

## FROM PASPA TO IPL: APPRAISING THE CHANGING PARADIGM OF SPORTS' GAMBLING

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### *Abstract*

*The currently ensuing debacle for the repealing of the Professional and Amateur Sports Protection Act of 1992 (PASPA) put into motion by the State of New Jersey is the subject of analysis of this paper. The act's objective is to criminalise and prohibit sports' gambling; a source of revenue that the state is contending its right to in times of distress. Despite the presence of the federal enactment, the incidence of sports' betting is fairly ubiquitous in the United States and the betting industry is worth billions of dollars currently. The demand of the state and the bettors is the regulation of the sports' gambling market by making the activity legal whereas powerful sports leagues contend that such a move would reduce the integrity of sports and increase the occurrence of match-fixing episodes, leading to a decrease in sports spectatorship itself. This movement is complemented by vicissitudes in notions of gambling and the rising incidence of the match-fixing phenomenon in various sports, which has been explored in an attempt to*

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*reach an effective model for the future of legalised betting.*

*Part I of this paper analyses the reasons for the growth of sports' gambling for popular sports and the factors impacting this trend. Part II deals with the policy in the United States regarding prohibition of sports' gambling in most states except four. Part III engages with the debate around the issue of legalisation versus prohibition of sports' gambling. Part IV and V evaluate the existing legal position of gambling on sports in the Indian subcontinent in comparison to the legal regimes of Commonwealth countries with specific legislations on the subject. Part VI, in conclusion, provides suggestions for an effective gambling policy.*

*“When I was young, people called me a gambler. As the scale of my operations increased, I became known as a speculator. Now, I am called a banker. But I have been doing the same thing all the time.”*

*-Sir Ernest Cassel, Private  
Banker to King Edward VII<sup>1</sup>*

## I. INTRODUCTION

‘Games wagering’ is basically the setting of a budgetary wager on the result of a gaming match, and in addition on occasions that happen inside of the bigger match or apparatus. While organised sports bets

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<sup>1</sup>Burton G. Malkiel, *Review of The Analysis of Sports Forecasting: Modeling Parallels between Sports Gambling and Financial Markets*, 39 J. ECON. LIT. 945–946 (2001).

have existed since Greek civilisation, sports betting or gambling during sporting events is a relatively recent phenomenon especially in the online context. Modern betting was popularised in the 18<sup>th</sup> century when the first bookmaker opened bets on horse-racing competitions.<sup>2</sup> Betting on sports was initially confined to the outcome of sports like horse racing, but post the internet boom of the 1990s, the web has fast caught on to become an effective medium in the spread of betting culture to many sports and cultures. One of the earliest instances of sports gambling through the internet was in 1993 when the Swiss lottery sold tickets using specially-developed software.<sup>3</sup>

The rise of the gambling market can be appropriated to a number of developments. The most essential of these is the availability and access of the internet as a mechanism for the dissemination of information at an instantaneous manner. This means that one can be betting on the outcome of a match from a different county without having to watch it on their televisions at home. Another reason for this is the increasing focus of advertisers in exploiting the sports television market. The consumption of sports now involves a number of collateral markets such as merchandise, sports analysis shows and gambling is another of these emerging collateral markets. Internet transactions are perceived as trustworthy with a number of products being sold and exchanged on the market through up to 199 payment mechanisms.<sup>4</sup> The result is a parallel market for various kinds of sports bets and wagers across the world.

Many countries lockdown on activities such as sports wagering, a primary reason for such laws in common law countries being that it

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<sup>2</sup>Sorbonne-International Centre for Sport Security, *Protecting the Integrity of Sport Competition: The Last Bet for Modern Sport* (2012-14), [http://www.theicss.org/wpcontent/themes/icssc corp/pdf/SIF14/SorbonneICSS%20Report%20Executive%20Summary\\_WEB.pdf?lbisphreq=1](http://www.theicss.org/wpcontent/themes/icssc corp/pdf/SIF14/SorbonneICSS%20Report%20Executive%20Summary_WEB.pdf?lbisphreq=1) [hereinafter ICSS Report].

<sup>3</sup>SALLY GAINSBURY, *INTERNET GAMBLING: CURRENT RESEARCH FINDINGS AND IMPLICATIONS 2* (2012) [hereinafter GAINSBURY].

<sup>4</sup>*Id.*

become a leakage in the financial system where money is exchanged even though no productive activity is taking place. Concerns for sports wagering include the emergence of crime syndicates, corruption scandals in sports and wasteful spending by its participants. On the contrary, proponents of legalising sports gambling believe that it would lead to a decrease in the criminal element of these activities by bringing it out into the mainstream where it can flourish adequately, reduce the possibilities of match-fixing in sports because of the regulation of unusual money flows in these channels and provide a novel source of tax and advertising revenue from its participants that are largely from the young, high-income earning demographic.

Different countries show different methods of regulating sports gambling, the primary focus of this research is the growing debate in the United States for the legalisation of sports gambling in cash-strapped New Jersey and instances closer home in relation to the IPL fiasco. New Jersey recently contested the ban on casinos passed by the Congress in 1992, but was unsuccessful.<sup>5</sup> Four states in the country, Nevada, Delaware, Oregon, and Montana, legally allow for sports gambling in most forms and see an immense revenue stream through the flourishing gambling markets.<sup>6</sup> The primary focus of this research paper is the analysis of legalisation aspects of sports betting in the backdrop of this movement in the United States.

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<sup>5</sup>Wayne Parry, *Federal Ban on NJ Sports Betting Upheld*, COURIER-POST (Aug. 25, 2015), <http://www.courierpostonline.com/story/news/local/south-jersey/2015/08/25/betting-sports-jersey/32324405/> [hereinafter Parry].

<sup>6</sup>Donovan Keene, *Bet on It*, HARVARD POLITICAL REVIEW (Dec. 22, 2015), <http://harvardpolitics.com/online/bet/>.

## II. GROWTH OF THE SPORTS GAMBLING PHENOMENON

It is said that gambling is a ubiquitously present industry in America, so ubiquitous that the combined profits made by gamers exceeds the total revenue flows of movies, music and sports entertainment together.<sup>7</sup> Studies show that gambling has increased manifold since the late 1970s, and by the turn of the century most states in the American union had their own well-functioning lotteries. A number of reasons have been proposed for the expanding popularity of gambling.

### A. *Changed Societal Perceptions About Gambling*

Gambling was initially perceived as a vice by American society, as it still is in many parts of the world, with many judicial decisions on its practice by means of lotteries to be a 'pestilence' or a disease.<sup>8</sup> Such decisions betrayed a certain amount of normativity and perceptions of immorality in the act of engaging in lotteries, partly because of a number of lottery scandals in the late 19<sup>th</sup> century and the belief that charity wagers were deemed permissible. This perception began to change by the mid-19<sup>th</sup> century when state lotteries were organised to raise funding for infrastructural needs and education facilities. A survey by the American Gaming Association revealed that the general perception amongst voters on the idea of legal casino gaming was positive, because they strengthened local economies and created job opportunities for local residents.<sup>9</sup> According to a recent poll, a majority of Americans believed that internet gambling must be

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<sup>7</sup>Lori K. Miller & Cathryn L. Claussen, *Online Sports Gambling--Regulation or Prohibition*, 11 JOURNAL OF LEGAL ASPECTS OF SPORT 99 (2001) [hereinafter Miller & Claussen].

