

January 2014

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Erin Gardner Schenk

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### Recommended Citation

Erin Gardner Schenk, Betting on Bowlers: This Just Isn't Cricket, 43 Denv. J. Int'l L. & Pol'y 91 (2014).

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## Betting on Bowlers: This Just Isn't Cricket

### Keywords

Gambling, Gaming, Sports

## BETTING ON BOWLERS: THIS JUST ISN'T CRICKET

Erin Gardner Schenk\*

### I. INTRODUCTION

Traditionally, the idiom, “this just isn’t cricket,” refers to something awry or dishonorable.<sup>1</sup> The expression derives from the strict code of sportsmanship that gave cricket the badge of being the “gentlemen’s sport.” However, stemming from the increasingly immense popularity of Indian cricket throughout the last century, sports betting—an illegal pastime under India’s gambling laws—has also become a huge industry.<sup>2</sup> Because punters<sup>3</sup> often wager enormous sums of money, corruption within the sport of cricket, in the forms of match-fixing and spot-fixing,<sup>4</sup> has become increasingly problematic.<sup>5</sup> In response to this corruption, many Indians advocate for the legalization of gambling, including sports betting, arguing that legalization would remove the incentive to bet on the black market

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\* Erin Gardner Schenk (J.D., 2014, University of Denver; B.B.A., 2005, University of Oklahoma) is grateful for the endowment of the Honorable Leonard v.B. Sutton and the dedication of Professor Ved Nanda, both of whom pioneered a belief in the importance of international law in Colorado. She also thanks Suraj and Subhashini Chalam and their entire family, who were kind enough to invite her into their lively home and their captivating city of Bengaluru. Finally, she thanks her family who encouraged her while writing this article, most notably Jason Schenk, who was supportive and long-suffering all throughout her legal studies, and her devoted parents, Michael and Jan Gardner, who likely began teaching her the importance of the Oxford comma while she was still *in utero*.

1. *Not Cricket Definition*, OXFORD DICTIONARIES: LANGUAGE MATTERS, <http://www.oxforddictionaries.com/definition/english/not-cricket> (last visited Sept. 17, 2014) (“Something contrary to traditional standards of fairness or rectitude”).

2. See ASSER INT’L SPORTS LAW CTR., SPORTS BETTING: LAW AND POLICY 444 (Paul M. Anderson et al. eds., 2012) (stating recent estimates suggest bets placed on a One Day International match being played anywhere in the world top US\$150 million). See also SIR PAUL CONDON, INT’L CRICKET COUNCIL, REPORT ON CORRUPTION IN INTERNATIONAL CRICKET 4 (2001), available at <http://www.icc-cricket.com/about/47/anti-corruption/reports>.

3. Betting is also called “punting,” and those who place the bets are often called “punters.” The terms will be used interchangeably throughout this paper.

4. *Spot-fixing Definition*, OXFORD DICTIONARIES: LANGUAGE MATTERS, <http://www.oxforddictionaries.com/us/definition/english/spot-fixing> (last visited Sept. 17, 2014) (Spot-fixing is the predetermination by a player, for the benefit of a better, of how a particular play will occur, in exchange for a payout to the player).

5. CHRISTIAN KALB, INT’L SPORTS FED’NS, INTEGRITY IN SPORT: UNDERSTANDING AND PREVENTING MATCH-FIXING 5, 7, 13 (2011), available at [http://www.sportaccord.com/multimedia/docs/2013/03/2013-02\\_-\\_SportAccordIntegrityReport\\_UpdatedFeb2013.pdf](http://www.sportaccord.com/multimedia/docs/2013/03/2013-02_-_SportAccordIntegrityReport_UpdatedFeb2013.pdf).

and would generate revenue in the form of gambling taxes.<sup>6</sup> Based on two underlying factors—India's deep, historical ties both to cricket and to England, its former colonizer that brought the sport to the subcontinent, as well as the similarities in the two countries' common law legal systems—Indian pro-legalization advocates look to the United Kingdom's<sup>7</sup> recent legalization of gambling as a model for what they argue India should do.<sup>8</sup>

However, this paper asserts the United Kingdom's gambling laws would not successfully translate into Indian culture due to disparities in the two nations' religious compositions, political landscapes, and legal enforcement mechanisms. Specifically, Section II of this paper provides background as to the relationship between the U.K. and India. It also includes information about the history of cricket and the environment of the sport, both of which are foundational to an understanding of India's current push for gambling legalization. Section III examines the gambling laws in the U.K. and in India, as well as the evolution and progression of those laws. Section IV examines the religious, political, and socio-economic situation in the U.K., and Section V examines those same three indicia as they pertain to India. These cultural features serve as the framework for understanding each nation's current position regarding the legality of gambling. Section VI then analyzes the differences between the two nations, as detailed in Sections IV and V, and evaluates the prudence of any impending decision to legalize gambling in India. Ultimately, the paper concludes in Section VII with the author's assertion that India's response should not be to legalize gambling, but rather to reaffirm and reinforce its current laws to include increased penalties for infractions, while fostering administrative transparency and improving enforcement mechanisms.

## II. BACKGROUND

Scholars are uncertain as to cricket's origins.<sup>9</sup> However, cricket undisputedly and swiftly assumed a position of significance in domestic English high society as

6. See Usman Rangeela, *CBI Chief's Suggestion to Legalise Gambling is Valid*, TIMES OF INDIA (Nov. 19, 2013, 8:56 AM), <http://timesofindia.indiatimes.com/sports/cricket/ipl/news/CBI-chiefs-suggestion-to-legalise-gambling-is-valid/articleshow/26019464.cms>.

7. For the purpose of this paper, the term "England" will encompass the present-day United Kingdom, and the two terms may be used interchangeably.

8. See, e.g., Rohani Mahyera, Comment, *Saving Cricket: A Proposal for the Legalization of Gambling in India to Regulate Corrupt Betting Practices in Cricket*, 26 EMORY INT'L L. REV. 365, 370-71 (2012).

9. See *The History of Cricket*, NAT'L LIBR. AND INFO. SYS. AUTHORITY OF TRIN. AND TOBAGO, <http://www.nalis.gov.tt/Research/SubjectGuide/Sport/Cricket/tabid/181/Default.aspx?PageContentMode=1> (last visited Sept. 17, 2014) (showing the origin of the name has two explanations: first, the name may come from the Anglo-Saxon word, "cricce," meaning "crooked staff," as it is believed the original cricket bats resembled modern day hockey sticks rather than their current shape; second, the name may have come from a church stool, known as a "krickstoel" in Flanders and a "cricket" in England, the shape of which the early wickets significantly resembled. Documentation also exists as to a game called "criquet" in northeast France in 1478; however it is unknown whether this resembled the modern sport of cricket).

well as in its colonial interests.<sup>10</sup> By the eighteenth century, wealthy English landlords often hosted matches amongst their leaseholders and the country folk.<sup>11</sup> The first documented organized county match-up was a Kent-Surrey match in 1709, and evidence indicates that heavy betting existed even in the earliest matches.<sup>12</sup> Not long thereafter, in 1721, the first cricket match in India was documented on the western coast near Kutch.<sup>13</sup>

Since its independence from England in 1947,<sup>14</sup> India has expended extensive efforts on distancing itself from England's former colonial influence.<sup>15</sup> Despite these efforts and despite the colonial origins of Indian cricket,<sup>16</sup> the popularity of the sport has soared amongst the Indian people since the mid-twentieth century.

From the early days, the idiom, "this just isn't cricket"—referring to something that lacks honor, propriety, or fairness<sup>17</sup>—developed from the fastidious attention supporters paid to the technique with which a player executed each move in what would come to be known as a true "gentleman's sport."<sup>18</sup> British aristocrats who cultivated the sport permitted no cheating and no bodyline bowling.<sup>19</sup> Cricket has long been a self-governing activity with its own set of laws.<sup>20</sup> In fact, the expectation of honor was so deeply ingrained that if an umpire

10. Furthermore, sport in Britain, generally, has always been a keystone of the fortress of global influence and acceptance Britain has enjoyed in recent history; cricket is no exception. See *SPORT IN BRITAIN: A SOCIAL HISTORY 3* (Tony Mason ed. 1989).

