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Debating the “Elephant in the Room”: Sports Betting Regulation in India

Will the Law Commission Report trigger progressive deliberations on legalizing and regulating sports betting in India?

The Law Commission of India's ("LCI") report¹ ("Report") debating the need for regulation of gambling is fresh out of the oven, spreading "wafts" of deliberation and discussion throughout the country. The Report initially seemed brave and practical in its approach, recommending legalizing sports betting and providing inputs for a regulated regime. However, just a day after its release, LCI clarified that their primary recommendation was to ensure a complete ban on unlawful betting and gambling. Should the enforcement of this complete ban not be possible, the only viable option for government to consider would be to regulate.² The ball has been put in the court of the central and state governments to make a decision on legalization. Such a cautionary approach by LCI, makes you wonder if the 140 pages of the Report would be only a 'soliloquy' for deaf ears or the first steps towards 'taming' the issues of unregulated sports betting and illegal gambling in India.

This article sets out the timeline that led to the Report, the authors' views on its impact and a critique of some of LCI's recommendations.³

A Peep into the country called "India"

Seventy years of independence may have changed the facade of India, but morals and culture flowing from the ancient texts, scriptures and mythology are still an important part of its social fabric. Stories and references of 'gambling' and 'betting' are found in epics of Ramayana and Mahabharata and ancient texts like Rig Veda and Atharva Veda. The scriptures and texts have been sceptic in their approach and consider them as risky activities which can lead to 'self-harm' and 'self-destruction'.⁴ The Report, interestingly cites these references to explain how the Indian society views 'gambling' and 'betting' acts as immoral and a vice. In fact, it continues to do so even now.

On the other hand, India is at the cusp of witnessing a paradigm shift in its regulatory and policy regime across all spheres. As a developing country boasting of a 1.3 billion population, India recognizes that to

sustain its growing global credibility, it needs to move towards a progressive economy with community standards commensurate to the need of the hour. The technology and digital boom have ensured that Indians are powered with more than 300 million smartphones, and counting.⁵ This speaks volumes in terms of India's burgeoning market potential.

There have been a spate of vibrant debates and changes on issues ranging from net neutrality and data protection to preparing itself with a stronger and reliable enforcement and court system. India's recent mantra has been to work towards offering stable policies, clarify the norms of doing business and make investments more lucrative. Grippled with the background of this vivacity, the timeline that led to the Report in India triggered the much-needed debate on regulating sports betting.

"The Awakening": Timeline to the Report

In 2013 when the Indian Premier League ("IPL")⁶ was plagued with match fixing and spot fixing, the issues of sports-betting were equally highlighted owing to its inextricable

linkage. The Supreme Court of India ("SC") appointed Hon'ble Justice Mukul Muddal⁷, to investigate these allegations. Stressing on the ineptitude of the investigative agencies to tracking sports related frauds, the 'Mudgal Committee' recommended that legalization and regulation of sports betting was key to the detection of fraud. Interestingly, a report published by FICCI in 2013 highlighted that the underground betting market in India was estimated at Rupees 300,000 crores (approximately 43.8 billion USD).⁸

Another committee set up by the SC under the chairmanship of Hon'ble Justice R.M. Lodha, recommended on similar lines, emphasizing the need for punishing/criminalising match fixing and regulating betting. While considering the Lodha Committee report in the case of Board of Cricket Control in India v Cricket Association of Bihar & Ors,⁹ the SC made a reference to the LCI to examine the issue of legalizing betting in India. Following this, the LCI took on the mandate to look into the issue of 'betting' and 'gambling'. On May 30, 2017, the LCI issued a public appeal inviting the views of industry

stakeholders on the issue. With a deluge of recommendations flowing in from all quarters, after a year the Report was finally released.

Legalising sports betting: Much ado about nothing?

While the Report dealt with gambling and betting in general, the real trigger and purpose of the Report was to address the mayhem around sports-betting. The proponents of regulation argue that sports-betting is in fact a legal activity, fighting a pointless battle against public perceptions of illegality.