<sup>8</sup>WILLIAM NORTON THOMPSON, GAMBLING IN AMERICA: AN ENCYCLOPEDIA OF HISTORY, ISSUES, AND SOCIETY 416 (2001) [hereinafter THOMPSON].

<sup>9</sup>American Gaming Association, *Voters View Casino Gambling More Favourably Than Ever* (2014), [http://www.gettoknowgaming.org/sites/default/files/AGA\\_G2KG\\_ExecutiveSummary\\_natlpoll\\_2.pdf](http://www.gettoknowgaming.org/sites/default/files/AGA_G2KG_ExecutiveSummary_natlpoll_2.pdf).

permitted in some form as long as it was regulated by the governments.<sup>10</sup> This also feeds into the most compelling argument for the legalisation of sports gambling from the consumer perspective, i.e. the protection of market participants from frauds and cheats in the market.<sup>11</sup>

### *B. Emergence of Risk-Taking Culture*

The growth of risk centric leisure activities is one of the factors promoting gambling, particularly for sports gambling. Adventure sports are increasingly imbibed by non-professionals and accepted as a leisure space not just for those with special expertise but rather an exhilarating new avenue. Gambling psychology promotes such irrational risk taking attempts, with the belief that every gambler is at somehow at a better chance of winning or able enough to outsmart his opponent, and if not that doesn't defeat the purpose of the exercise since all decisions in life are, in a way, gambles.<sup>12</sup> Sports' betting is seen as a 'challenging' new hobby, which gives sports spectatorship a wholly different meaning because those who participate feel they are 'part of the contest'.<sup>13</sup>

### *C. Intrinsic to the 'Sport Fan' Experience*

Sports' broadcasting forms a major chunk of prime time viewership for cable television networks globally. The 2015 season of Super Bowl (America's biggest football tournament) witnessed a viewership

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<sup>10</sup>Ipsos, *Canada And US Public Perceptions of Internet Gambling* (2008), <http://www.ipsos-na.com/news-polls/pressrelease.aspx?id=3792>.

<sup>11</sup>Miller & Claussen, *supra* note 7.

<sup>12</sup>THOMPSON, *supra* note 8.

<sup>13</sup>Billy Hawkins, *The Stakes Off the Field*, THE NEW YORK TIMES (Mar. 27, 2014), <http://www.nytimes.com/roomfordebate/2014/01/31/the-stakes-off-the-field-and-at-the-betting-window/legalized-sports-betting-would-threaten-sports-and-society> [hereinafter Hawkins].

of 114.4 million, the most watched broadcast in U.S. TV history.<sup>14</sup> The tremendous increase in sports broadcasting, shows based on sports statistics and player analysis, sports news programs and radio shows form a coherent network of sports consumption that has evolved from the way it was before. The ease of spread of information and technologies that analyse the remotest of sporting event phenomena all constitute the renewed experience of watching sports. Naturally, the amount of skill required in sports betting corresponds to the existing base for detailed analysis and information collection on sports matchups. The “involvement feeling” in team sports and nation sports tremendously increases through the social exercise of wagers. Proponents of legalisation in fact, argue that criminalising betting essentially takes away from aspects of popularity associated with a sport by depriving it of an essential foundational trait.<sup>15</sup>

#### *D. Opportunities from the Internet*

With up to no financial investment required in terms of cash and possibilities of deriving profits through advertising, internet websites provide a flourishing medium for unregulated content. It has been observed that the gambling population includes young, educated males belonging to a high economic bracket and with easy access to

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<sup>14</sup>Frank Pallota, *Super Bowl XLIX Posts the Largest Audience in TV History*, CNN MONEY (Feb. 2, 2015), <http://money.cnn.com/2015/02/02/media/super-bowl-ratings/index.html>.

<sup>15</sup>Vidushpat Singhania, *Sports Betting: Is it Really Illegal in India?* SPORTS BETTING: LAW AND POLICY 443, 446 (Paul M. Anderson eds., 2011) [hereinafter Singhania].

internet and electronic devices.<sup>16</sup> According to statistics, the size of the global online gambling market as of 2015 is USD 41.4 billion.<sup>17</sup>

### III. PROHIBITION POLICY IN THE UNITED STATES

Gambling bans in the United States are usually characterised by a cyclic legalisation policy, when states in economic sluggishness decide to exploit the market for tax revenues.<sup>18</sup> Historically, gambling has played a crucial role in the development of American culture. The American Revolution was financed by state-run lotteries and so were public utility projects and certain Ivy leagues. Eventually, the early 1800s witnessed a period where lottery runners would abscond with the collect, and the perception of lotteries which was earlier glorious changed. Lotteries became banned, until the American Civil War when states again needed the cash in order to be able to fight the war and sustain themselves. This again prompted a ban on state lotteries, and in the early 19<sup>th</sup> century coincided with the Prohibition, when all such activities were looked down upon and the paternalistic outlook of the government was widely dominant.

This lasted until the mid-1960s, during which time certain states restarted lottery systems. Casinos opened in New Jersey in 1976, and other states began joining the lottery bandwagon. Now, almost 40 U.S states out of 51 have lotteries.

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<sup>16</sup>Brad R. Humphreys & Levi Perez, *Who Bets on Sports? Characteristics of Sports Bettors and the Consequences of Expanding Sports Betting Opportunities*, 30(2) ESTUDIOS DE ECONOMÍA APLICADA 579, 587 (2012).

<sup>17</sup>Statista, *Global Online Gambling Market Size 2003-2015* (2015), <http://www.statista.com/statistics/270728/market-volume-of-online-gaming-worldwide/>.

<sup>18</sup>JACK S. BLOCKER et al., ALCOHOL AND TEMPERANCE IN MODERN HISTORY: AN INTERNATIONAL ENCYCLOPEDIA (2003).



The cause against sports' betting was considered in 1991 by the sports powerhouses in America, including the National Football League, which came out against the emergence of sports' betting as an ancillary hobby for fans.<sup>19</sup> The powerful lobbying for this ban saw the eventual passing of the Professional and Amateur Sports Protection Act in 1992.<sup>20</sup> At the time of passing of this act, the legislators sought to control what was perceived as a growing evil in society, outlawing gambling in sports' related activities in all but four states in America (Oregon, Montana, Delaware and Nevada), which had existing federal laws regulating and legalising it in place.

