed & Refereed Journal

The Law Journal strives to provide a platform for discussion of International as well as National Developments in the Field of Law.

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Dr. Raju Narayana Swamy popularly known as Kerala's Anti Corruption Crusader is the All India Topper of the 1991 batch of the IAS and is currently posted as Principal Secretary to the Government of Kerala. He has earned many accolades as he hit against the political-bureaucrat corruption nexus in India. Dr Swamy holds a B.Tech in Computer Science and Engineering from the IIT Madras and a Ph. D. in Cyber Law from Gujarat National Law University . He also has an LLM (Pro) (with specialization in IPR) as well as three PG Diplomas from the National Law University, Delhi- one in Urban Environmental Management and Law, another in Environmental Law and Policy and a third one in Tourism and Environmental Law. He also holds a post-graduate diploma in IPR from the National Law School, Bengaluru and diploma in Public

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Dr. Neha Mishra is Associate Professor & Associate Dean (Scholarships) in Jindal Global Law School, OP Jindal Global University. She was awarded both her PhD degree and Associate Professor & Associate Dean M.A.; LL.B. (University of Delhi); LL.M.; Ph.D. (NLSIU, Bangalore) LLM from National Law School of India University, Bengaluru; she did her LL.B. from Faculty of Law, Delhi University as well as M.A. and B.A. from Hindu College and DCAC from DU respectively. Neha has been a Visiting Fellow, School of Social Work, Michigan State University, 2016 and invited speaker Panelist at Global Conference, Whitney R. Harris World Law Institute, Washington University in St.Louis, 2015.

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Dr. Navtika Singh Nautiyal

Dr. Navtika Singh Nautiyal presently working as an Assistant Professor in School of law, Forensic Justice and Policy studies at National Forensic Sciences University, Gandhinagar, Gujarat. She has 9 years of Teaching and Research Experience. She has completed her Philosophy of Doctorate in 'Intercountry adoption laws from Uttranchal University, Dehradun' and LLM from Indian Law Institute, New Delhi.

Dr. Rinu Saraswat



Associate Professor at School of Law, Apex University, Jaipur,
M.A, LL.M, Ph.D,

Dr. Rinu have 5 yrs of teaching experience in renowned institutions like Jagannath University and Apex University. Participated in more than 20 national and international seminars and conferences and 5 workshops and training programmes.

Dr. Nitesh Saraswat

E.MBA, LL.M, Ph.D, PGDSAPM

Currently working as Assistant Professor at Law Centre II, Faculty of Law, University of Delhi. Dr. Nitesh have 14 years of Teaching, Administrative and research experience in Renowned Institutions like Amity University, Tata Institute of Social Sciences, Jai Narain Vyas University Jodhpur, Jagannath University and Nirma University.

More than 25 Publications in renowned National and International Journals and has authored a Text book on Cr.P.C and Juvenile Delinquency law.



Subhrajit Chanda



BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

A RESEARCH ARTICLE ON ONLINE GAMBLING REGULATIONS: THE NEED OF THE HOUR

AUTHORED BY: YOGA DHARSHINI.M

STUDENT, 3RD YEAR

B.B.A., LL.B (HONS)

SCHOOL OF EXCELLENCE IN LAW (SOEL)

THE TAMILNADU Dr. AMBEDKAR LAW UNIVERSITY (TNDALU)

CHENNAI- TAMILNADU- 600113

ABSTRACT:

India was ruled by the British bylaws for many decades, and still even after Independence, we the people of India follow few laws that were in existence from the British era. India being a diverse and densely populated country is a very great market for both legal and illegal activities, though there are few things that are regulated by the government. Gambling practices in India aren't recent, they are even found in ancient books, like Mahabharata. In the recent years, India has seen a rapid increase in the number of players engaged in online gambling, particularly from the COVID-19 pandemic era, where a nation-wide lockdown was put in force to keep the situation under control. And it was during this time, as an entertainment and money earning source, there was a significant increase of online gambling players.

This article specifically focuses on the existing laws and regulations (both centre and state) to regulate online gambling along with important case laws. This article also gives a comparative analysis of the Indian Regulations for online gambling with the International Frameworks for regulation of online gambling. Furthermore this article also dwells upon the need and benefits of proper regulation of online gambling and also critically analyses the loopholes in the laws prevailing to regulate online gambling. Finally, this article makes few recommendations as of how these laws can be implemented in an effective manner to control online gambling in India.