11. *The History of Cricket*, *supra* note 9.

12. Marcus K. Williams & Rex Alston, *Cricket History: The Early Years*, *ENCYCLOPEDIA BRITANNICA: ACAD. EDITION*, <http://www.britannica.com/EBchecked/topic/142911/cricket/30478/The-early-years> (last visited Sept. 17, 2014).

13. *History*, BOARD OF CONTROL FOR CRICKET IN INDIA, <http://www.bcci.tv/about/2014/history> (last visited Sept. 17, 2014).

14. Indian Independence Act, 1947, 10 & 11 Geo. 6, c. 30, § 1 (Eng.), available at [http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga\\_19470030\\_en.pdf](http://www.legislation.gov.uk/ukpga/1947/30/pdfs/ukpga_19470030_en.pdf).

15. Recent nationalistic efforts include reversion to former Indian names of streets, cities, and states.

16. In fact, India joining the ranks of the elite test clubs in 1932, followed by its first cricket match at Lord's in London, attended by over 24,000 fans, including the King of England (then Emperor of India), is cited as being one of the major turning points in Indian nationalism that eventually lead to its independence. Ravi Shastri, *Story of Cricket: Asia's New Found "Religion"*, *BBCWORLDSERVICE.COM*, [http://www.bbc.co.uk/worldservice/specials/1157\\_cricket\\_history/page6.shtml](http://www.bbc.co.uk/worldservice/specials/1157_cricket_history/page6.shtml) (last visited Sept. 17, 2014).

17. *Not Cricket Definition*, *supra* note 2.

18. Rajeshwari Singh, *Why is Cricket Called a 'Gentleman's Game'?*, *TIMES OF INDIA* (Apr. 17, 2011, 05:49 AM), [http://articles.timesofindia.indiatimes.com/2011-04-17/open-space/29427254\\_1\\_cricket-bodyline-bowling-english-aristocrats](http://articles.timesofindia.indiatimes.com/2011-04-17/open-space/29427254_1_cricket-bodyline-bowling-english-aristocrats).

19. *Bowl Definition*, *CAMBRIDGE DICTIONARIES ONLINE*, [http://dictionary.cambridge.org/dictionary/british/bowl\\_3](http://dictionary.cambridge.org/dictionary/british/bowl_3) (last visited Sept. 17, 2014) (Bowl, in the context of cricket, means "to throw a ball towards a batsman (the player who hits the ball) using a vertical circular movement of the arm while running").

20. See *Introduction: MCC and the Laws of Cricket*, *LORD'S: THE HOME OF CRICKET*, <http://www.lords.org/mcc/laws-of-cricket/introduction> (last visited Sept. 27, 2014).

mistakenly failed to call a batsman out,<sup>21</sup> the batsman was expected to walk<sup>22</sup> of his own volition.<sup>23</sup>

That expectation of propriety notwithstanding, one drastic change in cricket in recent years is the evolution of its faster-paced versions, One Day International<sup>24</sup> cricket and Twenty20<sup>25</sup> cricket, which have transformed cricket from an elitist sport to one that is enjoyed by the masses. These newer forms of cricket offer swifter spectator gratification than the traditional form, "Test" cricket, in which matches span up to five days, incorporate planned pauses for "tea,"<sup>26</sup> and are played in classic white cricket flannels.<sup>27</sup> The concept of Twenty20 cricket originated in 2003 when the England and Wales Cricket Board was faced with replacing the one-day Benson and Hedges Cup.<sup>28</sup> Twenty20 cricket is a substantially condensed (one innings<sup>29</sup> [sic] per team, each innings consisting of twenty overs<sup>30</sup>) and colorfully-clad version of cricket.<sup>31</sup> The launch of international Twenty20 cricket, as well as the Indian Premier League ("IPL"), which followed in 2008,<sup>32</sup> has drastically changed the face of cricket in India.

21. ROBERT EASTAWAY, *CRICKET EXPLAINED* 133 (1992) (first published in Great Britain as *What Is a Googly*, Robson Books Ltd.) ("Out[:] end of batsman's innings because he is bowled, caught [sic] etc., at which point he has to leave the field [also dismissed and many other colloquialisms]").

22. *Id.* at 141 ("Walk (vb) batsman decides he is out before waiting for the umpire's decision (very honourable [sic] thing to do)").

23. *Id.*

24. India played its first One Day International tour in 1974. See *India Tour of England, 1974: Scorecard*, ESPN CRICINFO, <http://www.espnricinfo.com/columns/engine/match/64951.html> (last visited Sept. 27, 2014); *When India Played First-ever ODI Series*, NEWSCHOU PAL.COM (Oct. 14, 2011), <http://newschoupal.com/2011/10/14/when-india-played-first-ever-odi-series>.

25. See *Records: Twenty20 Matches*, ESPN CRICINFO, <http://stats.espnricinfo.com/pak/engine/records/index.html?class=6> (last visited Sept. 27, 2014).

26. See INT'L CRICKET COUNCIL, STANDARD TEST MATCH PLAYING CONDITIONS, at Law 3.14 (2013), available at [http://icc-live.s3.amazonaws.com/cms/media/about\\_docs/524ac43be2aca-Standard%20Test%20Match.pdf](http://icc-live.s3.amazonaws.com/cms/media/about_docs/524ac43be2aca-Standard%20Test%20Match.pdf) ("Change of Intervals: If play has been suspended for any reason other than normal intervals for 30 minutes or more prior to the commencement of the scheduled or rescheduled tea interval on that day, the tea interval shall be delayed for 1/2 hour.").

Cricket "tea" generally connotes a light snack, which formerly incorporated actual tea and fingerling sandwiches, but which has currently become far more functional in nature, for the players, meaning primarily nutritional staples and supplements. See Elaine Lemm, *How to Prepare the Perfect Cricket Tea*, ABOUT.COM, <http://britishfood.about.com/od/diningdrinkingtradition/ss/The-Perfect-Cricket-Tea.htm> (last visited Sept. 27, 2014).

27. See SAILESH S. RADHA, *FIVE DAYS IN WHITE FLANNELS: A TRIVIA BOOK ON TEST CRICKET* 105 (2009).

28. *CRICKETING CULTURES IN CONFLICT: WORLD CUP 2003* 169 (Boria Majumdar & J. A. Mangan eds., 2004).

29. "Innings" is the proper singular form of the noun when referring to the play time of one single player.

30. EASTAWAY, *supra* note 21, at 133 ("Over (n) set of six balls bowled by one bowler. No balls and wides do not count towards the over").

31. JAMES ASTILL, *THE GREAT TAMASHA: CRICKET, CORRUPTION, AND THE SPECTACULAR RISE OF MODERN INDIA* xii (2013).

32. *Indian Premier League: How it all Started*, TIMES OF INDIA (Apr. 2, 2013, 10:34 AM), <http://timesofindia.indiatimes.com/ip1/ip1-history/Indian-Premier-League-How-it-all-started/articleshow/19337875.cms>.