The result is that where other avenues of gambling have grown and prospered in the last half century in America, sports betting remains illegal in most American states. The antipathy towards legalising this particular stream of betting may be attributed to prominent sports scandals that caused corruption concerns in American sporting. The most highlighted of these were the Baseball World Series of 1919 and the Boston College point-shaving scandal of 1978, both of which spawned literature and movies retelling the buyouts of sports players for deliberately giving up games.<sup>21</sup> A powerful euphemism used by the supporters of the ban during the 1991 prohibition was thus, '*Don't Gamble with our Children's Heroes*', which betrayed the American obsession for sporting as something sacred and above the greed of

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<sup>19</sup>Hampton Stevens, *The Great American Gambling Boom*, THE ATLANTIC (Sept. 21, 2014), <http://www.theatlantic.com/entertainment/archive/2014/09/how-daily-fantasy-sports-will-create-an-american-gambling-boom/380382/>.

<sup>20</sup>Chris Spatola, *Sports Gambling and Governing With a Moral Compass*, THE HILL (Sept. 17, 2015), <http://thehill.com/blogs/pundits-blog/sports-entertainment/253911-sports-gambling-and-governing-with-a-moral-compass>.

<sup>21</sup>The 1919 World Series Scandal earned the Chicago White Sox baseball team the nickname 'Black Sox,' for accepting gambling money to intentionally lose the game against the Cincinnati Reds team. The scandal was recapitulated in the book and screen adaptation of 'Eight Men Out' nearly 60 years after the event. The second scandal evolved the storyline for the 1990 classic by Martin Scorsese, 'Goodfellas' which focused on the gangster mafia behind the betting scandal. See John Sayles, EIGHT MEN OUT (1988); Martin Scorsese, GOODFELLAS (1990).

betting enthusiasts.<sup>22</sup> Proponents for upholding the ban argue that the collective conscience of the American population is yet immature to handle the fallout of gambling at the individual level of the compulsive gambler and the questioning of the integrity of much-venerated sports at the societal level.<sup>23</sup>

The law was recently contested on the grounds of unconstitutionality by the state of New Jersey, with the sports powerhouses now demanding for its legalisation.<sup>24</sup> National Basketball Association (NBA) Commissioner, Adam Silver argues that sports wagering remains an integral part of the way in which fans remain involved in a sport.<sup>25</sup> A large illegal sports betting market exists to validate this claim; while sports betting is largely legal in European countries, it is done at an illegal but massive level in the U.S. Statistics about 'March Madness', the college basketball season of 2015 support his idea. The event that lasted three weeks saw a total of U.S \$2.5 billion being exchanged illegally.<sup>26</sup> This is a fraction of the staggering amount that

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<sup>22</sup>Sean Gregory, *The Case for Sports Gambling in America*, TIME (Mar. 12, 2015), <http://time.com/3741836/the-case-for-sports-gambling-in-america/>.

<sup>23</sup>Hawkins, *supra* note 13.

<sup>24</sup>New Jersey was one of the states that was intended to have legal sports betting at the time of passing of PASPA, but failed to get the motion for a federal law on it passed in the one-year window afforded to it. *See* Statehouse Bureau Staff, *4 Major Pro Sports Leagues, NCAA Sue to Stop N.J. from Allowing Betting*, NJ.COM (Aug. 7, 2012), [http://www.nj.com/politics/index.ssf/2012/08/4\\_major\\_pro\\_sports\\_leagues\\_sue.html](http://www.nj.com/politics/index.ssf/2012/08/4_major_pro_sports_leagues_sue.html).

<sup>25</sup>Adam Silver, *N.B.A. Commissioner Adam Silver: Allow Gambling on Pro Games*, THE NEW YORK TIMES (Nov. 13, 2014), <http://www.nytimes.com/2014/11/14/opinion/nba-commissioner-adam-silver-legalize-sports-betting.html>.

<sup>26</sup>Rick Maese, *Conference tournaments hit jackpot in Las Vegas, much to chagrin of NCAA*, WASHINGTON POST (Mar. 11, 2015), [https://www.washingtonpost.com/sports/colleges/conference-tournaments-hit-jackpot-in-las-vegas-much-to-chagrin-of-ncaa/2015/03/11/ad461cc-c810-11e4-bea5-b893e7ac3fb3\\_story.html](https://www.washingtonpost.com/sports/colleges/conference-tournaments-hit-jackpot-in-las-vegas-much-to-chagrin-of-ncaa/2015/03/11/ad461cc-c810-11e4-bea5-b893e7ac3fb3_story.html).

is bet on sporting events per year in the country, which is \$140 billion according to the American Gaming Association.<sup>27</sup>

Parallels have been drawn between contemporary outlooks regarding sports' betting in the States with United Kingdom in the 1960s, where sports' betting is wholly legal and dissociated with possibilities of criminal underpinnings.<sup>28</sup> The realisation that sports' betting is a phenomenon that's here to stay and its effective monitoring is the only way of ensuring that corruption scandals don't plague the sport seems to be the guiding principle for its legalisation, the demand by New Jersey in a cash-strapped economy being a manifestation of this change. Alongside the normative and economic claims for legalising/prohibiting sports' betting is the massive concern of internet sports' gambling, a medium that can never be wholly maintained or regulated. Some of these concerns may be reasons why the 3<sup>rd</sup> U.S. Circuit Court of Appeals upheld the ban in all other states of America with a 2-1 majority, the case for the legalisation seems stronger with the lobbying moving for it rather than against.<sup>29</sup> The next section of the paper deals with the case for its legalisation and economic repercussions.

#### IV. THE DEBATE ON LEGALISATION

The case for sports' gambling is fast becoming increasingly one-sided, because prohibition or not, sports' gambling is not going to be easy to dispel.<sup>30</sup> Similar to the Prohibition of Alcohol during the

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<sup>27</sup>ICSS Report, *supra* note 2.

<sup>28</sup>Stan Hey, *Our National Love Affair: A History of the Betting Shop*, THE INDEPENDENT (Apr. 5, 2008) <http://www.independent.co.uk/sport/racing/our-national-love-affair-a-istory-of-the-betting-shop-804966.html>.

<sup>29</sup>Parry, *supra* note 5.

<sup>30</sup>Walt Bogdanich, James Glanz & Agustin Armendariz, *Cash Drops and Keystrokes: The Dark Reality of Sports Betting and Daily Fantasy Games*, THE NEW YORK TIMES (Oct. 15, 2015),

1920s in America, the economists are finally being led to believe that it would be more feasible to allow the perpetuation of these activities and exploiting them to gain benefits, rather than to pretend they don't exist. The case for a liberal policy on sports' betting has some compelling arguments, the merits of which are such as the following.

### *A. Arguments for Legalisation*

#### *1. Combating Falling Integrity in Sports & Organised Crime*

In an illegal setup, proceeds from sports gambling are accrued privately by individuals involved in betting rackets, creating a doorway for other illegal activities like tax evasion and money laundering. It has been observed that criminalising sports' gambling has increased overall crime in the United States.<sup>31</sup> Match-fixing by players and bookies not only tarnishes perceptions held by loyal sports' fans but also involves negative repercussions like the loss in value of being associated with that sport by sponsors and the media as a consequence of lowered demand.<sup>32</sup> While profits from successful bets are the driving factor behind fixing of events in sports matches irrespective of legality, a regulated market for innocuous bets and monitoring suspicious betting activity seems a more prudent method to confront sports offences. A higher probability of detection and greater financial penalties lowers the incentive for players and bookmakers to cheat.<sup>33</sup>

#### *2. Direct Tax Revenue*

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<http://www.nytimes.com/interactive/2015/10/15/us/sports-betting-daily-fantasy-games-fanduel-draftkings.html>.