KEYWORDS: Loopholes, Online Gambling, Rules and Regulations.

INTRODUCTION:

As previously stated, gambling isn't a new one in India. Even ancient Indian literatures like Mahabharata and Rig Veda, have mentioned gambling as a leisure pastime. It is important to note that the craze for gambling increased in India during the British era, where the British rulers themselves promoted gambling to generate lump sum amount of revenue. In 1867, the Imperial Legislative Council passed the Public Gaming Act of India¹ to regulate and limit gambling in India. And this is the only law which regulates gambling in India to a certain extent. The act was created to differentiate between games of pure chance, which it deemed illegal and games of skill, not merely chance, such as horse racing which it made legal.

As of today, there are two types of games in India. They are:

- (a) **Game of Skill:** This game played is purely out of the person's prior knowledge and experience in that game and this also involves analytical and logical thinking to succeed in the game.
- (b) **Game of Chance:** This game includes those are purely based on chance and can be played even without prior knowledge about it. The game of chances includes, dice games, number selection and many more. In India, Game of Chance is deemed to be prohibited.

Gambling, if it involves a certain ability to be players, it might not be prohibited. But due to the surge in the number of players in it, there is a wide spread prejudice about online gambling in particular.

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 information².

Many countries had already imposed a ban on online gambling. But in few European countries,

¹ Public Gaming Act, 1867

² 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)

Gambling is still valid. The importance of imposing a ban on online gambling isn't the laws being formulated, but the way that it is implemented to make sure that there is a complete ban imposed on it.

WHAT IS ONLINE GAMBLING?

Online Gambling means participating in Gambling activities through the means of internet by placing bets on games and events to win money. India online gambling market size reached US\$ 2.7 Billion in 2023. Looking forward, the IMARC Group expects the market to reach US\$ 5.49 Billion by 2032, exhibiting a growth rate (CAGR) of 8.10% during 2024-2032.³

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 laws⁴.

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 internet⁵. 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.

The players of online gambling use different forms of money like credit cards, e-wallets or electronic bank transfers to bet in the game and this process has influenced the ease of online gambling. This type of usage of money has serious disadvantages like not having a record as of how much money the players spend in betting and at last, when they realize it, it is almost the whole of their savings, or loans that they had.

³ <https://www.imarcgroup.com/india-online-gambling-market>

⁴ <https://www.drishtias.com/daily-updates/daily-news-analysis/online-gambling-in-india>

⁵ <https://lawrato.com/indian-kanoon/criminal-law/is-gambling-legal-in-india-heres-all-you-need-to-know-2837>

There are many types of gambling and the sites that offer online gambling in India, though it is being regulated.

TYPES OF GAMBLING:

In India, there are many types of gambling prevalent in many places, out of which few predominant types are discussed below:

- a) **Cricket Betting:** There are no explicit laws that regulate cricket betting in India, however, this is seen as a game of chance and not that of skill. Following the spot-fixing scandal 2013, the Union Government was recommended by the law commission on the regulation of this type of betting with the prime reason to stop money laundering activities in India.
- b) **Poker:** This is a card based game on which the players bet that the cards on their hands are of more value than what others have on their hands. This game generally involves betting in form of chips and keeping a straight face.
- c) **Bingo:** This game generally involves calling out random numbers, usually up to 75 to 90 by a person who has the prize amount. The players are given cards with random numbers printed. When the numbers are called out, the players stamp on the numbers and the one to achieve a card or a line in which all the numbers have been called shouts “Bingo and collects the entire stake money that is permitted by the local law.
- d) **Lottery:** This is a type of game where in the lottery tickets with a number are bought by the people for a price and this is a game completely based on chance, wherein there is a draw in a week and the number that gets picked up at the draw is awarded the prize money which is generally a higher prize.
- e) **Horse Betting:** This game involves betting on horse that might win in the race. The whole process is all about the players who bet money on horses that might win the race. If the horse wins, he gets the prize money and if not, he loses the money that he had betted upon the horse.
- f) **Gambling in Casinos:** Casinos are places where the most number of gambling games take place. Mostly, games like craps, roulette, baccarat, blackjack, and video poker are played which might have an element of skill but are predominantly played on the basis of chance. Casinos are generally located near resorts, hotels and cruise ships as a place of entertainment where the players either bet in form of cash or casino chips.