Indians have worshiped Twenty20 cricket from the moment India defeated archrival Pakistan and won the inaugural International Cricket Council (“ICC”) World Twenty20 tournament in September of 2007.<sup>33</sup>

Although the advent of Twenty20 cricket itself is not the source of cricket corruption in India,<sup>34</sup> the influx of extremely wealthy investors in Twenty20 cricket—including movie stars and entrepreneurs otherwise unrelated to the sport<sup>35</sup>—has created an environment ripe for corruption.<sup>36</sup> Additionally, with the shortened format of the Twenty20 cricket match and, consequently, the dramatically increased viewership as compared to that of Test cricket, came the increased opportunity for spot-betting.<sup>37</sup>

Ultimately, although the landscape of the game has changed significantly, the popularity of cricket has only grown.<sup>38</sup> Furthermore, the degree to which Indians hold the sport sacred is exhibited by famous and recently-retired<sup>39</sup> Indian cricketer Sachin Tendulkar’s nomination by Indian President Pranab Mukherjee to the Rajya Sabha, India’s upper house of Parliament,<sup>40</sup> based on Tendulkar’s “special knowledge or practical experience in respect of such matters as literature, science, art and social service.”<sup>41</sup> Tendulkar was also conferred with the Bharat Ratna,

33. *Id.* See also ICC World Twenty20: 2007/08 Results, ESPN CRICINFO, <http://www.espnricinfo.com/twenty20wc/engine/series/286109.html> (last visited Sept. 27, 2014).

34. CONDON, *supra* note 3, § 2, ¶ 69 (stating the ICC Anti-Corruption division also cites the advent and increased availability of mobile phones as a contributing factor to recent cricket corruption); *The Cronje Chronicles: A Timeline of the Hansie Cronje Match-fixing Episode from 2000 and the Impact on the Players Named*, ESPN CRICINFO (July 22, 2013), <http://www.espnricinfo.com/ci/content/story/654219.html> (representing that cricket corruption existed before Twenty20 cricket as well).

35. See discussion *infra* Part V.C.2.

36. ASTILL, *supra* note 31, at xiii-xiv.

37. Usman Rangeela, *CBI Chief’s Suggestion to Legalise Gambling is Valid*, TIMES OF INDIA (Nov. 19, 2013, 8:56 AM), <http://timesofindia.indiatimes.com/sports/cricket/ipl/news/CBI-chiefs-suggestion-to-legalise-gambling-is-valid/articleshow/26019464.cms> (“[G]ambling on horse racing and cricket in particular grew manifold when limited-overs cricket became a rage following India’s World Cup victory in 1983.”).

38. ASTILL, *supra* note 31, at xii (stating cricket is recent and continuing rise in prominence developed in conjunction with the proliferation of technology throughout the country, generally, and especially to rural areas; James Astill, Political Editor and Bagehot columnist for the Economist, estimates that in 1989, just under twenty-five years ago and the first year Sachin Tendulkar—the most famous Indian cricketer and one of the most famous Indians—began playing the sport, only thirty million Indian households had televisions; now, however, that number has grown to more than 160 million households with televisions).

39. See Annie Gowen, *Sachin Tendulkar, India’s ‘God of Cricket,’ Retires*, WASH. POST (Nov. 14, 2013), [http://www.washingtonpost.com/world/asia\\_pacific/sachin-tendulkar-indias-cricket-god-retires/2013/11/14/98355548-4d49-11e3-bf60-c1ca136ae14a\\_story.html](http://www.washingtonpost.com/world/asia_pacific/sachin-tendulkar-indias-cricket-god-retires/2013/11/14/98355548-4d49-11e3-bf60-c1ca136ae14a_story.html).

40. The Rajya Sabha is also called the Council of States. The other house of Indian Parliament is called Lok Sabha, or the Council of Ministers. YOGENDRA NARAIN, AN INTRODUCTION TO THE PARLIAMENT OF INDIA 21-22 (4th ed. 2007), available at [http://rajyasabha.nic.in/rsnew/Parliament\\_of\\_India.pdf](http://rajyasabha.nic.in/rsnew/Parliament_of_India.pdf) (explaining the relationship between the two houses).

41. See Sportsmail Reporter, *Top Honour for Tendulkar: Legendary Batsman Sworn into Indian Parliament*, MAIL ONLINE, <http://www.dailymail.co.uk/sport/cricket/article-2154388/Batsman-Sachin->

India's highest civilian honor, "in recognition for [his] contribution to [Indian] society."<sup>42</sup> These distinctions show not only the respect Tendulkar has personally earned from his nation, but more importantly, the tremendous degree to which the sport of cricket is revered in India.

### III. THE LAWS ON GAMBLING IN THE U.K. AND IN INDIA

Even though the very concept of gambling is said to have originated in India<sup>43</sup> with a game involving tossing the Vibhitaka seed to see on which side it would land,<sup>44</sup> India's modern laws prohibit operating, funding, or even being present in a "gaming-house."<sup>45</sup> Gambling is currently illegal in India, with the exceptions of casinos in two states<sup>46</sup> (Goa<sup>47</sup> and Sikkim<sup>48</sup>), horse betting, and certain (usually government-operated) state lotteries.<sup>49</sup> In a recent decision in the High Court of Judicature at Madras, the judge, prior to holding rummy for stakes to be illegal, observed, "the [gambling] activities which have been condemned in this country from ancient times appear to have been equally discouraged and looked upon with

Tendulkar-sworn-Indian-Parliament.html (last updated June 4, 2012, 4:23 PM) (stating out of the 250 members of Parliament, Tendulkar is the first athlete to be nominated as a Member of Parliament).

42. *Sachin Tendulkar and CNR Rao Conferred Bharat Ratna*, TIMES OF INDIA (Feb. 4, 2014, 12:08 PM), <http://timesofindia.indiatimes.com/sports/series-tournament/bharat-ratna-sachin-tendulkar/top-stories/Sachin-Tendulkar-and-CNR-Rao-conferred-Bharat-Ratna/articleshow/29849599.cms>.

43. *The History of Gambling in India*, CASINOONLINE.NET.IN, <http://casinoonline.net.in/history> (last visited Sept. 27, 2014).

44. ENCYCLOPAEDIA OF THE HINDU WORLD 306 (Ganga Ram Garg ed., vol. 2 1992) ("The dice appear normally to have been consisted [sic] of small nuts called vibhīdaka or vibhītaka. . . . Later oblong dice with four scoring sides were used.")

45. Public Gambling Act, No. 3 of 1867, §§ 4, 8, INDIA CODE (1993), available at <http://indiacode.nic.in>.

46. See INDIA CONST. art. 246, list 2, §§ 34, 62 (representing that states are permitted by the Constitution of India to legalize gambling within their own territories; however, currently, only Goa and Sikkim have elected to legalize gambling beyond state lottery).

47. K.C.D. Gangwani, *The Goa, Daman and Diu Public Gambling Act, 1976*, in 3 MANUAL OF GOA LAWS: M TO Q 937, 946-47, para. 13A (2011), available at <http://goaprintingpress.gov.in/uploads/Public%20Gambling%20Act.pdf> ("(1) Notwithstanding anything contained in this Act, the Government may authorised any game of electronic amusement/slot machines in Five Star Hotels {and such table games and gaming on board in vessels offshore as may be notified} subject to such conditions, including payment of such recurring and non-recurring fees, as may be prescribed[;] (2) [t]he provisions of this Act [prohibiting and punishing gambling] shall not apply to any game authorised under sub-section (1).").

48. Sikkim Regulation of Gambling (Amendment) Act, 2005, No. 23 (India), available at <http://districtcourtsnamchi.nic.in/laws/gambling%20act%20%28amended%29.pdf> ("In the said notification, after third paragraph, the following paragraph shall be inserted, namely: 'The State Government may by rule regulate gambling in a manner as it may be considered expedient and the rule may relate to the following, namely- (1) The rule may provide for place or time or days or area where such gambling may be allowed[;] (2) [t]he rule may provide for procedure for obtaining license for such gambling house.'").