<sup>31</sup>Andrew Vacca, *Sports Betting: Why the United States Should Go All in*, 11 WILLIAMETTE SPORTS LAW JOURNAL 1, 12 (2014).

<sup>32</sup>David Forrest & Robert Simmons, *Sport & Gambling*, 19(4) OXFORD REVIEW OF ECONOMIC POLICY 598, 607 (2003).

<sup>33</sup>*Id.*

In order to combat activities such as gambling, the government has basically three options; (1) to ban the activity completely and appropriate funds to see to the implementation of these laws, (2) to have legislations prohibiting it in place but not putting any financial clout behind their implementation and (3) to legalise the activity and extract taxes from it.<sup>34</sup> Since most countries are not able to effectively prohibit the transactions of sports' gambling that take place on the web, states such as Missouri believe that it would be more effective to remove the ban in order to generate income by applying existing tax laws to the trade. While sports' betting laws prohibit such activities from taking place, profits from transaction between bookies and bettors accrue to the unregulated sportsbooks owners and underworld mafia and cartels instead. Though the exact figures for the sports' betting market aren't certain, the national estimate puts them at around U.S \$400 billion a majority of which is illegal.<sup>35</sup> Therefore, an able government policy would indicate that a tax rate that brings in a proper amount of revenue for the government that more than adequately meets the costs of the regulation and does not dissuade the participants from leaving the legal betting market for underhand dealing to be the most appropriate measure to combat the phenomenon.<sup>36</sup>

### 3. Indirect Benefits from Trade

The most evident consequence of legalising sports' betting would be the creation of collateral employment opportunities. Bookkeeping in American states that permit legal sports' betting constitutes a stable profession, which could be a boon for America's chronically high

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<sup>34</sup>Eric Meer, *The Professional and Amateur Sports Protection Act (PASPA): A Bad Bet for the States*, 2(2) UNLV GAMING LAW JOURNAL (2011).

<sup>35</sup>National Gambling Impact Study Commission, *Final Report* (1999), <http://govinfo.library.unt.edu/ngisc/reports/2.pdf>.

<sup>36</sup>David Lariviere, *Legalization Of Sports Betting Would Be Huge Revenue Producer For Leagues, Expert*, FORBES (Sept. 19, 2014), <http://www.forbes.com/sites/davidlariviere/2014/09/19/legalization-of-sports-betting-would-be-huge-revenue-producer-for-leagues-expert-says/>.

rates of unemployment.<sup>37</sup> Legalisation also means deriving benefits of the naturally ensuing ancillary industries, better known in economic terms as ‘crossover effects’.<sup>38</sup>

This means greater tourism, Las Vegas, Nevada being the quintessential case study for the development of the tourist industry based on gaming notoriety. More than just taxes, the hospitality industry that stem from handling all these tourists is another source of economic returns for the state. Rent from hotels, restaurants, alcoholic beverages and tobacco sales that result from a single weekend spent by a tourist in a gaming state testify to the benefits of its endorsement.<sup>39</sup>

#### 4. Protection of Betting Market Participants

Despite the illegal status of online sports gambling in the States, Americans form a huge percentage of the market and figures from 1997 shows that out of the then U.S. \$1 billion global market, U.S. \$600 million were from America.<sup>40</sup> Economist and Public Policy scholar Justin Wolfers argues that the economic principle behind the legalisation of sports betting is the preference for transparency in market participants.<sup>41</sup> Regulated markets ensure that bettors who win get returns, which greatly increases the incentive for betting as it ensure that scam book runners do not abscond with profits. The premise behind this is at once the activity is legalised and monitored

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<sup>37</sup>Statista, *Unemployment rate in the U.S. 1990-2014* (2015), <http://www.statista.com/statistics/193290/unemployment-rate-in-the-usa-since-1990/>.

<sup>38</sup>Miller & Claussen, *supra* note 7.

<sup>39</sup>David M. Schwartz, *Nevada's tax income from gaming well below other markets*, LAS VEGAS SUN NEWS (Oct. 7, 2001), <http://lasvegassun.com/news/2011/oct/07/nevadas-tax-income-gaming-well-below-other-markets/>.

<sup>40</sup>Parry, *supra* note 5.

<sup>41</sup>Ian Mcgugan, *The Case for Legalized Gambling on Sports*, THE NEW YORK TIMES (Jan. 23, 2015), <http://www.nytimes.com/2015/01/25/magazine/risk-factor.html> [hereinafter Mcgugan].

by state governments, potential market participants are less hesitant about engaging in the market, which will run itself on free-market principles effectively.

## *B. Arguments Against Legalisation*

### *1. Trade-Offs for State Governments*

Governments find that legalising sports betting played against their economic interests, even if it was a legal viability. State governments in the U.S compete for opportunities to host professional franchises college sports tournaments in their cities because of the revenue that they acquire from these events. Leagues are vehemently opposed to the concept of sports' gambling and have been the most vocal lobbyists against it. These leagues enjoy a significant power status in the way sports are run in the country, and the discussion of legalising is accompanied with the possibility of these competitions turning away for other states. In such a situation, the government faces the trade-off of acquiring proceeds from a domestic college tournament or the economic returns from legalising betting on it.

Despite the change with the advent of a new power politics at the helm of these institutions that are looking to support the cause, the leagues' are not offering their support to the movement. The National Collegiate Athletic Association (NCAA), the National Basketball Association (NBA), the National Football League (NFL), the National Hockey League, and Major League Baseball filed a federal lawsuit against New Jersey in order to prevent sports betting which was against the PASPA on the grounds that it maintained the integrity of sports in viewers' opinions.<sup>42</sup>

### *2. Insatiable Greed*

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<sup>42</sup>Parry, *supra* note 5.

The counter view to the argument of legalising from the participant protection perspective is that once the gambling is legal, it will be taxed and would naturally entice bettors to move towards the unregulated illegal market. Neither would lead to a reduction in match fixing. Maria Haberfeld, a Criminal and Political Science expert at John Jay College of Criminal Justice believes that legalisation would not dismember the desire to make greater profits in bettors; people would be forced to become more ingenious to make the best bet which they inevitably do when there is a question of a huge amount of money on the line.<sup>43</sup>

### 3. *Financial Drain*

Gambling is known to cause serious addictive behaviour in bettors, most of who are unreasonably afflicted with self-confident beliefs on having a chance of always winning.<sup>44</sup> Such behaviour results in wasteful expenditure and is known to lead to high levels of addictive and suicidal behaviour.<sup>45</sup> Scholars believe that it would also take away from altruistic activities like charitable donations and charitable gambling events. Sports' gambling also offers a pursuit for young teenagers, who are easily receptive to the dangers of addictive behaviour early on.<sup>46</sup>

## V. SPORTS BETTING IN THE INDIAN CONTEXT

The debate around legalising sports betting in India originates in the context of cricket's match-fixing scandals. Match/spot fixing and unregulated betting have plagued the sports' popularity post the

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<sup>43</sup>McGugan, *supra* note 41.