AN OVERVIEW OF REGULATIONS FOR GAMBLING AROUND THE STATES IN INDIA:

- (a) **Tamil Nadu:** In Tamil Nadu, there are a lot number of gambling activities since ancient times, which includes Cock Fights, Teen Patti, Rummy and out of all the Madras Racecourse, called as Guindy Racecourse, is India's oldest Racecourse and the Ooty Racecourse, known for its beautiful scenery are the two racecourses in Tamil Nadu. Most of the Gambling activities in Tamil Nadu are regulated under the laws that deal with gambling and animal cruelty.
- (b) **Goa:** Goa being the smallest state of the country, Goa is filled with eye catching tourist spots is the best place known to the teenagers for vacation. Due to the increased number of visitors, there are few restrictions on the process of obtaining licence for casinos. As of 2023, there were 15-20 casinos both on and off shore and all the gambling activities are regulated by the Goa, Daman and Diu Public Gambling Act, 1976⁶ in which under Section 13A specifies:
Notwithstanding anything contained in this Act, the Government may authorise any game of electronic amusement/slot machines in Five Star Hotels {and such table games and gaming on board in vessels offshore as may be notified} subject to such conditions, including payment of such recurring and non-recurring fees, as may be prescribed⁷.
- (c) **Karnataka:** It was in the case of MJ Sivani v. State of Karnataka (1995)⁸ the Supreme Court declared rummy to be a game of skill rather than gambling (game of chance). Karnataka during the earlier period legalised horserace betting, but despite many efforts to restrict it in today's era, horserace betting is still legal in Karnataka.
Karnataka has also banned single digit lotteries and lotteries that draw more than once in a week similar to all the other states.
- (d) **Andhra Pradesh:** The Andhra Pradesh Gaming Act of 1947⁹ has illegalized most of the gambling activities other than rummy, horserace betting and state run lotteries. Though this act illegalizes most gambling activities in the state, as the fine or the punishment

⁶ Goa, Daman and Diu Public Gambling Act, 1976

⁷ Sec 13 of the Goa, Daman and Diu Public Gambling Act, 1976

⁸ MJ Sivani vs State of Karnataka, 1995(3) SCR 329

⁹ Andhra Pradesh Gaming Act, 1947

imposed for the first time offenders aren't severe, there are traces of such activities still being played in the state. But repeated Offenders are punished severely under the act.

(e) **Uttar Pradesh:** Uttar Pradesh, being the densely populated state in the country, Uttar Pradesh is a place where illegal betting and gambling networks are fairly popular. Despite the state administration's efforts to curb gambling activities, people residing over there believe that legalising these games is the only solution for these types of problems.

(f) **Maharashtra:** Maharashtra is a state where the gambling activities are minimized. To be precise, Maharashtra can be fairly a gambling friendly state in the country. The Bombay Wager Act¹⁰ addresses online gambling in Maharashtra, stating that it is banned within the state and the majority of gambling legislations in Maharashtra focuses on the establishment of such gaming places.

Maharashtra has granted Playwin permission to operate within the state under the Lotteries (Regulation) Act of 1998¹¹, which permits only state governments to print or regulate lottery sales. Some smaller cities and districts, like Buldana, have attempted to run their own lotteries but have been sued by the state government. Matka is a lottery-like game which was originated in the state.

(g) **West Bengal:** There is no explicit regulation laws in West Bengal that overviews the gaming process.

(h) **Kerala:** Popularly known as God's Own Country, Kerala is one of the first states in India to legalize lottery and today it is a part of local legal lottery draws. Lottery was legalised by the Lottery Department of the Government of Kerala in 1967¹² and is currently regulated according to the Kerala Paper Lotteries (Regulation) Rules, 2005¹³.

i. **Nagaland:** Nagaland, also known as the Switzerland of the East has implemented The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015¹⁴, which specifically address as of what Game of Skill and Game of Chances are, what gambling games are prohibited and what are the restrictions to get licence under this Act.