49. Ashish Roy, *Government Issues List of Legal Lotteries*, TIMES OF INDIA (Nagpur) (Jan. 9, 2011, 5:18 AM), [http://articles.timesofindia.indiatimes.com/2011-01-09/nagpur/28355708\\_1\\_illegal-lotteries-lottery-tax-lottery-market](http://articles.timesofindia.indiatimes.com/2011-01-09/nagpur/28355708_1_illegal-lotteries-lottery-tax-lottery-market).



disflavour [sic] in England, Scotland, the United States of America[,] and in Australia . . . .”<sup>50</sup> However, this statement appears on the surface to be untrue, at least in recent years, since the U.K.’s Parliament passed a bill legalizing most forms of gambling.<sup>51</sup>

#### A. *Gambling Laws in the U.K.*

The U.K. Parliament recently passed the Gambling Act, 2005 (“U.K. Act”), legalizing gaming, betting, and participation in a lottery.<sup>52</sup> The U.K. Act also established the Gambling Commission<sup>53</sup> and tasked the commission with regulating commercial gambling in the U.K.<sup>54</sup> However, the evolution of England’s gambling laws was a slow process, and the U.K. Act was a departure from the U.K.’s history of prohibiting gambling or only permitting it in specific instances.

The Unlawful Games Act 1541 [sic]<sup>55</sup> (“1541 Act”) initially banned gambling in the U.K. because King Henry VIII believed the popularity of such games was distracting men from the focus of perfecting military skills and protecting the realm.<sup>56</sup> The scope of this ban was broad, even including tennis and “bowls.”<sup>57</sup> Because of the stringent nature of the 1541 Act, it was often ignored; therefore, the Gaming Act, 1739 was specifically designed to target lack of enforcement (especially in Ireland) by imposing penalties on any judiciary members, or “Justices of the Peace” that turned a blind eye to enforcement of the laws.<sup>58</sup>

Largely because the very sweeping prohibitions of the 1541 Act banned healthy and otherwise legitimate sporting activities and because of the lack of reverence paid to the previous laws, 1844 saw the Select Committees of the House of Lords and House of Commons appointed to holistically examine existing gambling laws.<sup>59</sup> Very shortly thereafter, the Gaming Act, 1845<sup>60</sup> repealed previous enactments prohibiting games of skill.<sup>61</sup> However, it also relieved courts

50. *Dir. Gen. of Police v. Mahalakshmi Cultural Ass’n*, W.A.No.2287 of 2011 (Madras H.C.) ¶ 17 (Mar. 22, 2012), available at <http://indiankanoon.org/doc/61898553>.

51. See Mahyera, *supra* note 8; Jay Sayta, *Time Ripe for Gambling Law Reforms*, STATESMAN (Sept. 12, 2013), <http://www.thestatesman.net/news/17204-time-ripe-for-gambling-law-reforms.html>.

52. Gambling Act, 2005, c. 19, Part 1, § 3 (U.K.).

53. *Id.* Part 2, § 20.

54. *Who We Are*, GAMBLING COMMISSION, <http://www.gamblingcommission.gov.uk/> (last visited Sept. 27, 2014).

55. U.K. laws are titled with only the name of the act and the year. See generally *UK Public General Acts*, LEGISLATION.GOV.UK, <http://www.legislation.gov.uk/ukpga> (last visited Oct. 6, 2014).

56. Anderson et al., *supra* note 2, at 608.

57. *Id.* See *The Online Guide to Traditional Games: Bowls*, TRADGAMES.ORG.UK, <http://www.tradgames.org.uk/games/Bowls.htm> (last visited Sept. 27, 2014) (stating bowls was a game involving the bowling of small wooden balls, knocking opponent’s balls out of the way in an attempt to be nearest to a “jack,” or target ball; it is the sport upon which the Italian “Boece” is based).

58. Anderson et al., *supra* note 2, at 608.

59. *Id.* at 609.

60. *Id.* Notably for pro-legalization advocates, the U.K. Gaming Act, 1845 uses similar language permitting games of skill as does India’s Public Gambling Act, 1867.

61. *Id.*

of any obligation to “tak[e] any cognizance” of a claim for money based on a wager, essentially rendering bets unenforceable.<sup>62</sup>

England’s focus also shifted from individual prohibition, although that paradigm remained in place, to prohibition on the availability of gaming opportunities.<sup>63</sup> In addition to making wagers unenforceable, the Gaming Act, 1845 also “suppressed” gaming houses.<sup>64</sup> Finally, the Betting Act, 1854 formally made the act of private bookmaking illegal, reduced the proof required to show that an establishment was a gaming house, and increased the penalties for an infraction.<sup>65</sup> Even despite the Street Betting Act, 1906,<sup>66</sup> which made loitering in the streets for the purpose of betting illegal, all of these pieces of legislation had the unforeseen effect of sending gaming into the streets and onto the black market, handing gambling over to the control of the criminal world.<sup>67</sup>

Although each one of England’s laws reflected tangible societal problems at the time it was enacted, collectively, the laws were slow to adapt and largely reactionary. Believing the successful creation of effective turn-of-the-century legislation required a revised and holistic approach, the U.K.’s Members of Parliament decided to form a committee, the Gambling Review Body,<sup>68</sup> to examine the overall climate of the country and make official recommendations.<sup>69</sup> The result of the assessment was a 2001 recommendation to overhaul most of the U.K.’s past legislation with new, comprehensive legislation that would legalize gambling<sup>70</sup>—the 2005 U.K. Act—and to create the U.K. Gambling Commission in order to regulate the soon-to-be legal pastime.<sup>71</sup>

Finally, on May 14, 2014, a new addition to the U.K. Act received Royal Assent and became an Act of Parliament.<sup>72</sup> The new law, the Gambling (Licensing and Advertising) Act 2014 (“2014 Gambling Act”), which took effect on

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62. *Id.*

63. *See id.* at 609-10.

64. *Id.* at 609.

65. *Id.*

66. *Id.*

67. *Id.* at 613 (“Although reasonable enforcement of the Betting Act (U.K.) 1853 and the Street Betting Act (U.K.) 1906 was possible; in practice, the legislation lacked public support, was outmoded, and even promoted an amount of underground, unregulated wagering.”).

68. SIR ALAN BUDD, GAMBLING REVIEW BODY: GAMBLING REVIEW BODY REPORT, at Chairman’s Introduction, 8, § 2.2 (2001) (stating the Gambling Review Body was “commissioned by the Home Office, but, following changes in departmental responsibilities after the General Election, it[s] review] is being submitted to the Department of Culture Media and Sport;” furthermore, the Gambling Review Board states “[w]e have been asked to make recommendations for the kind and extent of regulation appropriate for gambling activities in Great Britain”).

69. *Id.* at Chairman’s Introduction.

70. Gambling Act, 2005 § 5 (“The [Gambling] Act [2005] repeals the Betting, Gaming and Lotteries Act 1963 (c.2), the Gaming Act 1968 (c.65) and the Lotteries and Amusements Act 1976 (c. 32)”).

71. *Id.* *See infra* note 74 (following the March 2002 publication of *A Safe Bet for Success*, the government’s official response to the Gambling Review Body’s report, a new bill legalizing gambling was drafted in 2004).

72. Gambling (Licensing and Advertising) Act, 2014, c. 17 (U.K.).

November 1, 2014, requires all operators or advertisers in the British market to hold a U.K. Gambling Commission license; contribute to research, education, and treatment of gambling addiction; and protect children and vulnerable adults.<sup>73</sup> Another key feature of the 2014 Gambling Act is its fifteen percent Point of Consumption Tax, which will apply to all wagers placed by punters within the U.K.'s borders, regardless of the operator's location.<sup>74</sup> The act also discourages corruption in sport by forcing overseas operations to report suspicious betting patterns involving British customers.

## B. *Gambling Laws in India*

### 1. General Prohibition on Gambling

The Constitution of India divides the power for making statutes into three lists based on the activity regulated: List I enumerates activities to be regulated by the Centre, or national government; List II activities are to be regulated by each state; and List III activities are matters on which the Centre and the state may concurrently regulate.<sup>75</sup> Betting and Gambling fall on List II; however, several states have enacted a verbatim version of India's Public Gambling Act, 1867 ("Public Gambling Act"), and most other states have adopted their own state gambling acts that were heavily drawn from and contain language substantially similar to the prohibitions contained in the Public Gambling Act.<sup>76</sup> Notably, many of the preambles of these state gambling acts unequivocally caution against the moral and social ills of gambling, including the Preamble to the Assam Gaming Act, which states, "gambling and betting on games and sports have widely spread throughout the state causing debasement of public morality and wide spread [sic] exploitation and threat to peace and order."<sup>77</sup> Although states are free to depart

73. *Queen's Speech 2013: Gambling (Licensing and Advertising) Bill*, POLITICS.CO.UK, <http://www.politics.co.uk/reference/queen-s-speech-2013-gambling-licensing-and-advertising-bill> (last visited Sept. 27, 2014).