<sup>44</sup>Emanuel V. Towfigh et al., *Dangerous Games: The Psychological Case for Regulating Gambling*, 8 CHARLESTON LAW REVIEW 147 (2013) [hereinafter Towfigh].

<sup>45</sup>Miller & Claussen, *supra* note 7.

<sup>46</sup>Towfigh, *supra* note 44.



Indian Premier League's inception in 2008, with various stakeholders waking to the realisation that sports betting is a ubiquitous phenomenon that requires regulation to bring it out of the USD 150 billion black market of underhand transactions.<sup>47</sup>

Multiple authorities have suggested the legalisation of sports betting in an attempt to check the incidence of fixing, including the Committees set up by the Hon'ble Supreme Court under the aegis of former Chief Justice R.M. Lodha and Justice Mukul Mudgal to look into allegations of sports fraud and suggest transparency reforms.<sup>48</sup> The recommendations are in line with those of the 2001 Condon Report published after the Hansie Cronje incident under the ICC's Anti-Corruption Unit and the 2014 Report by International Centre for Sports Security on the integrity of competitive sports.<sup>49</sup>

In similarity to the debate around the PASPA, the most powerful cricket-governing body in India, the BCCI, is opposed to the recommendation of the Lodha Committee and contested the feasibility of a uniform sports betting law in India.<sup>50</sup>

#### A. *Legal Status of Betting: The 'Game of Skill' Model*

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<sup>47</sup>KPMG, *Online Gaming: A Gamble or a Sure Bet* (2010), <https://www.kpmg.com/EU/en/Documents/Online-Gaming.pdf>.

<sup>48</sup>Justice R.M. Lodha, *Report of the Supreme Court Committee on Reforms in Cricket* (2015-16), <https://lodhacommittee.wordpress.com>; Justice Mukul Mudgal, *Report on the Allegations of Betting and Spot/Match fixing in the Indian Premier League-Season 6 Volume 1* (2014), [http://www.thehindu.com/multimedia/archive/01750/JUSTICE\\_MUDGAL\\_IPL\\_17\\_50743a.pdf](http://www.thehindu.com/multimedia/archive/01750/JUSTICE_MUDGAL_IPL_17_50743a.pdf).

<sup>49</sup>Paul Condon, *Report on Corruption in International Cricket*, Anti-Corruption Unit, International Cricket Council (2001), <http://www.icc-cricket.com/about/47/anti-corruption/reports>.

<sup>50</sup>'Betting and Gambling' is a state subject under Entry 34, List II of the Seventh Schedule and legislations governing gambling differ by state. See Jay Sayta, *Not in Favour of Legalising Betting, BCCI tells SC*, GAMBLING LAWS IN INDIA (May 4, 2016), <http://glaws.in/2016/05/04/not-in-favour-of-legalising-betting-bcci-tells-sc/>.

The legality of betting with stakes vis-à-vis gaming laws in India depends, as in most foreign jurisdictions, upon whether the game is one of skill or of chance. Games based on skill are deemed lawful trading activities and are guaranteed protection under Article 19(1)(g) and Article 301 of the Constitution.<sup>51</sup> Section 12 of the Public Gambling Act, 1867 envisages an exception of betting on games of skill played anywhere in the country. Currently, gambling is legal in Goa and Sikkim and licensed online gambling is legal only within the territorial limits of Sikkim for non-residents.<sup>52</sup> Nagaland recently brought out a legislation to regulate *online* games of skill; however, this Act may be open to constitutional challenges as per the *Chamarbaugwala* judgement and Entry 42, List I of the Seventh Schedule regulating inter-state trade and commerce for extra-territorial effect.<sup>53</sup> Sports betting is excluded from the Act's designated list of games of skill at the present stage.

The Information Technology Act, 2000 and the Information Technology (Intermediaries Guidelines) Rules implicitly prohibit online gambling. The rules place the onus on ISPs to inform users not to upload, publish or transmit any information relating to or encouraging gambling.<sup>54</sup> Rule 3(a) of the Foreign Exchange Management Rule (Current Account Transactions) Rules, 2000

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<sup>51</sup>State of Bombay v. R.M.D. Chamarbaugwala, A.I.R. 1957 S.C. 699 (India) [hereinafter Chamarbaugwala].

<sup>52</sup>Sikkim Online Gaming (Regulation) Amendment Act, 2015 (India).

<sup>53</sup>Jay Sayta, *Nagaland Governor approves the Online Skill Games Bill*, GAMBLING LAWS IN INDIA (Apr. 9, 2016), <http://glaws.in/2016/04/09/nagaland-governor-approves-the-online-skill-games-bill/>; Territorial nexus has been appositely explained by the Supreme Court in numerous judgements, including Chamarbaugwala, *supra* note 51.

<sup>54</sup>Information Technology Act, 2000 (India), § 67; Information Technology (Intermediary Guidelines) Rules, 2011, Rule 3(2)(b).

prohibits remittances specified in Schedule I, which include winning from lotteries, football pools, sweepstakes etc.<sup>55</sup>

If one were to analyse the jurisprudence on 'games of skill' by the Courts of the country it would be easier to view betting on cricket a game of skill as opposed to gambling on mere chance. While deciding upon the legality of race-horse betting in *K.R Lakshmanan v. Union of India*,<sup>56</sup> the Supreme Court relied upon factors involved by bettors in placing these bets. Numerous considerations such as the pedigree of the horse, training and conditioning provided to it by jockeys, conditions of the turf on which the race is being held, etc. formed the basis of a rational and reasoned decision by a better to place his money upon a certain horse. The winner in such a competition, although dictated to some degree by changing odds during the game, wasn't a function of random allocation such as the fall of a dice or turn of a wheel in a game of roulette. It depended upon an outcome formed by years of nurturing and analysis of experts by closely studying these games. Horse race betting therefore was held to be a game of skill as success 'depended principally on the superior knowledge, training, attention, experience and adroitness of the player'.<sup>57</sup> It is essential to note for this analysis that the fact that a certain degree of chance is involved in any kind of bet does not determine its illegality, as Courts across jurisdictions have interpreted the term 'mere skill' prevalent in Gaming legislations in India to mean a 'preponderance' of skill.<sup>58</sup> Therefore, the test of whether betting of a certain nature is a game of skill is the 'substantial degree

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<sup>55</sup>Foreign Exchange Management Rule (Current Account Transactions) Rules, 2000, Rule 3(a).

<sup>56</sup>*K.R Lakshmanan v. Union of India*, A.I.R. 1996 S.C. 1153 [hereinafter *Lakshmanan*].

<sup>57</sup>*Id.* at ¶ 3.