To give background, ‘betting and gambling’ are state subjects under the Constitution of India, 1950¹⁰ (“Constitution of India”) making it the States’ prerogative to enact laws relating to betting and gambling within their jurisdiction. While most State-specific gaming laws (“Gaming Enactments”) do not share a common definition of ‘gaming,’ it is understood to mean the act of wagering or betting for money or money’s worth under most Gaming Enactments. Barring a few, most Gaming Enactments exempt games preponderantly of skill from prohibitions thereunder. The Supreme Court has in fact recognised the business activity of conducting skill games as a fundamental right under the Constitution of India.¹¹

The Supreme Court of India also held that betting on horse racing was a game of skill since factors like fitness, and skill of the horse and jockey could be objectively assessed by a person placing a bet and hence do not fall within the prohibitions under the law.¹² There is a strong argument to make that the same principles applied to the horse racing case should also apply to betting on sports like cricket and football, thereby making sports betting a game of skill as well.¹³ In spite of this, India continues to be embroiled in the morality debate and perceptions against legality of sports betting.

In fact, LCI in its Report puts across same arguments with respect to sports betting and states that if substantial skill is required to place the bets, the argument of immorality of the activity does not survive. Hence, it is not clear why LCI cautiously

omits to recommend sports betting as an exempted “skill centric game”.

Therefore, LCI’s recommendation on whether sports betting should be treated as an exempted “skill-centric” game or a gambling activity (which needs regulation) is unclear. All eyes would now be on the Supreme Court who a while ago had been tasked with determining whether sports betting is preponderantly skill based in the case of *Geeta Rani v Union of India*.¹⁴

Slay the dragon or tame it? LCI’s mixed bag of statements & recommendations

In light of the clarification, the LCI recommendations could be a bit confusing to decode. However, on a closer review of the Report, it would be fair to say that despite its cautionary approach, LCI tried to evaluate both sides of the coin. Albeit as alternate recommendations, the Report does set out some interesting and apt headline items to consider for prospective legislation in India. The Report reflects the massive amount of research and effort the LCI has put into evaluating the matter and highlighting relevant material on the subject. It sets out detailed references from ancient texts to existing laws. It suggests regulation as an effective measure to curb the menace of black-money generation through illegal gambling and prevent instances of ‘problem gambling’. The Report also sets out relevant amendments to other existing laws in case of implementation of regulation. Notably, it acknowledges the present restrictions on foreign investment and recommends the relaxation of the norms to allow investment in the gambling industry. Some interesting hits and misses of the Report have been analysed below.

Tipping the hat to the positives of regulation but refraining to go the complete mile

The Report acknowledges the positives of legalization of gambling including the potential to generate revenues and employment, increase tourism as a complimentary industry, protect the consumer and give stability to the operators/players at the hands of law enforcement authorities.¹⁵ The Report also ends on a positive note stating that “as society changes,

the law cannot remain immutable” and “the law exists to serve the needs of the society which is governed by it”. The Report supports the need of evolving and progressive community standards. However, the Report stops short and hesitates to give a bold recommendation to implement LCI’s own sound logic. Irrespective of this approach, one hopes that the encouraging views and analysis in the Report fuel the much required discussions around the subject, which till now was the ‘Voldemort’ amongst government debates.

Self-regulation to combat over-regulation

While the Report touches upon the unicorns and rainbows of regulation, it also acknowledges and sets out the advantages of self-regulation by industry bodies. It notes that it is not a rare phenomenon to allow industries to establish their own standards with a degree of government control,¹⁶ keeping at bay the ill effects of over-regulation by the government.

“To be or not to be, that is the question”- States to decide on regulation

The LCI’s seems to recommend implementation of a central legislation and state wise regulation in the same breath. On one hand, it recommends that since online betting is offered on internet and mobile, the centre has the legislative competence to enact the law,¹⁷ while on the other, it states that the States have the power to enact a law and the centre should provide for a model law for the States to adopt. Apart from the legal debate it creates on legislative competence, the recommendation does not solve the current issue at hand. Today the industry is struggling with conflicting and unstable policies and approaches by different States. To give an example, while Nagaland provides for a license regime for skill games, Telangana overnight amended its law to ban the same. Especially for an online business, this inconsistency affects the growth plans. The industry’s appeal to the LCI was to give a clear direction to the parliament on the approach for enacting a central law for at least skill

games. The Report not only brings the decision back to the government's court but also ignores the folly conflicting state regulations can pose for a country-wide online gaming business.

Keeping mum on onerous taxes

One of the key impediments to effective implementation of any regulation is offering an economically viable business opportunity to the operators. The industry had made representations to the LCI to curtail onerous taxes, in the hope that some positive recommendations would be offered in the Report. However, the Report remains conspicuously silent on any tax related recommendation. This was a key concern for the Indian gaming industry, which the Report notes, but fails to redress. The high taxation rates prevalent in France and Greece have acted as a disincentive for players and operators to partake in the regulated regime there. If India sticks to an ostrich approach, imposing regulation without incentivizing the operators and players to participate in legal regime, would render the effort of little use.