74. Sajid Javid & HM Treasury, *Gambling Tax: New Rules and Sanctions to Prevent Avoidance by Gambling Companies*, GOV.UK (Aug. 16, 2013), <https://www.gov.uk/government/news/gambling-tax-new-rules-and-sanctions-to-prevent-avoidance-by-gambling-companies>.

75. Anderson et al., *supra* note 2, at 444.

76. *See, e.g.*, Dir. Gen. of Police v. Mahalakshmi Cultural Ass'n, W.A.No.2287 of 2011 (Madras H.C.) ¶ 14 (Mar. 22, 2012), available at <http://indiankanoon.org/doc/61898553> (referencing the Hyderabad Gambling Act). *See also* Exec. Club formed by Lalitha Real Estates Pvt. v. A.P., 1999 Crim.L.J. (Andhra H.C.) 35 (Aug. 10, 1998) ("The definition of common gaming house in Hyderabad Gambling Act is more or less is the same as in the Act of 1974. Both the Acts, it appears, mainly borrowed the provisions from the Public Gambling Act, 1867 . . .").

77. Anderson et al., *supra* note 2, at 445 (quoting as the text cited the Preamble). *See also id.* at 444 (stating notably, although eventually reaching the conclusion that sports betting, including cricket betting, is not prohibited under India's laws, or alternatively if it is, it should not be, as it constitutes a game of skill). The author of that chapter, Vidushpat Singhania, expressly states that in analyzing sports betting, he is "avoiding a discussion on moral codes, social views and religious beliefs." *Id.* These are the very aspects of Indian culture that this author asserts prevent the U.K.'s gambling legalization from working in the Indian paradigm. *Id.* The interconnectedness of moral codes, social views, and religious beliefs with what Mr. Singhania calls "the legal position [on gambling] in India," is

from India's Public Gambling Act, and although certain states have done so, for the purpose of this paper, the Public Gambling Act represents the general consensus of Indian law.<sup>78</sup>

The Public Gambling Act, in pertinent part, states:

Whoever, being the owner or occupier, or having the use, of any house, walled enclosure, room or place situated within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house; and whoever, being the owner or occupier of any such house, walled enclosure, room or place as aforesaid, knowingly or willfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house; and whoever has the care or management of, or in any manner assists in conducting, the business of any house, walled enclosure, room or place as aforesaid, opened, occupied, used or kept for the purpose aforesaid; and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, walled enclosure, room or place; shall be liable to a fine not exceeding two-hundred rupees, or to imprisonment of either description,' [sic] as defined in the Indian Penal Code (45 of 1860), for any term not exceeding three months.<sup>79</sup>

The act also punishes anyone who is found in a gaming house:

Whoever is found in any such house, walled enclosure, room or place, playing or gaming with cards, dice, counters, money or other instruments of gaming, or is found there present for the purpose of gaming, whether playing for any money, wager, stake or otherwise, shall be liable to a fine not exceeding one hundred rupees, or to imprisonment of either description,' [sic] as defined in the Indian Penal Code (45 of 1860), for any term [ ] not exceeding one month and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.<sup>80</sup>

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evidenced by numerous references in India's gambling statutes and related judicial decisions, several of which Mr. Singhania quotes or cites in his chapter. *Id.*

78. Jay Sayta, *Legality of Poker and Other Games of Skill: A Critical Analysis of India's Gaming Laws*, 5 NAT'L U. JURID. SCI. L. REV. 93, 94 (2012) ("Almost all states, with the exception of Goa and Sikkim, have prohibited all forms of gambling, betting and wagering or have continued to enforce the pre-independence legislations enacted by the British rulers that banned gambling."). Notably, the author's argument is that it is not only the "pre-independence legislations," i.e. "British policy," that has influenced the prohibition on gambling in India, but also the Indian culture, of its own volition, even though Mr. Sayta does not advocate for cricket betting in this article, specifically, but rather focuses on poker.

79. Public Gambling Act, No. 3 of 1867, § 3, INDIA CODE (1993), available at <http://indiacode.nic.in>.

80. *Id.* § 4.

## 2. Exceptions to India's Rule

The Public Gambling Act does not prohibit “any game of mere skill . . . .”<sup>81</sup> Currently, the only sports betting activity that is legal under this game of skill exception in India is horse betting.<sup>82</sup> The courts have held that a horse better's decisions require skill because they are based on a number of factors, including the horse's pedigree, his upbringing and training, the competition, and the weather conditions.<sup>83</sup> Indian courts have not yet held that cricket-betting rises to the same level of skill, and therefore, cricket betting remains prohibited.

However, some evidence exists that the tide is turning, if only at a glacial pace, and recent debate over what constitutes a “game of skill” has made this framing of the issue the battle cry of pro-legalization advocates.<sup>84</sup> Notably, two of the few material state law deviations from the Public Gambling Act are the acts of Assam and Orissa, neither of which provides any exception for games of skill.<sup>85</sup> For the majority of states with gambling acts containing such a provision, an appeal is currently pending before the Supreme Court of India from the Madras High Court that would help elucidate the issue by deciding whether rummy is one such game of skill.<sup>86</sup> The Madras High Court controversially<sup>87</sup> held that rummy is a legal game of skill that does not attract the attention of the Madras City Police Act, 1888 (“Chennai City Police Act”) <sup>88</sup> *unless* the game is being played for stakes or for a profit as to the owner of the facility, in which case, the premises upon which the rummy is being played is an illegal gaming-house under the

81. *Id.* § 12 (“Act not to apply to certain games—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”).

82. K.R. Lakshmanan v. Tamil Nadu, A.I.R. 1996 S.C. 1153 (India), *available at* <http://indiankanoon.in/doc/1248365>.

83. GAMING LAW: JURISDICTIONAL COMPARISONS 147 (Julian Harris ed., 2012).

84. *See generally id.*

85. *Legality of Poker and Other Games of Skill: A Critical Analysis of India's Gaming Laws*, *supra* note 78, at 98 n.33.

86. Sajai Singh & Yajas Setlur, *Supreme Court to Decide Whether Rummy for Stakes is a Skill-based Card Game or a Criminal Offence*, *ECON. TIMES* (Oct. 19, 2014, 3:40 AM), [http://articles.economictimes.indiatimes.com/2014-10-19/news/55197230\\_1\\_rummy-mahalkshmi-cultural-association-criminal-offence](http://articles.economictimes.indiatimes.com/2014-10-19/news/55197230_1_rummy-mahalkshmi-cultural-association-criminal-offence).

87. Jay Sayta, *Recent Madras HC Decision Outlaws Rummy for Profit, Decision Based on Fallacious Interpretation*, *GAMBLING LAWS IN INDIA* (Mar. 28, 2012), <http://glaws.in/2012/03/recent-madras-hc-decision-outlaws-rummy-for-profit-decision-based-on-fallacious-interpretation/> (“This decision of the Madras HC is a clear U-turn from an earlier decision of the Andhra Pradesh High Court,” Mr. Sayta also states, “[t]he court in this instance tried to play the moral police and cited religious scriptures and other treatises in justifying the ban on rummy for stakes.”). Although, notably, Mr. Sayta seems to advocate, in his published article, for the legalization of poker and does not extend his analysis of gambling to cricket betting.

