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Laws Related to Gambling in India

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ABSTRACT

This paper on the Gambling laws in India aims towards the analysis of the laws through which gambling is governed in our country. It shows that how the people of our country is destroying their lives because of illegal gambling. The gambling has been known as the illegal and bad work in whole of the country except some states like Goa, Sikkim etc. But it is widely practiced all over the country illegally. It is mainly practiced in the field of sports. Thus, this paper analyzes the loopholes and reforms that are progressively needed for this practice and thus it also analyses the recent judicial trends about the same.

I. INTRODUCTION

Gambling is not a modern game. It has been practiced in our country from the ancient times. The traces can be found from the times of Mahabharata also. In the ancient times, it has been a source of joy but now in today's modern era it has become a source of earning money. The gambling has been widely practiced all over the country despite being illegal. Only in some states of our country it has made legal. It has its own advantages and disadvantages. But it has more negative effects. It increases the poverty as well as the crime rate. It also impacts the economy heavily. It forms a vague image in the minds of people that money can be created on the basis if luck only. Sometimes, it also acts as a medium to transfer money from poor to rich people. It also clearly affects the social as well the moral values of the society. One of the old law which governs these subjects is The Public Gambling Act, 1867. There has been a type of vagueness related to the gambling and betting laws in our country. Thus, the objective of this paper is to make an analysis of the laws related to gambling in our country, how these laws affects the society and what reforms are needed in such sector.

II. LAWS RELATED TO GAMBLING AND BETTING

The subject of gambling and betting in our country has been governed through various legislations in India. The first legislation that has been made to deal with gambling and betting is the Public Gambling Act, 1867 which deals with certain type of betting and gambling in our country. As the law has been made in the 19th century it doesn't covers the

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modern changes that has been made in the society. Like it doesn't cover the concept of online gaming. As per the state list of our constitution, the power related to make laws over gambling and betting comes under that states. It has been mentioned under the Entry 34 of the constitution. Thus, the act has become incompetent in nature as it has now become the only means of the officers to take money from the gamblers. A large number of population of our country are indulged in such type of activities and they opposed the law for the same. The Law Commission of India has also recommended legalizing sports betting in the country.² These activities has nowadays become common in society which is uncommon ethically. It involves all the classes of the society rich as well as poor. The laws have now become incompetent to deal with these subjects. The two issues always comes before the state before legalizing such activities as (i) the subject is closely related to crime and thus the government wasn't able to safeguard its citizens (ii) these activities gave a rise to the poverty and crime in the state. Thus, the states should make a clear way by suppressing the people to not entails or rather can regulate the same safely.

III. LAWS RELATING TO ONLINE BETTING

There has been no mentioning about the online gaming in the Public Gaming Act of 1867. And it is also expected that as at that point of time the trend of online gaming is not there as the technology is not that much developed in the world. It is only because of today's modern technology that such type of online gaming is possible. And thus at that time the act doesn't needs to introduce to regulate the online gaming. Thus, it can be clearly understood that gambling through the online sites is clearly an illegal practice in our country under this act. But it has now been governed under the Information Technology Act, 2000 and thus it can be considered as legal also. It has some provisions related to the online gaming and thus it also has provisions for online gambling and betting. Although, similar to that of the Public Gaming Act it doesn't separately talks about online gaming and betting but it has provision for considering any thing related to same. The government of our country has tried their best to keep away the people from such illegal activities and thus they have created awareness for the same. They have also blocked such sites which offer illegal gambling and betting. Only some states of our country have made laws related to the online gaming and betting. Like in the state of Sikkim, the power to provide licenses for the online gaming and betting has been given to the public authorities under The Sikkim Online Gaming (Regulation) Act, 2008. The authorities can provide the license to such companies which are interested in such profession.

²Editorial, *Betting the Future*, The Indian Express, July 7, 2018

While in the state of Maharashtra, the online gaming is purely an illegal thing. Thus, more states of our country are needed to make laws about the same so that a clarity has been introduced in the subjects.

