

Opinion: the benefits of sports betting regulation in India

Despite being a popular form of entertainment in India, sports betting is currently deemed illegal. However, this practice is widespread, raising serious concerns about the integrity of sport. Recent match-fixing incidents in cricket strongly suggest a new regulatory approach is necessary to prevent criminal organisations from tainting sport in this region of the world. Aditya Shamlal and Vishnupriya Sainath of Gamechanger Law Advisors propose a controlled sports betting market and stronger criminal regulation to deter the activities of illegal organisations and dubious practices that may be compromising the integrity of competitions.

Introduction

Betting and wagering as a human activity is an extremely ancient one. There is evidence of gambling throughout human history and various regimes and governments have either prohibited or permitted the same with mixed experiences and results. The one undeniable fact is that we as a society participate in gambling across demographics, regions and cultures. In India, the law on betting and gambling is quite nebulous and is undergoing rapid change.

This has been due to the discovery of rampant corruption within sport, particularly cricket, where participants within the sporting activity have been found to be either trading sensitive information and/or attempting to stage/fix certain periods or entire results of cricket games. Further, although betting on sporting activities is a popular pastime, it is illegal and the bookmaking activity

has been and remains in the control of crime syndicates. The Supreme Court of India in a recent landmark judgment¹ observed that “Allegations of sporting frauds like match fixing and betting have for the past few years cast a cloud over the working of the Board of Cricket Control in India (‘BCCI’). Cricket being more than just a sport for millions in this part of the world, accusations of malpractices and conflict of interests against those who not only hold positions of influence in the BCCI but also own franchises and teams competing in the IPL format have left many cricketing enthusiasts and followers of the game worried and deeply suspicious about what goes on in the name of the game. There is no denying the fact that the lower the threshold of tolerance for any wrong doing, the higher the expectation of the people of the system. Cricket being not only a passion but a great unifying force in this country, a zero tolerance approach towards any wrong doing alone can satisfy the cry for cleansing.”

Aside from the pure sporting context, it is undeniable that regulation of sport betting is the need of the hour. This point is driven home by the Special Investigation Team (‘SIT’), appointed by the Supreme Court of India, in response to a Writ Petition filed by Senior Advocate Ram Jethmalani. The Supreme Court of India, by an order dated 4 July 2011², ordered the formation of the SIT to probe into unaccounted ‘black’ money in India. The SIT is headed by a retired Supreme Court judge, Justice M B Shah. In its third report the SIT stated that cricket betting is a major source of unaccounted money and cited reports by the Federation of Indian Chambers of Commerce and

Industry (‘FICCI’) and KPMG, which have estimated the illegal betting market in India to be around INR 3,00,000 crores³ (approx. £2.97 billion).

Legislating and regulating sports betting

The illegality of betting permits these crime syndicates to channel illegal and unaccounted funds for various nefarious purposes. As mentioned by the SIT report, the gambling industry itself accounts for a large portion of India’s parallel black money economy.

The legalisation and regulation of sports betting in India would have a profound impact on the flow of unaccounted funds within the country, and would be a rich source of data for the government. A regulator would be required to maintain data and records which would be supplied by licensed betting companies, which would be required to accept bets only upon the fulfilment of various reporting requirements. Such data would be immensely useful for the government in determining suspicious betting patterns, and therefore would aid in the fight against corruption in sport.

The economic advantages of regulating the sports betting industry are no less profound. If betting becomes a legalised and regulated activity, licences may be provided to companies and persons of good repute and standing. The government would be in a position to put in place robust reporting and accounting mechanisms that would result in greater transparency over the source of funds. This would result in a large dent in the flow of unaccounted and illegal funds through crime syndicates, thereby adversely affecting their other criminal activities such as smuggling, sale of drugs and potentially funding terrorist

activities.

Further, the government would be in a position to tax not only the revenue of bookmakers resulting in revenue to fund enforcement and other activities of the regulator, but also the income received from such taxation on betting could be utilised for education campaigns and awareness on safe betting and enforcement of compliance best practices for the entire betting and gambling industry.

Sports betting is a global industry and there are many multinational corporations which provide betting and gambling services in a responsible and transparent manner. If the sports betting and gambling industry were to be first regulated and thereafter opened up for foreign direct investment, the same could be a great boost to the Indian economy.

Requirement of sporting fraud legislation

However, it would be pertinent to point out that while legalising and regulating the betting and gambling industry would undoubtedly be good for checking the flow of black money as well as curbing corruption in sport, it cannot be done in a vacuum.

Legal sports betting has never been a deterrent for corruption in sport. There are many instances of match-fixing in jurisdictions where sports betting is legal and tightly regulated. The 2010 case of the Pakistani cricketers who were caught in a *News of the World* sting operation occurred in England where betting on cricket matches is legal and regulated, and resulted in three Pakistani cricketers being convicted for fraud under the criminal laws in England.

However in the Indian context the same conviction would not have been possible under criminal law. General criminal law is administered by enforcing the

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provisions of the Indian Penal Code 1860 ('IPC'). The lacunae in Indian law was evident in the recent decision of a trial court⁴, which dismissed the charges against three cricketers who were accused of participating in spot-fixing during the 2013 edition of the Indian Premier League. The provisions of the IPC would need to be judicially moulded out of shape in order to bring such sporting fraud activities under its ambit.

Therefore, in the need of the hour, along with regulation of sports betting, the promulgation of a sporting fraud law by the Indian Parliament is imperative. In this context, the Prevention of Sporting Fraud Bill has been in draft stages before the legislature; however it has not been debated or discussed.

The Prevention of Sporting Fraud Bill 2013 defines 'sporting fraud' and provides for stringent punishments for indulging in such activity. Where the sporting fraud relates to (i) manipulation of sports results, or making arrangements of an irregular alteration of the field of play etc; or (ii) wilful failure to perform to true potential for economic or any other advantage or benefit for himself or for any other person, unless such under-performance can be attributed to strategic or tactical reasons deployed in the interest of that sport or team, shall be punishable with imprisonment for a term which may extend to five years and with a fine of INR 10,00,000 (approx. £9,900) or five times the economic benefits derived by the person from sporting fraud, whichever is greater.

Where the sporting fraud relates to (i) disclosure of inside information to any person before or during any sporting event with the knowledge that the disclosure of such information is likely to

result in financial gain or is likely to be used in relation to betting or manipulation of a sporting event; or (ii) omission to inform the appropriate authority or the team management or the National Sport Federation in writing about any information pertaining to a sporting fraud being committed, it shall be punishable with imprisonment for a term of not exceeding three years and with a fine of INR 5,00,000 (approx. £4,950) or three times the economic benefits derived by the person from sporting fraud, whichever is greater.

Conclusion

There is an urgent need to legalise and regulate sports betting, as well as to provide for an adequate deterrent mechanism by way of stringent punishments for engaging in corruption in sport. These activities must be undertaken taking into account the global experience in the regulation of sport betting and the prevention of sporting fraud.

Along with such legalisation, a robust regulation mechanism must be put in place which provides licences to only such persons who would be able to operate within the rigours of the system. Reporting and accounting checks and balances that would result in accurate data reporting by licensed bookmakers, should be a key consideration for such regulations.

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1. Board of Control for Cricket in India v. Cricket Association of Bihar & Ors, JT 2015 (1) SC 526.
2. <http://www.sci.nic.in/outtoday/wc17609.pdf>
3. <http://pib.nic.in/newsite/PrintRelease.aspx?relid=123677>
4. http://www.judis.nic.in/judis_cat/detail_dc.aspx