88. Chennai, formally named Madras, is a city in the Indian state of Tamil Nadu. The “Madras City Police Act, 1888” is Chennai's adopted criminal code. *See Dir. Gen. of Police v. Mahalakshmi Cultural Ass'n*, W.A.No.2287 of 2011 (Madras H.C.) ¶ 4 (Mar. 22, 2012), *available at* <http://indiankanoon.org/doc/61898553> (reflecting the court specifically refers to the “Chennai City Policy Act, 1888”).

Chennai City Police Act.<sup>89</sup> A recent Karnataka High Court decision quashed criminal charges against nineteen petitioners accused of playing rummy under Sections 79 and 80 of the Karnataka Police Act, 1963, which punish keeping a gaming house and being present in a gaming house for the purpose of gaming, respectively.<sup>90</sup> The court noted that the petitioners were playing rummy and that money was found and seized; however, the court did not specify whether petitioners were playing for stakes as between the players. Rather, the court only held that “[t]he game of Rummy with cards is not a game of chance but a game of skill,” and that “[t]he collection of commission from the members of a club playing Rummy does not make it a gambling house.”<sup>91</sup> The same Karnataka High Court also recently held that poker is a game of skill and is, therefore, legal for “recreational” purposes but did not address playing poker for “commercial” purposes.<sup>92</sup> The discord within India’s judicial system, observed in combination with the extensive number of gambling cases before the court in recent years, indicates the need for a clear expression of the law going forward. Generally, the courts seem hesitant to broadly interpret game of skill exceptions, and they also seem unwilling to address the issue of gambling for stakes. However, as discussed in the following section, one thing is certain: even if the Supreme Court of India continues to hold gambling for stakes to be illegal, the practical difficulties of detecting and intercepting online gambling activity will persist and will continue to affect enforcement.

### 3. The Modern Realities of Online Betting

The proliferation of the internet has provided a fertile ground for a new way of gambling. Although online gambling is growing exponentially worldwide, the laws concerning online gambling are generally outside the scope of this paper.<sup>93</sup>

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89. *Id.* ¶ 1 (discussing the Madras High Court decision (the decision being appealed to the Supreme Court of India), where the Honorable Justice D. Murugesan quoted Saint Thiruvalluvar from the 934th couplet of Thirukkural (a work from c. 30 B.C., considered to be one of the Tamil “books of law” aimed at promoting order amongst people), which described the evils of gambling as follows: “There is nothing else that brings (us) poverty like gambling which causes many a misery and destroys (one’s) reputation.”).

90. Criminal Petition, *Kirana v. Karnataka* (2014) (No. 7648/2013), available at <http://judgmthck.kar.nic.in/judgments/bitstream/123456789/917391/1/CRLP7648-13-07-01-2014.pdf>.

91. *Id.*

92. Writ Petition, *Indian Poker Ass’n v. Karnataka* (2013) (WP Nos. 39167 to 39169), available at <http://judgmthck.kar.nic.in/judgments/bitstream/123456789/902507/1/WP39167-13-08-10-2013.pdf>.

93. See Ola O. Olatawura, *Why There May Not Be an Extraterritorial Sport Right to Online Gambling*, 27 *LOY. L.A. INT’L & COMP. L. REV.* 371 (2005) (providing a more comprehensive look at arguments concerning the legality of extraterritorial online betting in general). Bear in mind, however, legislation may have changed since the article’s original publication, e.g., India’s implementation of the Information Technology (Intermediaries guidelines) Rules, 2011, which attempt to place the burden of legality of online activity (including gaming) on intermediaries, broadly defined to include, “internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes . . . .” See Information Technology (Intermediaries Guidelines) Rules, 2011, Gazette of India, Part II, section III(i) (Apr. 11, 2011), available at

However, it is worth noting that websites like Bet365.com<sup>94</sup> allow players to use major credit cards to pay in their home currency (including Indian Rupees), thereby largely skirting the Public Gambling Act. The stakes are high: the maximum one-time deposit Bet365.com allows is ₹99,999, or approximately US\$1,600.<sup>95</sup> Other websites, such as IndioCasino.com<sup>96</sup> allow payment in Rupees via a banking or brokerage websites such as EntroPay or Skrill, creating only one additional step over Bet365.<sup>97</sup>

In a Delhi district court decision in September of 2012, Judge Ina Malhotra held that online games, even “games of skill” like chess, poker, bridge and rummy, are illegal under the Public Gambling Act, as well as the Information Technology Act, 2000,<sup>98</sup> and are not protected as trade or commerce under Article 19(1)(g) of the Constitution of India.<sup>99</sup> However, the effect of the decision is limited and is not binding on other Indian courts. Additionally, even a binding decision would not alleviate the practical difficulty of regulating online gambling in India.

To summarize, India’s laws prohibit most forms of gambling, including sports betting. However, the law provides for certain exceptions, such as permitting games of mere skill,<sup>100</sup> including horse betting.<sup>101</sup> Furthermore, states are expressly permitted to legislate and make their own policies on “[b]etting and gambling[.]”<sup>102</sup> which two states have done, leading to numerous waterfront casinos in the states of Goa and Sikkim.<sup>103</sup> Furthermore, in recent years, the courts have seemed willing to consider carving out exceptions to this general prohibition through their determinations as to what activities qualify as games of mere skill.

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[http://www.ijlt.in/pdf/files/IT-\(Intermediary%20Guidelines\)-Rules-2011.pdf](http://www.ijlt.in/pdf/files/IT-(Intermediary%20Guidelines)-Rules-2011.pdf); see also The Information Technology Act, No. 21 of 2000, ch.1(2)(w), INDIA CODE (1993), vol. X, available at <http://indiacode.nic.in/>.

94. *Promotions*, BET365, <http://casino.bet365.com/home/en> (last visited Sept. 27, 2014).

95. According to the exchange rate of August 25, 2014, US\$1.00 is equivalent to 60.46 Indian Rupees.

96. *Promotions*, INDIOCASINO, <http://www.indiocasino.com/banking.php> (last visited Sept. 27, 2014).

97. SKRILL, <https://www.skrill.com/en/> (last visited Sept. 27, 2014); NETELLER, <http://www.neteller.com/us/> (last visited Sept. 27, 2014).

98. *Games Offered by Websites Involving Money Can't be Legal: Court*, ECON. TIMES (Sept. 4, 2012, 6:29 PM), [http://articles.economictimes.indiatimes.com/2012-09-24/news/34062085\\_1\\_online-games-websites-delhi-court](http://articles.economictimes.indiatimes.com/2012-09-24/news/34062085_1_online-games-websites-delhi-court).

99. INDIA CONST. art. 19, §§ 1, (1)(g) (“All citizens shall have the right— (g) to practise any profession, or to carry on any occupation, trade or business.”).

100. Public Gambling Act, No. 3 of 1867, § 12, INDIA CODE (1993), available at <http://indiacode.nic.in/> (“[The a]ct not to apply to certain games—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”).

101. *K.R. Lakshmanan v. Tamil Nadu*, A.I.R. 1996 S.C. 1153, 5-6, 13 (India), available at <http://indiankanon.in/doc/1248365>.

102. INDIA CONST. art. 246, list 2, § 34.

103. Gangwani, *supra* note 47; Sikkim Regulation of Gambling (Amendment) Act, 2005, sec. III.

#### IV. THE U.K.'S CULTURAL PERSPECTIVE ON GAMBLING

Due to India's historical ties with England and the extensive similarities of their legal systems, Indian pro-legalization advocates often cite the U.K. as an indicator of future success should gambling be legalized in India. However, despite the two nations' similarities, this author concludes certain distinct and deep-set cultural disparities prevent the U.K.'s gambling legislation from being translatable to India. For the purpose of this analysis, those cultural distinctions are divided into one section addressing England's religious and socio-political viewpoints, followed by one comparative section addressing the religious, social, and economic considerations in India.