<sup>58</sup>The Court gleaned two principles from the judgements of the *Chamarbaugwalla* case and the *Satyanarayan* case: (i) the competitions where success depended on substantial degree of skill were not 'gambling' and (ii) despite an element of chance being present, if a game was preponderantly a game of skill it would nevertheless be a game of "mere skill." *See Lakshmanan*, ¶ 20.

or preponderance of skill' on chance and not the exclusion of chance on the outcome of the game entirely. This is applied in the US as the 'Dominant Factor Test'.<sup>59</sup>

The author believes that the argument for legalising horse race betting in the Lakshmanan judgement can be extended to justify bets on all kinds of regularised sports. Justice Mudgal in his book '*Law and Sports in India: Development, Issues and Challenges*', argues that sports betting is not illegal per se as it "*involves an element of the predominant skill of both the player and the bettor*" and laws for its legalisation must be implemented forthwith to curb the incidence of fixing in sports and supplement proceeds for the exchequer.<sup>60</sup> Vidushpat Singhania (founder of Sports and Gaming law firm Ludus Legal) explains further that since bets on a player's likely performance are made on skilled deductions of his strengths during a game, his past performances gleaned from statistics and even his body language on the field, betting on sports events would be a game of skill and therefore beyond the purview of the Public Gambling Act or other state acts.<sup>61</sup> In cricket for example, the outcome of a game depends on multiple factors like the performance of the team in that specific format of the game, form of current players in the team, the playing conditions in the venue where a match is held, the selection of the playing 11 in any given tournament, the history of the team in matches against a certain opponent, injuries of players on both sides,

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<sup>59</sup>This test, which has become increasingly debated upon in the context of fantasy sports recently, involves a spectrum with pure skill and pure chance on opposite ends. Where a player's ability determines the outcome of the game more than the chance factor, it would be held to be game of skill. See Jeffrey C. Meehan, *The Predominate Goliath: Why Pay-to-Play Daily Fantasy Sports are Games of Skill Under the Dominant Factor Test*, 26(1) MARQUETTE SPORTS LAW REVIEW 5, 16 (2015).

<sup>60</sup>MUKUL MUDGAL & VIDUSHPAT SINGHANIA, *LAW AND SPORTS IN INDIA: DEVELOPMENT ISSUES AND CHALLENGES* (2016).

<sup>61</sup>Vidushpat Singhania reasons that bets of this nature constitute wagering contracts and are governed by Section 30 of the Indian Contract Act, 1872. These contracts are void in the eyes of the law but not illegal, as they are not expressly prohibited by an existing legislation. See Singhania, *supra* note 15, at 469.

weather conditions during the match and so on. An avid bettor requires a methodical understanding of how interaction between these factors impacts outcomes of games which he acquires through a multitude of cricket analysis, prediction software and statistics available on the sport across forums.<sup>62</sup> A paper on the spectrum of speculation by Professor Christine Hurt (2006) places sports betting on the same threshold as trading in stocks.<sup>63</sup> A large swathe of information is publicly available for both avenues, which allows investors to make informed decisions despite factors external to the market player's control being prevalent. It may be argued then, that sports' betting is just as legal as trading on the stock market.

### *B. State, Paternalism and Games of Vice*

It is also of relevance to recognize the prospect of an affirmative sports gambling legislation outside of the currently existing skill-chance framework prescribed by Courts and legislations. The skill-chance spectrum has been termed as irrelevant to the future of sports gambling and the emphasis on regulation and taxation on all its forms, be they skill based or governed entirely by unfair chance has been put forward.<sup>64</sup> Laws in U.K, Australia and South Africa amongst many other European nations have legalised sports betting and adopt a

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<sup>62</sup>How Can Prediction Analysis be Used in the Game of Cricket?, QUORA.COM, <https://www.quora.com/How-can-prediction-analysis-be-used-in-the-game-of-Cricket>.

<sup>63</sup>Christine Hurt, *Regulating Public Morals and Private Markets: Online Securities Trading, Internet Gambling, and the Speculation Paradox*, 86 BOSTON UNIVERSITY LAW REVIEW 371, 378 (2006).

<sup>64</sup>Jay Sayta, *NUJS hosts first of its kind conference on the Gaming and Betting industry, top professionals discuss social, legal and constitutional issues*, GAMBLING LAWS IN INDIA (Sept. 15, 2013), <http://glaws.in/2013/09/15/nujs-hosts-first-of-its-kind-conference-on-the-gaming-and-betting-industry-top-professionals-discuss-social-legal-and-constitutional-issues/>; Dustin Gowker, *NBA Commish Adam Silver Talks Daily Fantasy at SXSW*, LEGAL SPORTS REPORT (Mar. 14, 2016) <http://www.legalsportsreport.com/8994/nba-adam-silver-on-dfs/>.

morally neutral stance on gambling; freedom of choice to citizens and reduction in social costs are the primary objectives.<sup>65</sup>

Gambling has been perceived in India's legal history as a depravity indulged in by the disreputable or beguiled. Numerous judgements cite religious edicts to demonstrate the malicious and destructive nature of, and cultural antipathy towards gambling.<sup>66</sup> At the time of the insertion of 'gambling' as an entry in the State list, Shri Lakshminarayan Sahu during the Constituent Assembly debates maintained that a nation born of the Gandhian ideal of truth had no place for gambling and the understanding reached was that it was being added solely to empower states to prohibit such activities.<sup>67</sup> The State's outlook towards gambling remains hostile in the most recent debates leading up to the pro-legalisation agenda coming to the forefront.<sup>68</sup>

This paternalistic attitude decidedly laid down the current legal position of gambling by a five-member bench in *R.M.D Chamarbaugwala v. Union of India*<sup>69</sup> as an activity which is '*res extra commercium*' or 'outside the scope of commerce'. Therefore, gambling does not enjoy the protective ambit of the fundamental right to free trade mentioned previously in the context of games of skill. The Roman law doctrine was introduced in India (incorrectly, see

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<sup>65</sup>FICCI, *Regulating Sports Betting in India-A Vice to be Tamed?* (2012), <http://ficci.in/spdocument/20254/report-betting-conference.pdf>.

<sup>66</sup>State of Bombay v. R.M.D. Chamarbaugwala, A.I.R. 1957 Bom. 1 (India), ¶ 45 [hereinafter *Bombay v. Chamarbaugwala*].

<sup>67</sup>Question by Shri Lakshminarayan Sahu, CONSTITUENT ASSEMBLY DEBATES (Sept. 2, 1949).

<sup>68</sup>Jay Sayta, *Union Law Minister refuses to support sports betting legalisation, says time not ripe*, GAMBLING LAWS IN INDIA (Jan. 1, 2016) <http://glaws.in/2016/01/07/union-law-minister-refuses-to-support-sports-betting-legalisation-says-time-not-ripe/>.

<sup>69</sup>R. M. D. Chamarbaugwala v. The Union Of India, A.I.R. 1957 S.C. 628 (India).