¹⁰ Bombay Act No. IV of 1887, The Maharashtra Prevention of Gambling Act

¹¹ Lotteries (Regulation) Act of 1998

¹² The Directorate of Kerala State Lotteries, Government of Kerala

¹³ Kerala Paper Lotteries (Regulation) Rules, 2005

¹⁴ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015

INTERNATIONAL LAWS REGULATING GAMBLING:

- a. **THE UK:** UK has been quite consistent with the regulation of gambling laws with the implementation of The Gambling Act of 2005¹⁵. There are specific laws relating to each games with regulates the licencing and the punishments for illegal practices. Some of them are as follows: Horserace Betting & Olympic Lottery Act, 2004¹⁶, Categories of Casino Regulation, 2008¹⁷ and Gambling (Licensing & Advertising) Act, 2008¹⁸. There are a number of other laws with provide a specific pattern on the regulation of gambling activities in the country.
- b. **The United States of America:** Native American tribes have the power to control gambling on their territory under the Gaming Regulatory Act of 1988¹⁹, while at the present, gambling laws are implemented by both the federal and state legislations in the United States. The Unlawful Internet Gambling Enforcement Act of 2006²⁰ is another federal law that regulates internet gambling. The Act focused on financial transactions sought for use in the gambling sector and stipulated that no ‘restricted transactions’ should be used for any such use of online gambling. Another key law is the Interstate Wire Act of 1961²¹, which outlaw’s interstate betting through the use of a wire communication facility for any betting game or sporting event, but exempts it if it is lawful in both jurisdictions where the money is being transmitted.
- c. **Canada:** Gambling in any form is illegal in Canada. The Criminal Code of Canada regulates gambling on a federal level, with Section 201-207 covering betting and gaming laws with Section 204 of the aforementioned Act making specific exceptions for betting on legitimate races or sports games, as well as pari-mutuel systems on running or trotting. Each state also has its own set of legislation, such as the Ontario Lottery & Gaming Corporation Act, 1999²², which governs Ontario, and the Gaming Control Act²³, which governs New Brunswick.

¹⁵ The Gambling Act, 2005

¹⁶ Horserace Betting & Olympic Lottery Act, 2004

¹⁷ Categories of Casino Regulation, 2008

¹⁸ The Gambling (Licensing & Advertising) Act, 2008

¹⁹ The Gaming Regulatory Act of, 1988

²⁰ The Unlawful Internet Gambling Enforcement Act, 2006

²¹ the Interstate Wire Act, 1961

²² The Ontario Lottery & Gaming Corporation Act, 1999

²³ The Gaming Control Act, 1992

- d. Europe:** In the case of gambling in Europe, there is no special legislation or regulation that addresses the subject. There is only one requirement: every EU country must adhere to the provisions set forth in the Treaty on the Functioning of the European Union (TFEU).²⁴ Horse racing, betting, and online gambling are all regulated by separate legislation in France. In Germany, there has been no structural agreement on a number of issues, and there have been concerns about the gaming monopoly, while Italy has comparatively been more lenient toward regulating gambling activities.
- e. Australia:** In Australia, Gambling is regulated by the federal legislations, wherein each state has its own legislations to regulate it. The Interactive Gaming Act of 2001²⁵ is the Australian federal law that regulates gambling. It establishes guidelines for licencing and online gambling in Australia which emphasises lawful gaming through licencing and the exclusion of lottery services. Apart from this, Victoria has rules such as the Casino Control Act of 1991²⁶ and the Gambling Regulation Act of 2003²⁷, New South Wales has the Betting & Racing Act of 1998²⁸ and the Casino Control Act of 1992²⁹.
- f. 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 2004³⁰ 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.
- g. Mexico:** In Mexico, all forms of gambling are regulated by except for National lotteries

²⁴ Treaty on the Functioning of the European Union, 1958

²⁵ The Interactive Gaming Act, 2001

²⁶ Casino Control Act, 1991

²⁷ Gambling Regulation Act, 2003

²⁸ Betting & Racing Act, 1998

²⁹ Casino Control Act, 1992

³⁰ National Gambling Act, 2004 & Section 2

IMPORTANT CASE LAWS IN INDIA RELATING TO GAMBLING:

(a) **State of Karnataka & Anrs. vs State of Meghalaya & Anrs.**³¹: The issue before Supreme Court of India was, who according to union and state list has the authority to levy and collect taxes on lotteries. The court observed the Doctrine of Pith and Substance, which is applied to determine the true character of an enactment and the entry within which it would fall, as well as the law that when a power is conferred on the Legislature to levy a tax, the power itself must be widely construed, and the doctrine of unjust enrichment, allowed the appeal of the States of Karnataka and Kerala and upheld the upheld.