##### A. *The U.K.'s Religious Viewpoint*

Although the potential for excessive gambling has long been recognized, many of England's most influential and respected leaders historically embraced the institution of gambling. Furthermore, religion in England may even be largely responsible for the proliferation of gambling. For instance, Ordericus Vitalis, the English Benedictine monk who lived from around 1075-1143 A.D., tells us that "clergymen and bishops [were] fond of dice-playing."<sup>104</sup> Additionally, the Christian Army, under the command of Richard the First of England, permitted gambling amongst its knights and clergymen.<sup>105</sup> However, they were required to exhibit restraint while doing so: the archbishops of the army levied a fine against anyone who lost more than twenty shillings in one day.<sup>106</sup>

From gambling's first appearance in the U.K., the church, followed by the crown and the nobility, embraced the concept readily. For instance, the first public lottery in England was drawn in 1569, having been organized at the Queen's order, the revenues of which were to be "converted towards the reparation of the havens and strength of the Realme, and towards such other publique good workes."<sup>107</sup> Notably, the lottery was not sufficiently popular initially, such that the Queen solicited support in the form of a recommendation from the Lord Mayor and circulars from two other lords.<sup>108</sup> Therefore, the perception began at an early stage that the crown and the church backed the lottery.

##### B. *The U.K.'s Socio-Political Viewpoint on Gambling*

The English populous has historically perceived gambling as being a sign of wealth and societal importance. His Royal Highness Frederick Louis, Prince of Wales, frequented early cricket matches for the purpose of placing bets on them.<sup>109</sup> Additionally, Georgiana, Duchess of Devonshire, famously and regularly hosted gambling evenings, "turn[ing] Devonshire House into London's most exclusive

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104. JOHN ASHTON, *THE HISTORY OF GAMBLING IN ENGLAND* 12-13 (1898).

105. *Id.* at 13.

106. *Id.*

107. *Id.* at 223.

108. *Id.*

109. Simon Gardiner, *On the Front Foot Against Corruption*, 15 *SPORT & L.J.* 16, 16 (2007).



gambling club, even charging professional faro dealers fifty guineas a night, illegally, for the right to set up tables there.”<sup>110</sup> At one point, she had accumulated a gambling debt of 3,000 pounds, which is roughly the equivalent of US\$297,000 in the modern economy.<sup>111</sup> Yet the Duchess’ debt paled in comparison to that of her confidante and prominent English politician, Charles Fox, whose gambling debts passed 140,000 pounds, or nearly US\$14 million by modern equivalents.<sup>112</sup> Georgiana’s sister, Harriet, Lady Duncannon, was also a compulsive gambler.<sup>113</sup> The history of gambling in England repeatedly indicates that the wealthy and aristocratic individuals glamorized gambling as a pastime, and although its attractiveness eventually permeated all walks of life, the vestiges of the aristocracy’s approval prevented the activity from developing the social scorn that it has in other parts of the world, namely India.<sup>114</sup>

Nonetheless, the history of gambling in the U.K. is admittedly not without corruption. Documentation of lottery-tampering dates back to 1775.<sup>115</sup> That year, two “Blue Coat boys” (who drew the lottery tickets) appeared before a magistrate for having rigged the selection of winning tickets in exchange for money and meals.<sup>116</sup>

Additionally, one can detect some shift in the perception of gambling in England in recent years, some of which is attributable to the proliferation of electronic gambling sources. Such Fixed Odds Betting Terminals make gambling readily available to pedestrians provide no human influence that might otherwise indicate to the gambler that he should stop betting.<sup>117</sup> In addition to discussion over Fixed Odds Betting Terminals,<sup>118</sup> the only major political resistance to the 2005 U.K. Act was regarding the number and location of super-casinos to be permitted by the bill.<sup>119</sup> Additionally, some groups call for increased cautionary advertising, especially increasing the protection of young people and minorities.<sup>120</sup> However, once the Members of Parliament reached a compromise on these issues,

110. Francine du Plessix Gray, *The High Life: Sex and Gambling in Eighteenth-century England*, NEW YORKER (2000), available at <http://www.amanda-foreman.com/new-yorker.shtml> (reviewing AMANDA FOREMAN, *GEORGIANA: DUCHESS OF DEVONSHIRE* (1998)).

111. *Id.*

112. *Id.*

113. *Id.*

114. *See id.*

115. ASHTON, *supra* note 104, at 231.

116. *Id.* at 231-33.

117. *See generally* GERDA REITH, RESEARCH ON THE SOCIAL IMPACTS OF GAMBLING 64-66, 101 (2006), available at [http://www.gla.ac.uk/media/media\\_34552\\_en.pdf](http://www.gla.ac.uk/media/media_34552_en.pdf).

118. *Michael Connarty MP Urges Fixes Odds Betting Terminals Review*, MICHAEL CONNARTY: LABOUR MP FOR LINLITHGOW & EAST FALKIRK CONSTITUENCY, <http://www.mconnartymp.com/michael-connarty-mp-urges-fixed-odds-betting-terminals-review.html> (last visited Dec. 2, 2013).

119. *Climbdown Saves Super Casino Plan*, BBC NEWS, [http://news.bbc.co.uk/2/hi/uk\\_news/politics/vote\\_2005/frontpage/4412949.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/vote_2005/frontpage/4412949.stm) (last updated Apr. 5, 2005) [hereinafter *Climbdown*].

120. REITH, *supra* note 117, at 64-69.

the bill generally enjoyed widespread and bi-partisan support.<sup>121</sup> While Parliament took care to address at least some of the practical and socio-economic considerations of legalized gambling, no moral or religious considerations controlled the discussions, and the author has found no evidence that parties attempted to use gambling as a tool to create political leverage.<sup>122</sup>

## V. INDIA'S CULTURAL OPPOSITION TO GAMBLING

In contrast to the U.K.'s historically accommodating coexistence with the concept of gambling, India's sentiment, as a nation, historically tends toward intolerance thereof.<sup>123</sup> For example, the Supreme Court of India noted that, "[g]ambling activities . . . were considered to be a sinful and pernicious vice by the ancient seers and law-givers of India . . . ."<sup>124</sup> Contrary to the outspoken writers advocating for gambling legalization in India, this author asserts that because of India's religious denunciation of gambling; its lack of political acceptance of gambling; and its general lack of transparency and enforcement mechanisms, which would magnify the difficulty of effectively regulating legalized gambling, the time is not yet ripe for India to legalize gambling.

### A. Religious Opposition by Both Hinduism and Islam

The two major religions of Hinduism and Islam together encompass the vast majority of the Indian population,<sup>125</sup> and each of these religions significantly restricts, admonishes against, or unequivocally prohibits gambling.<sup>126</sup>

#### 1. The Mahābhārata

The Mahābhārata is one of two great epic Sanskrit poems,<sup>127</sup> which, according to Hindus, provide vital information on both morality (*dharma*) and history (*itihasa*).<sup>128</sup> The Mahābhārata is extremely lengthy,<sup>129</sup> and the storyline is very involved. However, one of the most famous events of the plot centers around

121. *Climbdown*, *supra* note 119.

122. *Id.*

123. *Legality of Poker and Other Games of Skill: A Critical Analysis of India's Gaming Laws*, *supra* note 78, at 93 ("The law and the judiciary, in modern times, have looked at card games as a pernicious and immoral activity.")

124. *Bombay v. R. M. D. Chamarbaugwala*, A.I.R. 1957 S.C. 699 (India), available at <http://judis.nic.in/supremecourt/imgs1.aspx?filename=654>.

125. *Religion*, GOV'T OF INDIA: MINISTRY OF HOME AFF., [http://censusindia.gov.in/Census\\_And\\_You/religion.aspx](http://censusindia.gov.in/Census_And_You/religion.aspx) (last visited Sept. 27, 2014) [hereinafter *Census*] (according to the official 2001 Census of India, 80.5% of the country's population professes Hindu faith, while 13.4% professes Islam; therefore, the two religions together account for 93.9% of the Indian population).