Protection of players of skill centric games

LCI notes that since horse-racing is characterized as a game of skill that is exempt from the prohibitions, other skill games should be afforded this exemption. However, it recommends that the operators should focus on the safety and protection of the players.

Restrictions on wager amounts & participation eligibility

The Report suggests regulation as an effective measure to curb the menace of black-money generation through illegal gambling and prevent instances of 'problem gambling'. It advocates for a variety of restrictions to safeguard users from the hazards of gambling. It suggests imposing an upper cap on user transactions within a specified period (a month, half a year, or a year), an upper cap on wager amount on the basis of deposits, winnings or losses and exclusion of players who avail of benefits from social welfare schemes for their sustenance. It also suggests a bifurcation of 'proper gambling' (denoting higher stakes gambling) and 'small gambling' (denoting lower stakes gambling), recommending that only individuals belonging to higher income groups would be permitted to indulge in the former. While one can argue whether such restrictions risk over-regulation, but keeping in mind player protection and issue of problem gambling, this is a sensible suggestion. The real devil will lie in the detail of what the thresholds prescribed would be.

Some other noteworthy recommendations

- o The Report also makes subtle recommendations on having a 'game license authority' but does not flesh out its composition, role or responsibility.
- o All gambling transactions are recommended to be linked to social

security numbers (i.e. Aadhar in the Indian context) to help transparency.

- o The report has cautioned that gambling and betting should only be permitted to be offered by Indian licensed operators operating from within India. While the report suggests that licenses should be awarded by a 'game licensing authority,' it does not provide any recommendations on who such an authority shall comprise of, or how it shall operate

Will we 'chase rainbows' or find that pot of gold?

The Report may have triggered vocal resistance of certain politicians towards regulation, but this is not unexpected. At the brink of the 2019 general elections, no government would want to get embroiled into moral debates. But for a fast growing economy like India, the pace of law making needs to be commensurate to innovation in business and technology. The industry makes a strong business case, especially in terms of player protection, employment generation and revenues to the state. But it elicits the inevitable question- post elections would the government choose to evaluate this business case. Till then, brace yourself for a slew of debates and musings from hopefully, optimistic minds. **CGL**

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1. <http://lawcommissionofindia.nic.in/reports/Report276.pdf> Report No. 276, Law Commission of India, 'Legal Framework: Gambling and Sports Betting,' July 2018

2. <http://lawcommissionofindia.nic.in/reports/press-note-6.7.18.pdf> Law Commission of India, Press Note dated July 6, 2018

3. Views and opinions expressed in this article are the authors' personal views and interpretation of reading the Report.

4. Paragraphs 2.5 to 2.14, at pages 7-12 of the Report

5. <https://money.cnn.com/2017/09/26/technology/india-mobile-congress-market-numbers/index.html>

6. A professional cricket league in India

7. Former Chief Justice of the High Court of Punjab and Haryana

8. <http://fci.in/SEdocument/20208/report-betting-conference.pdf>

9. (2016) 8 SCC 535

10. Constitution of India, Seventh Schedule, List II, Entry No. 34 Betting and Gambling.

11. State of Bombay v RMD Chamarbaugwala, AIR 1957 SC 699

12. K R Lakshmanan vs State of Tamil Nadu, AIR 1996 SC 1153

13. It is interesting to note that the issue of sports betting was considered by the Delhi District Court in State vs Ashwani Aggarwal (SC No 115/13). The court heard extensive submissions relating to the role of organised crime and black money in sports betting. It observed that the Public Gambling Act, 1867, though it made gambling illegal, had created an exception with respect to games where skill was involved while being played. The court referred to Lakshmanan Case, wherein betting on horse racing was held to be a game of skill since factors like fitness and skill of the horse and jockey could be objectively assessed by a person placing a bet. The District Court noted that cricket was a game that required training, practice, strategy and knowledge to be played. Therefore, cricket was squarely a game of skill. The court, applying the ratio in Lakshmanan Case, observed that betting on the outcome of a game of cricket would not constitute an offence under the Public Gambling Act, 1867.

14. W.P. (C) No. 000287/2017

15. Paragraph 8.27 at page 109 of the Report.

16. Paragraph 8.28 at pages 109-110

17. Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication; Entry 31, List I, Seventh Schedule, Constitution of India