DATAR<sup>70</sup>) in this judgement while deciding upon the question of gambling businesses and began to be invoked by Courts subsequently to prohibit any manner of activities perceived as 'immoral' or 'noxious' by the Indian judiciary.<sup>71</sup> The effect of such a categorisation is that state policies on the matter are not subject to 'reasonable restrictions' under the Constitutional regime and can be completely forbidden.

The role of the state in promoting a certain virtue over another while proscribing gambling as a vice in what Lon Fuller calls in his framework in 'The Morality of Law' as "the morality of aspiration", is worthy of interrogation.<sup>72</sup> Liberal political theory condemns the interference of state mechanisms in prescribing 'higher morality' as opposed to interests of administrative law. Does the state in fact have the prerogative to designate gambling as a 'privilege' and not a 'right', subjecting it to the discretion of state policy? What can be said of a state which derogates citizenship to an understanding that involves making decisions for the 'undiscerning and improvident common man'?<sup>73</sup> Assuming, but not conceding, that the gambling is something to be restrained as opposed to encouraged by the state, can this argument be used to successfully defend the denial of free and informed choice? The Public Gambling Act possibly requires a reconceptualization of what must be deemed offences within the activity of gambling and introduce an operative structure to tackle the ills of compulsive behaviour that are removed from entrenched ideas

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<sup>70</sup>Arvind P. Datar, *Privilege, Police Power and Res Extra Commercium – Glaring Conceptual Errors*, 21(1) NATIONAL LAW SCHOOL OF INDIA REVIEW 133, 145 (2009).

<sup>71</sup>Arvind Datar & Shivprasad Swaminathan, *Police Powers And The Constitution Of India: The Inconspicuous Ascent of an Incongruous American Implant*, 28 EMORY INTERNATIONAL LAW REVIEW 63, 69 (2014).

<sup>72</sup>G. Marcus Cole, *What is the Government's Role in Promoting Morals?... Seriously?* 31(1) HARVARD JOURNAL OF LAW AND PUBLIC POLICY 77, 78 (2008).

<sup>73</sup>*Bombay v. Chamarbaugwalla*, *supra* note 66, ¶ 42.

of morality. The onus to set this ball rolling lies, most certainly, in the legislative's court.<sup>74</sup>

## VI. APPRAISING PRO-LEGALISATION JURISPRUDENCE: LESSONS FROM THE COMMONWEALTH

History is testament to the inefficiency of absolute prohibitions and leakages created by overarching legislation, which cannot be effectively stemmed by law enforcement.<sup>75</sup> Gambling laws in India are vestiges of a pre-independence era; gambling remains illegal despite its legalisation in the U.K since the 1960s.<sup>76</sup>

The recourse to criminal legislation is effectively adopted in the United Kingdom so as to uncover the organised crime network that is usually involved with large-scale betting. The U.K Gambling Act, 2005 is a consolidated legislation on gaming activities which creates specific offences for cheating, including match-fixing. Section 9 of the U.K. Act defines 'betting' broadly to include forms of sports betting in it.<sup>77</sup> 'Cheating' in order to further any deception in the process by which gambling takes place is an offence.<sup>78</sup> The Act established a Gambling Commission which is responsible for issuing licenses to parties interested in offering betting services in the U.K.<sup>79</sup> Licensed gambling companies are heavily regulated by the License

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<sup>74</sup>Shamik Chakrabarty, *Ringside view: The big challenge*, THE FINANCIAL EXPRESS (Jan. 10, 2016), <http://www.financialexpress.com/article/fe-columnist/ringside-view-the-big-challenge/191436/>.

<sup>75</sup>Markandey Katju, *Prohibition Has Never Worked and Never Will*, THE WIRE (Jan. 1, 2016), <http://thewire.in/2016/01/01/prohibition-has-never-worked-and-never-will-18424/>.

<sup>76</sup>Jay Sayta, *Legality of Poker and Other Games of Skill: A Critical Analysis of India's Gaming Laws*, 5 N.U.J.S. LAW REVIEW 93, 94 (2012).

<sup>77</sup>Gambling Act, 2005 (U.K.), § 9 [hereinafter Gambling Act, 2005].

<sup>78</sup>*Id.* at § 42.

<sup>79</sup>*Id.* at § 20.



Conditions and Codes of Practice, which places an obligation upon these companies to disclose any of form of suspicious betting activity.<sup>80</sup> Other measures include awarding of discretion to local authorities for regulating timings for betting parlours, advertising restrictions and display of warnings about responsible gambling by providers.<sup>81</sup>

Regulation in the U.K is rigorous; an operating license is necessary for offshore betting companies wanting to provide services in the subcontinent.<sup>82</sup> Only licensed remote operators are permitted to advertise legally in the U.K, and are subjected to a tax of 15% on all gross profits made on bets by U.K. residents.<sup>83</sup> The significant involvement of Asian betting companies in sponsoring teams in the English Premier League<sup>84</sup> ensures a two-fold impact; *first*, suspicious remittances of money from foreign jurisdictions will be brought under the ambit of the Gambling Commission and *second*, the 15% tax rate applicable on licensed operations will be implemented on foreign providers, bringing in a higher revenues for the British Crown. The ICC's Anti-Corruption and Security Unit has Memorandums of Understanding in place with the U.K. Gambling commission and legal betting companies like Betfair to closely monitor betting transactions through these agencies.<sup>85</sup>

By distinguishing legal from illegal forms of betting, the U.K Act is able to weed out and penalise corruption is manipulating sport

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<sup>80</sup>Sec.15.1.1, Licence Conditions and Codes of Practice – Gambling Commission, <http://www.gamblingcommission.gov.uk/pdf/Latest-LCCP-and-Extracts/Licence-conditions-and-codes-of-practice.pdf>.

<sup>81</sup>*UK Gambling Act is now in force*, THE REGISTER (Sept. 4, 2007) [http://www.theregister.co.uk/2007/09/04/gambling\\_act\\_in\\_force/](http://www.theregister.co.uk/2007/09/04/gambling_act_in_force/).

<sup>82</sup>Gambling (Licensing and Advertising) Act, 2014 (U.K.), § 33.

<sup>83</sup>Gambling Act, 2005, *supra* note 77, Part 5.

<sup>84</sup>Squire Patton Boggs, *The Gambling (Licensing and Advertising) Act: A Squeeze on Sports Sponsorship*, 12(6) SPORTS LAW ADMINISTRATION & PRACTICE 12 (2014).