(b) **RMD Chamarbaugwala vs Union of India**³²: The issue revolved around whether Section 2(d) of Prize Competitions Act³³ applies to competitions that require substantial skills and are not in the nature of gambling. Question arises whether or not they can be applied to the competitions having slight characteristics of gambling as when considering section 4 and 5 and rule 11 and 12 of the act these competitions are ex concessi invalid.

The court viewed that though gambling is not listed as an unauthorised trading activity under Art 19(1)(g) and Art 301 of the Constitution of India³⁴ observed that it does come under res extra commercium and hence cannot be consider a legal from of trade in M/s B.R. Enterprises vs. State of UP & Ors³⁵.

The court is of the view that competition's nature will determine whether it will fall under commercial contract or wagering contract. Because of the definition in Section 2 (d), the challenged provisions were presumed to apply to all types of competitions, and that they were not severable in their application to competitions in which success is not significantly dependent on skill.

Doctrine of Severability played a significant role in the court's decision-making process in this case, Sections 4 and 5 of the Act, as well as rules 11 and 12 of the Act, were in dispute as to whether they could be applied to competitions in which success did not depend on any skill. That is why it was necessary for the court to decide whether a statute that is partially invalid will be treated as invalid in its entirety, or whether the valid portion

³¹ State of Karnataka & Anrs. vs State of Meghalaya & Anrs

³² RMD Chamarbaugwala vs. Union of India, 1957 AIR 628, 1957 SCR 930

³³ Prize Competitions Act, 1955, & Section 2(d)

³⁴ Art 19(1)(g) & 301, Constitution of India, 1950

³⁵ M/s B.R. Enterprises vs State of UP & Ors, SLP (C) No. 10356 of 1997

can be enforced, in light of the doctrine of severability.

(c) Dr K.R. Lakshmanan vs State of Tamil Nadu³⁶: In this case the question that were raised were

- What is a mere skill?
- Whether the horse-racing even if it is a game of 'mere skill' is still prohibited under section 49A of the Police Act ³⁷ and section 4 of the Gaming Act³⁸?

The Supreme Court while giving its judgement stated that the expression "mere skill" means 'mainly and preponderantly a game of skill'. Horse racing is a game of skill because it depends on various factors like pedigree of the animal, the training given to it as well as the rider, its current form, the nature of the race, etc. and not dependent on any sort of chance or accident. Therefore, betting is legal on horse racing and comes under game of mere skill under section 49A of the Police Act³⁹ and section 11 of the Gambling Act⁴⁰.

(d) Varun Gumber v. Union Territory of Chandigarh and Others⁴¹: Also known as 'DREAM 11 case', The High Court of Punjab and Haryana held 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.

In an interesting case, the Kerala High Court in 2019⁴² 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

³⁶ Dr K.R. Lakshmanan vs State of Tamil Nadu, 1996 AIR 1153 1996 SCC (2) 226

³⁷ Police Act, 1861, Section 49A

³⁸ Gaming Act, 1867, Section 4

³⁹ Police Act, 1861, Section 49A

⁴⁰ Gaming Act, 1867, Section 4

⁴¹ CWP No. 7559 of 2017

⁴² WP(C) No. 35535 of 2018

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.”

- (e) **Bimalendu De vs. Union of India & Ors**⁴³: the legality of the popular show Kaun Banega Crorepati ("KBC") was an issue in this case. A Public Interest Litigation was filed before the Calcutta High Court requesting that the game show KBC (a game show based on the format of popular British show 'Who wants to be a Millionaire') and Jackpot Jeeto be prohibited from being telecast on television on the grounds that the same amounted to gambling, and were hence prohibited under the laws. The court reviewed the provisions of the West Bengal Gambling and Prize Competition Act, 1957 (which has an analogous provision to the Prize Competitions Act) and held that game show did not fit within the definition of a 'prize competition'.

INTERNATIONAL CASE LAWS RELATING TO GAMBLING:

- (a) **Harry Kakavas v. Crown Melbourne Ltd. & Ors**⁴⁴: It's a landmark decision in Australian gambling law regarding the casino's duty of care and obligation to its customers. Crown Casino is the respondent in this case, and the appellant was a problem gambler who had lost around \$ 20.5 million. He had been a regular at the casino for a long time but had been denied entry because of the questionable grounds, but he returned after proving his financial capability. Free lodging and other perks, including a private jet ride to the casino, were also provided by the casino. His casino debt had ballooned to \$20.5 million after a period of inactivity.