IV. GAME OF CHANCE VS GAME OF SKILL

It has always remained a matter of discussion that is it fair to compare both in the game of chance and game of skill. Game of chance can be defined as a game in which a person chose a specific number for which he bets and if that number came in the game then he wins or else he loses the game. On the opposite side, the game of skill is merely a different thing. In this game, the results have been obtained in which the skills of the other persons play the major role in respect of the luck. Like betting on the chances of an international team winning a cricket match. Although, confusions are always there in sort of games that whether they are the game of chance or game of skill. Examples of such type of games are poker. This game is popular all over the world and thus in our country India also. But there is lack of clarity over it. All over the world it has been regarded as the game of skill and not as the game of chance. But in some states of our country, it has been regarded as the game of chance like in Gujarat as per the case of *Dominance Games Pvt. Ltd. v. State of Gujarat & Ors.*³, the high court of Gujarat held that the game of poker is regarded as the game of chance rather than game of skill and thus it falls under the definition of Gujarat Gambling Legislations and thus it is prohibited in the state. It was also held that if any game involves more luck in it then even if it involves skills it falls under the definition of gambling and betting. Also, the apex court of our country has a similar point of view about the game of poker. In the case of *M.J. Sivani & Ors v. State of Karnataka & Ors*⁴, it has been popularly held that the game of poker is a game of chance and not a game of skill.

V. JUDICIAL DECISIONS

1. The High court of Punjab and Haryana became the first court to held the fantasy match to be purely skill base in the case of *Shri Varun Gumber vs. UT of Chandigarh & Ors, 2017*⁵. This case was registered against the Dream 11 Fantasy Pvt. Limited where the petitioner has lost an amount of Rs. 50,000 while playing the game which has been organized by the company. Thus, the petitioner has gone with the court alleging that the game is not skill based and thus comes under the definition of gambling under the under the gambling and betting laws related to the state of Punjab. But the court has a contradictory view. The

³ *Dominance Games Pvt. Ltd. v. State of Gujarat*(2018) 1 GLR 801.

⁴ *M.J. Sivani v. State of Karnataka*, Appeal (Civil) No. 4564 of 1995.

⁵ *Shri Varun Gumber vs. UT of Chandigarh*, CWP No. 7559 of 2017.

court has made its decision by referring to the case of *K.R. Lakshmanan v State of Tamil Nadu*⁶ which has been decided by the apex court of our country. The court has held that the games in which there is a greater chance of success because of skill rather than the chance of skill will be regarded as a game of skill. It was held that playing the fantasy cricket game requires the judgmental and analytical skills and not merely luck only and thus it doesn't amount to gambling at all. Thus, the fantasy game has been treated as a sort of business as per the article 19(1)(g) of the constitution.

2. The popular show named Kaun Banega Crorepati has to face the issue of its legality in the case of *In the case of Bimalendu De vs. Union of India & Ors*⁷. The petitioner in this case through a public interest litigation has pleaded before the Hon'ble Calcutta High Court that the telecast of show should be prohibited on the television since the game amounts to gambling and thus should be prohibited as per the gambling and betting laws. The court has thus reviewed the show as per the gambling laws of the state and thus held that the show doesn't come under the ambit of gambling and betting.

VI. GAMBLING AND CRIME

Both the Gambling as well as crime are quite similar in nature as both are committed against the law. A person doesn't directly indulge into crime after gambling. It is a step wise step process. First the person gets lost in the game of gambling which then results into financial crisis and depression and thus the person gets into various types of crimes. Thus, it can be also be said that the person who gets indulged in gambling has a greater chance to commit the crime. A person always needs money for securing its basic necessities of life. But when a person gets indulged in gambling the whole money has been invested in the game which then become the game of life. The person wants to earn more money for gambling which can only be gained through criminal activities. Thus, the money was invested to play the gambling rather than fulfilling the basic necessities of their lives. Thus, the person first turns into a gambler then into a criminal and he remains the same until death most of the times. Thus, both the crime and the gambling are closely related to each other.⁸

VII. CONCLUDING REMARKS

The laws related to gambling and betting in our country is totally vague and not clear. The courts have tried their best to clear the situation although the laws are still not that much

⁶ Dr. K.R. Lakshmanan v State of Tamil Nadu and Anr. 1996 AIR 1153.

⁷ Bimalendu De vs. Union of India AIR 2001 Cal 30

⁸ Desai, N. *The Curious Case of the Indian Gaming Laws*, Nishith Desai Associates (2018)

clear. Because of the modern advancements in the today's society, the people are almost free to play the online games which lies over the lines of betting and gambling as per the definition of subjects as per the law. The competency of these games is not decided by the court of laws. The real test of gambling and betting has not yet been done in the Indian courts. The gambling and betting have its own advantages and disadvantages. As it is widely accepted among the people, it has more negative effects. It increases the poverty as well as the crime rate. It also impacts the economy heavily. It forms a vague image in the minds of people that money can be created on the basis if luck only. Sometimes, it also acts as a medium to transfer money from poor to rich people. It also clearly affects the social as well the moral values of our society. Thus, laws have to be taken while considering all these aspects.
