

Law Commission Report Summary

Legal Framework: Gambling and Sports Betting Including Cricket in India

- The Law Commission of India (Chair: Justice B.S. Chauhan) submitted its report on July 5, 2018, examining whether betting may be legalised in India. The report follows a Supreme Court directive in 2016 where the Court asked the Commission to examine the possibility of a law to regulate betting. The Commission noted that while it is desirable to ban betting and gambling, it is difficult to prevent these activities altogether. Therefore, it recommended regulation of gambling and betting.
- **Regulating gambling and betting:** Betting and gambling is a state subject under the Constitution. Therefore, the Commission noted that state legislatures may enact a law to regulate betting and gambling. However, it stated that Parliament may enact a model law to regulate betting and gambling, which states may adopt. Parliament may also enact laws under Article 249 (in national interest) or Article 252 (if two or more states consent). With regard to online gambling and betting, it observed that Parliament has the competence to enact a law.
- **Regulations governing gambling and betting:** The Commission recommended that gambling and betting should only be permitted by licensed operators from India. For participants, it recommended that there should be a cap on the number of such transactions for a specific time period, i.e., monthly, half-yearly or yearly. It further recommended that transactions between operators and participants should be made cashless and penalties should be imposed for cash transactions.
- In order to protect the public from the ill-effects of these activities and to increase transparency and state supervision, the Commission recommended that all betting and gambling transactions should be linked to the Aadhaar/PAN Card of the operator and the participants. Further, any income derived from betting or gambling should be made taxable under the Income Tax Act (IT Act), 1961, the Goods and Services Tax Act (GST), 2017, and other relevant laws.
- **Classification of gambling:** The Commission recommended classifying gambling activities into two categories, namely ‘proper gambling’ and ‘small gambling’. “Proper gambling” would be characterised by higher stakes. Only individuals belonging to higher income groups will be permitted to indulge in “proper gambling”. Individuals belonging to the lower income groups will only be permitted to indulge in “small gambling”. The stakes for “small gambling” will fall below the bracket of of stakes permitted in “proper gambling”.
- **Prohibited persons:** The Commission recommended that certain classes of persons should be barred from participating in online or offline gambling platforms. These persons include: (i) minors, (ii) those who receive subsidies from the government, or (iii) those who do not fall within the purview of the Income Tax Act, 1961, or the Goods and Services Tax Act, 2017.
- **Amendments to FEMA:** The Commission recommended that the Foreign Exchange Management Act, 1999 and the Foreign Direct Investment Policy be amended to encourage Foreign Direct Investment in the casino/online gaming industry, and for other purposes. It felt that this would propel the growth of tourism and hospitality industry in such states, and would also lead to higher revenue and an increase in employment opportunities.
- **Amendment to IT Rules:** Under the Information Technology (Intermediary Guidelines) Rules, 2011, intermediaries are barred from hosting or transmitting content relating to or encouraging gambling. The Commission recommended barring only those intermediaries which illegally transmit or host content related to gambling. This will ensure that intermediaries are not held liable in states which license gambling.
- **Match-fixing and sports fraud:** The Commission recommended that match-fixing and sports fraud should be made criminal offences with severe punishments.

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