A claim was made by this individual that the Casino had enticed him to start gambling by offering him perks and benefits in exchange for becoming a regular patron. He went on to say that the Casino owed it to the appellant to deal with his bad behaviour.

According to the High Court of Australia, the appellant was in a position to examine his conduct and behaviour. When it came to Casino's behaviour, there was nothing particularly

⁴³ Desai, N. (2018). The Curious Case of the Indian Gaming Laws. [online] Nishithdesai.com. Available at: http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf [Accessed on 20th August 2024]

⁴⁴ Harry Kakavas v. Crown Melbourne Ltd. & Ors, [2013] HCA 25

troubling. A casino's duty to protect its customers from themselves does not exist in the absence of a law, the Court found, because doing so would have a negative effect on the entire gaming industry. Thus, the Court ruled in favour of the Casino, and the case was dismissed.

(b) Pauline Mckee vs Isle Casino Hotel⁴⁵: Pauline Mckee a 87 year old lady received a notification of winning a \$41.8 million bonus prize when she was in Iowa's Isle Casino. It took the casino a while to figure out that the machine was faulty and that the woman had only won \$ 1.85, so they denied paying her. The 87-year-old then sued, claiming for breach of contract, estoppel, and fraud as grounds for her lawsuit.

In the end, the District Court ruled in favour of the Casino. Court said that the lady couldn't prove the basics of a contract and estoppel as the Casino never made a representation that she would win a bonus prize, and they never made the guarantee after. However, the Casino did not commit fraud because they immediately informed her of the error and provided an explanation, so there was no evidence to support either claim. Thus, the Court sided with the Casino.

(c) Murphy v. National Collegiate Athletic Association⁴⁶: One of the provisions of PASPA⁴⁷, which prevents the state from authorising any type of sports gambling, is at the centre of this lawsuit, which is based on the theory that it violates the Anti-Commandeering Doctrine. It is against the law for any state to sponsor, advertise or promote a lottery that is linked to a competitive sporting event.

That's what led to accusations of federalism, according to critics. It was found unconstitutional by the District Court as well as by the Third Circuit Court of Appeals for the United States. A clause in PASPA that allows the federal government to dictate actions to state legislatures violates The Anti-Commandeering Doctrine, according to the Supreme Court of the United States, which ruled on the matter. As a result, the decision was overturned, and the provision was found to be in violation of the doctrine.

⁴⁵ Pauline Mckee v. Isle Casino Hotel, 854 N.W.2d 518, 215 Iowa Sup. Lexis 50 (2015)

⁴⁶ Murphy v. National Collegiate Athletic Association, No. 16-476, 584 U.S.

⁴⁷ Professional Amateur Sports Protection Act, 1992

UNION LEGISLATION REGULATING GAMBLING IN INDIA:

- (a) **The Prevention of Money Laundering Act, 2002**⁴⁸ : This Act which came into force with effect from 1st July, 2005 governs the law relating to anti-money laundering in India. All entities offering games to be played for cash or its equivalent, whether online or offline are required to adhere to the provisions of the Act and The Prevention of Money Laundering (Maintenance of Records) Rules, 2005⁴⁹.
- (b) **Public Gambling Act, 1687**⁵⁰: Also known as the Gambling Act, this act was enacted⁵¹ to provide for the punishment of public gambling. 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. 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.
- (c) **The Indian Contract Act, 1872**⁵²: "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 Act⁵³. 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 illegal⁵⁴. 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.
- (d) **The Foreign Exchange Management Act, 1999**⁵⁵: The aim of this Act is to consolidate and amend the law relating to foreign exchange with the objective of facilitating external

⁴⁸ The Prevention of Money Laundering Act, 2002

⁴⁹ http://www.enforcementdirector.gov.in/pmla_rules.pdf

⁵⁰ Public Gambling Act, 1687

⁵¹ Enacted on 25 January 1867

⁵² The Indian Contract Act, 1872 Act No. 9 of 1872

⁵³ The Indian Contract Act, 1872 and section 23

⁵⁴ The Indian Contract Act, 1872 and section 30

⁵⁵ Act No. 42 of 1999

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. 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.