<sup>85</sup>Andrew Miller, *You'll never entirely eradicate fixing*, CRICINFO (July 7, 2010), <http://www.espnricinfo.com/match-fixing-anniversary/content/story/465725.html>.

outcomes while reaping a percentage of tax from legal bets. The existence of a regulatory commission which has powers to rescind licenses and prosecute illegal bets ensures that small to medium sized bettors are brought to the white market rather than being driven underground where the apprehension of serving as gateway crimes lurks. The Commission has also established a Responsible Gambling Strategy Board (RSGB) to inform consumers against addictive behaviour.<sup>86</sup>

Gambling was legalised in South Africa by The National Gambling Act introduced in 2004, which included provisions for physical and online betting on sports.<sup>87</sup> In similarity to the English model, this Act also differentiates between illegal and legal forms of betting. Sports Gambling is illegal when the outcome of the game depends upon an activity which is itself illegal.<sup>88</sup> This includes all form of cheating, fixing and other methods of match-throwing which have been designated unlawful, and may possibly be too narrowly worded to deal with various forms of sports corruption. Legal gambling is regulated through national licenses and also includes non-contractual informal bets between two individuals.<sup>89</sup> In this regard, the author considers the compulsory license betting format of the U.K. more efficient with respect to monitoring money flows.

Recent allegations of fixing in tennis matches at the Australian Open have brought widespread sports gambling culture in Australia to question.<sup>90</sup> The Interactive Gambling Act, 2001 governs wagers on sporting events. Online interactive games such as online poker are outlawed, including “in-play” sports betting, i.e. betting on an

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<sup>86</sup>Responsible Gambling Strategy Board, Department for Culture, Media and Sport (U.K.).

<sup>87</sup>National Gambling Act, 2004 (South Africa), §§ 1, 4.

<sup>88</sup>*Id.* at § 7.

<sup>89</sup>*Id.* at §§ 8, 28.

<sup>90</sup>*Everything to play for, THE AUSTRALIAN*, <http://at.theaustralian.com.au/link/de8e6248040797bf60b633444239e2e2?domain=theaustralian.com.au>.

outcome in the match after it has commenced although the same can be done telephonically.<sup>91</sup> International operators such as William Hill and Bet365 attempted to by-pass this provision by offering Voice-over Internet Protocol (VoIP) so that customers could place in-play bets via a call-like mechanism, which has led to a review of the in-play betting rule by the Australian Communications and Media Authority.<sup>92</sup> The Review inconclusively stated that until “effective harm minimisation and consumer protection measures” were put in place, the original intent of the Interactive Gambling Act to prohibit online in-play sports gambling must be enforced.<sup>93</sup> The official government response to this review stated in its comments upon the recommendation that it did not intend to expand the Australian betting market by offering in-play services.<sup>94</sup> A shutdown initiative ensued by the Australian government in furtherance of this.<sup>95</sup> The conclusion is that in-play sports betting remains illegal and will probably continue to be so in the foreseeable future in Australia.

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<sup>91</sup>Interactive Gambling Act, 2001 (Australia), § 15.

<sup>92</sup>Robert Clarke, James Morley & Sally Milner, *In-play betting – don't bet on it*, MONDAQ (May 8, 2016) <http://www.mondaq.com/australia/x/489348/Gaming/Inplay+betting+dont+bet+on+it>.

<sup>93</sup>Barry o' Farrell, *Review of Illegal Offshore Wagering*, Department of Social Services, Parliament of Australia (2015), [https://www.dss.gov.au/sites/default/files/documents/04\\_2016/review\\_of\\_illegal\\_of\\_fshore\\_wagering\\_18\\_december\\_2015.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2016/review_of_illegal_of_fshore_wagering_18_december_2015.pdf).

<sup>94</sup>*Government Response to the 2015 Review of the Impact of Illegal Offshore Wagering*, [https://www.dss.gov.au/sites/default/files/documents/04\\_2016/government\\_response\\_review\\_illegal\\_offshore\\_wagering.pdf](https://www.dss.gov.au/sites/default/files/documents/04_2016/government_response_review_illegal_offshore_wagering.pdf).

<sup>95</sup>*Ladbrokes yanks live-betting service*, THE SYDNEY MORNING HERALD (June 14, 2016), <http://www.smh.com.au/business/ladbrokes-yanks-its-livebetting-service-on-government-crackdown-20160613-gpiapm.html>.

## VII. CONCLUSION: AN EFFECTIVE GAMBLING POLICY

The Gaming policy in America and similarly, in India, is in its current state is not adept enough to meet the objectives of monitoring a ban on sports' gambling in the face of fixing scandals. Concerns such as saving the integrity of sports fall flat in the face of instances where prohibition does not positively reduce the incidence of point-shaving and intentional tanking by players for money. The correlation that an outright ban reduces the scope for match fixing is thus flawed, because facts show that it only creates alternative channels for sports' gambling that are illegal and unmonitored and major cash flows between these channels is not tracked by government enforcers. Sports scandals themselves have not shown preponderance towards reducing the spectatorship for respective sports and the apprehension of major sports leagues that they reduce the market for sports consumers may be unsound.

A better approach presently carried out by a number of European countries like United Kingdom, Norway, Germany and Hungary is to target the supply side of gambling providers. Gambling in these countries is a monopoly trade, which makes the monitoring, regulation and control of gambling activities a smaller burden to fulfil.<sup>96</sup> A licensing arrangement could be extended to all forms of sports' gambling in a manner that state-run lotteries are prevalent in the U.S. currently. State-regulated parlours would be at a competent level to designate what kind of betting must take place, for instance spread betting, the practice of ascertaining a spread of scores below or above which bets are taken could be outlawed to ensure reduction of point-shaving by players. The public choice model of choosing the parameters of regulation based on lobbying by interest groups should determine the manner and method of policy adoption by the state. The economic benefits of legalisation have changed from the time of the

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<sup>96</sup>GAINSBURY, *supra* note 3.

Prohibitive attitude of the early 1900s and a large amount of interest has been garnered for sports betting as integral to the way in which sports fans consume sports presently. People are less inclined to accept the paternalistic attitude of governments in deciding what avenues of activity must or must not be prohibited.

An important criterion for ensuring that legalisation would be effective would be to place incentives for bettors to remain in the legal market. An over-taxed betting policy would drive out those who desire to engage in legal betting activities from the market towards the underworld economy where safety of transactions is lowered along with tax rates. In the 1950s, the U.S government taxed gambling at a high rate of ten percent, until it had to be lowered so as to bring in maximum bettors under the ambit of legal betting.<sup>97</sup> Contrarily, high betting taxes to the extent of fifteen percent in United Kingdom did not lead to a major outflow of market participants because of the minimal underground criminal betting syndicates in the country. The appropriate balance of deriving sufficient revenues to offset the ill-effects of legalisation and ensuring the activity remains functional in the largely legal domain has to be devised. Focus on these policies becomes exponentially more crucial for governments in the face of the advent of online transacting, where it can be effectively handled by geo-blocking technology.

An overhaul of the Public Gambling Act in India to eke out a space for legal gambling activities in a safe, transparent and regulated manner is suggested by the author. The current regime is archaic as against countries that are successfully carrying out regulated betting, even in comparison to the limited betting model practised in Australia. A specifically-appointed Commission established under the Ministry of Youth Affairs and Sports to look into corruption in sports is a glaring necessity. While a strong regulatory model cannot wholly dispel the disillusionment arising out of manipulation in sport,

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<sup>97</sup>Hawkins, *supra* note 13.

it can go a long way in creating an atmosphere that champions the virtue of integrity in sport.