(e) Information Technology Act, 2000: The IT Act 2000 is a 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."⁵⁶

The Intermediaries Rules⁵⁷ have been outlined under section 87(2) and section 79(2) the Information Technology Act, 2000. The Rule 3(2)(b) of the IT act 2000 thereof requires agents like network specialist, web access suppliers, web crawlers, telecom administrators to send any substance which identifies with or energizes betting through the means of internet in India.

(f) Central Goods and Services Tax Act, 2017⁵⁸: The new act has set up in a coordinated unitary framework, for example IGST, CGST or SGST 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.

⁵⁶ The Information Technology Act, 2000

⁵⁷ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

⁵⁸ Central Goods and Services Tax Act, 2017

CRITICAL ANALYSIS: LOOPHOLES IN ACTS IMPLEMENTED?

Gambling being a type of game with the increased number of players in today's era. Controlling online gambling is more difficult when there is no centralised law in place. There are some states where it is legal but most don't have complete control over it. Other states have enacted bans on online gambling, including Sikkim, which is enthusiastically implementing a legal online gambling system. The three Indian states in question are Telangana, Andhra Pradesh, and Maharashtra. There has been no mention of online gaming in India's fundamental norm for gambling, namely The Public Gambling Act⁵⁹, but two separate acts indirectly regulate online gambling in India, namely:

- a. **The Foreign Exchange Management Act, 1999⁶⁰:** The FEMA plays any important role in legality of online gambling in India. FEMA regulates the type of financial transaction involving the exchange of currencies and the trading of goods and services across international borders. But the only loophole in FEMA is that there are no gambling-related provisions can be found in the Foreign Exchange Management Act. There are two ways in which customers of online gaming sites can avoid FEMA regulations while still accessing their sites: The first option is to permit transactions in rupees. On the other hand, accepting the money does not imply that you intend to use it for commercial purposes. Foreign exchange laws for electronic wallets allow the gambling site to process payments without violating FEMA, regardless of the currency used to conduct transactions. Transactions are also made simple for customers. Banking options may be limited for Indians playing online casino games as there are many regulations to the bank involved.
- b. **The Information Technology Act, 2000⁶¹:** The Information Technology Act, 2000 is the most recent piece of federal Indian gambling legislation and almost every aspect of online activity is covered by this comprehensive law. The act is silent on online gambling being against the law. The legislation does not mention gaming at all. The Indian government, on the other hand, has the power to restrict access to foreign websites if it so chooses. The government has the right to require internet service providers to limit access to specific

⁵⁹ The Public Gaming Act, 1867

⁶⁰ The Foreign Exchange Management Act, 1999

⁶¹ The Information Technology Act, 2000

websites, as it has done in the case of certain online poker sites. It's not clear if these sites have been taken down or if they will reappear.

PROS AND CONS OF PROPER REGULATION OF GAMBLING:

(A) PROs:

- a. Employment:** The construction of casinos or other gaming facilities might help communities in high unemployment areas by generating jobs. In addition to producing a substantial amount of money, it also helps both skilled and unskilled people. Gambling leads to the creation of a variety of jobs, including waiters, casino executives, dealers, cleaners, security guards, and others. A dealer and occasionally sponsors are present even in online gambling.⁶²
- b. Economic Development:** The most notable example of how legalising gambling quickly improves the economy is in Las Vegas, which is located in the United States. Due to these firms, there is an increase in income, tax revenue, and property value. Moreover, it encourages other businesses to locate nearby. A significant hub for casinos and other gaming venues is now Thailand.
- c. Proper Delegation and overview about the implementation of legislations:** When authorities are properly delegated and there is a timely overview of the act that was implemented gives the authorities concerned the ideas to effective amendment and changes to be brought in such legislations.

(B) CONs:

- a. Crime and Cultural Effect:** At the end of the day, gambling establishments may become popular hangouts for the wealthy or even thugs, and the quantity of money exchanged can be a huge source of concern for security. On the one hand, it can be managed if properly regulated, but in most cases, it will lead to more crimes, such as drug trafficking and prostitution. Furthermore, the cultural aspects of such games, as well as the tourists or various types of people that they attract, may not be compatible with all cultures. One of the reasons it is illegal in many nations is because of this.

⁶² <https://www.ijlmh.com/wp-content/uploads/Gambling-Regulations-in-India-A-Critical-and-Comparative-Study.pdf>

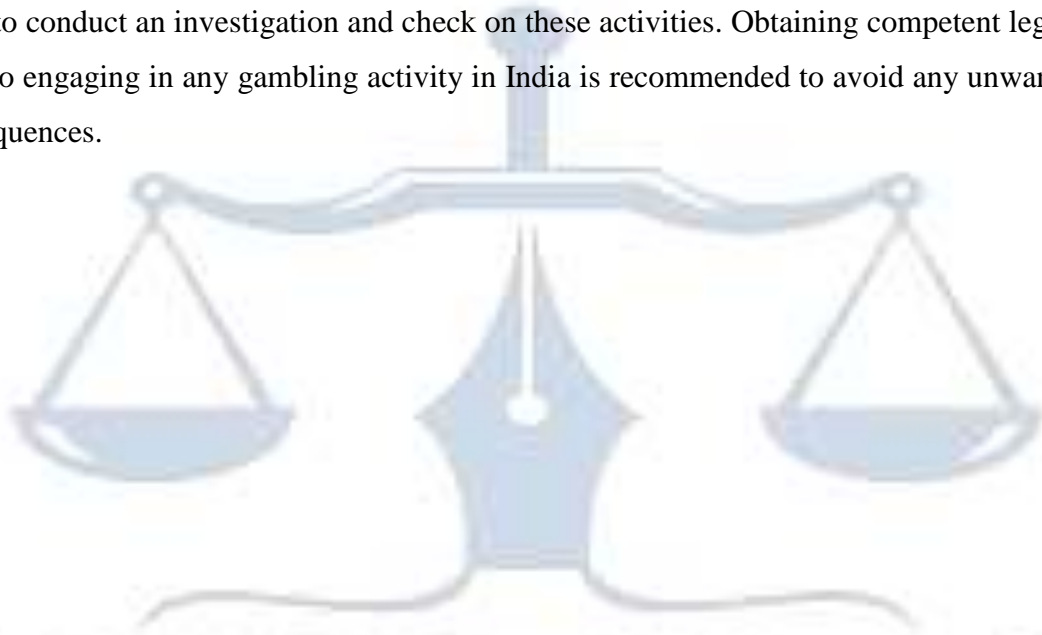
- b. **Effect on psychology:** Relaxation is the main aspect of these gambling games, they are pro at providing a relaxing feeling to the player that's the major reason why they exist in the 1st place. It has the potential to be highly soothing and energising people, which are some of the positive elements and goals of it. Many people who have huge business and hold a reputable occupation find casinos as well as online gaming to be quite calming, and they become regular customers. And in the contrast, poor and middle class people indulged in these games risk almost everything that they have with the wish to earn more, which might sometimes not be true, leading them to indulge un illegal activities to survive.

RECOMMENDATIONS:

- a. Gambling prevention should consist of primary, secondary, and tertiary levels rather than just one.
- b. Awareness-raising campaigns about various aspects of gambling, its potential for harm and the banning and enforcing thereof (in both print and online media) of gambling advertisements as well as promotions as well as the signs and symptoms of gambling addiction should be done to create wide spread awareness about this issue.
- c. Secondary prevention measures target problem gamblers and those who take risks by focusing on early diagnosis and treatment.
- d. There should be timely amendments made in the acts regulating gambling to keep it up to date in force
- e. To reduce gambling-related harm, India or individual Indian states should develop a coordinated strategy and action plan with the primary motive to curb gambling practices that affects the life of the citizens.
- f. A body consisting of high level officials must be formed for monitoring various aspects of Indian gambling research, education, and training must also be established.
- g. A broader exchange of ideas on this subject among academics, policymakers, and others with a stake in the field of gambling would enhance the idea of gambling and the loopholes in the laws to the law makers.
- h. The judiciary must review the case involving aspects of gambling in a stricter manner and must interpret the laws more stringently.

CONCLUSION:

Indian society needs to address the taboo subject of gambling. The Public Gambling Act, which governs gambling in India, was proposed by British rulers more than a century ago. However, in England, gambling legislation has advanced significantly, leading to the legalisation of a greater variety of gambling-related games. Because of the widespread availability of online gaming, many questions have been raised about the legality of other laws, including the FEMA and IT Acts. . New technological advancements have opened up the market and encouraged people to engage in behaviours that fall outside of Indian gaming regulations. There is still a need for the judiciary in India to conduct an investigation and check on these activities. Obtaining competent legal advice prior to engaging in any gambling activity in India is recommended to avoid any unwanted legal consequences.



W H I T E B L A C K
L E G A L