126. QUR'AN AL-Baqarah, 2:219-20; QUR'AN AL-Ma'idah, 5:90-91.

127. B.A. van Nooten, *Introduction* to WILLIAM BUCK, THE MAHABHARATA, at xiii (1973) (referring to Ramayana as the other great Sanskrit epic).

128. Wendy Doniger, *Mahabharata*, ENCYCLOPEDIA BRITANNICA: ACAD. EDITION, <http://www.britannica.com/EBchecked/topic/357806/Mahabharata> (last visited Sept. 27, 2014).

129. *See id.* (stating the Mahābhārata totals almost 100,000 couplets and approximates seven times the length of the Iliad and Odyssey combined).

gambling and the pervasive ills thereof.<sup>130</sup> In the epic, two sides of one family were at odds with each other based on each side's belief that its respective father should rule the kingdom (essentially the Kauravas, sons of Dhritarashtra, and the Pandavas, sons of Pandu, were warring first-cousins).<sup>131</sup> In a very famous passage of the Mahābhārata, the animosity between the two sides peaked when Duryodhana, eldest and leader of the Kaurava side of the family, challenged Yudhishtira, the eldest son of the Pandava side of the family, to a dice game.<sup>132</sup> By that time, Yudhishtira was the ruler of the land, and the stakes of the game escalated quickly to include the control of the kingdom and the servitude followed by exile of Yudhishtira himself, his four brothers, and their common wife, Draupadi.<sup>133</sup> Yudhishtira lost the dice game, costing his side of the family great humiliation, and eventually culminating in a devastating war.<sup>134</sup>

#### a. Diwali

Worth conceding is the limited, legal acceptance of gambling on Diwali,<sup>135</sup> one of the most widely-celebrated and most jovial Hindu holidays. Diwali is the festival of lights and new beginnings, and, specifically in northern India, Diwali is the start of a new business and accounting year.<sup>136</sup> Following the examples of the Goddess Pārvati, who gambled with her companion, Lord Shiva, on Diwali, Hindus often gamble on Diwali to symbolize taking calculated risks.<sup>137</sup> Many Hindus believe Diwali gambling invokes Lakshmi, the goddess of wealth.<sup>138</sup> However, Hindus heavily emphasize restraint, both in the calculated nature of the risk and in the limitation of the activity to only one day.<sup>139</sup> Limited Diwali gambling is considered auspicious and reflects the maxim, “nothing ventured;

130. Nooten, *supra* note 127, at 95-105.

131. *Id.*

132. *Id.*

133. *Id.*

134. *Id.*

135. Jay Sayta, *Gamblers on Police Radar this Diwali, but Private Gambling Not Illegal as per Numerous Court Rulings*, GAMBLING LAWS IN INDIA (Nov. 2, 2013), <http://glaws.in/2013/11/gamblers-on-police-radar-this-diwali-but-private-gambling-not-illegal-as-per-numerous-court-rulings> (“[G]ambling in a private enclosure where there is no invitation to members of the public at large and where there is no element of ‘profit or gain’ for the owners . . . of the premises is not illegal.”).

136. TANENBAUM, WORKPLACE: FACT SHEET, DIWALI (2013), available at [https://www.tanenbaum.org/sites/default/files/Diwali\\_Fact\\_Sheet\\_2013.pdf](https://www.tanenbaum.org/sites/default/files/Diwali_Fact_Sheet_2013.pdf) (“Many Hindus will start the new business year at Diwali, and will pray to the goddess Lakshmi for a financially successful year.”); *Diwali*, BBC: RELIGIONS, <http://www.bbc.co.uk/religion/religions/hinduism/holydays/diwali.shtml> (last updated Oct. 20, 2010) (“Business people regard it as a favourable day to start a new accounting year because of the festival’s association with Lakshmi, the goddess of wealth.”).

137. In fact, the saying goes that one who does not gamble on Diwali is foolish (literally, he will be reborn as a donkey) because he is too afraid to try anything new. K. K. Aggarwal, *Diwali Gambling*, ITIMES (Oct. 27, 2012, 1:58 PM), <http://www.itimes.com/blog/diwali-gambling>.

138. *The Tradition of Gambling in Diwali*, INDIA TRIB., [http://www.indiatribune.com/index.php?option=com\\_content&view=article&id=4228:the-tradition-of-gambling-in-diwali-&catid=114:youth&Itemid=478](http://www.indiatribune.com/index.php?option=com_content&view=article&id=4228:the-tradition-of-gambling-in-diwali-&catid=114:youth&Itemid=478) (last visited Sept. 27, 2014).

139. *Id.*

nothing gained.” Such gambling, however, is entirely distinguishable from and arguably completely contrary to gambling as a habit or a vice.

## 2. The Qur'an

Around thirteen percent of India is Muslim, making Islam the second most prominent religion in India.<sup>140</sup> For this portion of India's population, the prohibition of gambling is direct and emphatic. Unlike the Hindu texts, which discourage gambling indirectly through moral and religious parables, the parallel Muslim belief is based on an explicit and indisputable prohibition on gambling in the religion's primary text. The Qur'an, believed by Muslims to be the direct words of Allah to the prophet Mohammed and, therefore, the supreme source of religion, states, “intoxicants, and gambling, and the altars of idols, and the games of chance are abominations of the devil; you shall avoid them, that you may succeed. The devil wants to provoke animosity and hatred among you through intoxicants and gambling . . . .”<sup>141</sup> This admonition is not only clear but also adamant. The Qur'an calls gambling, “*Ithm al-kabir*,” meaning, “a very great sin.”<sup>142</sup> This is a severe phrase reserved for reference to only two concepts: gambling and drinking alcohol.<sup>143</sup>

Between the Hindu majority and the strong Muslim minority, more than ninety-three percent of India's population professes a religion that at least indirectly and often explicitly prohibits gambling.<sup>144</sup> The author concedes that religion is an individual practice and that each person may follow the letter of the religious law to a different extent. However, regardless of whether individual Hindus or individual Muslims chose to gamble in secret, the well-known fact that gambling is frowned-upon by both religions would likely undermine the success of any systematic overhaul of India's gambling legislation in the near future.

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140. *Census*, *supra* note 125.

141. RASHAD KHALIFA, QURAN—THE FINAL TESTAMENT—AUTHORIZED ENGLISH VERSION, *Sura Al-Maeda* 5:90-91 (Islamic Productions, 2003), available at <http://www.feedbooks.com/userbook/3968.pdf>.

142. *Fourteenth Greater Sin: Gambling*, AL-ISLAM.ORG, <http://www.al-islam.org/greater-sins-volume-1-ayatullah-sayyid-abd-al-husayn-dastghayb-shirazi/fourteenth-greater-sin> (last visited Sept. 27, 2014).

143. *Id.*

144. Q. S. KHAN, HOLY VEDAS AND ISLAM 7 (2011) (quoting Rig Veda 10-34-3: “Every breath curses a gambler. His wife deserts him, and no one lends money to a gambler.” Also quoting Rig Veda 10-34-13: “[o]h gamblers, do farming and quit gambling, and remain satisfied with whatever you earn through farming.”); MANUSMRTI: THE LAWS OF MANU, ch. 9, verses 221-22 (George Bühler trans., 1886) (“Gambling and betting let the king exclude from his realm; those two vices cause the destruction of the kingdoms of princes. Gambling and betting amount to open theft; the king shall always exert himself in suppressing both (of them).”).

### B. Political Dynamics

Gambling enjoys very little support in the world of Indian politics. Although India has a multi-party political system, two predominant national<sup>145</sup> political parties exist: the Bharatiya Janata Party (“BJP”) and the Indian National Congress (“Congress”).<sup>146</sup> A new state party entered the scene in 2012: the Aam Aadmi political party, whose primary battle cry is anti-corruption.<sup>147</sup> Although the BJP is widely considered to be philosophically conservative and is said to have an “ideological opposition to casinos,”<sup>148</sup> various parties have succeeded in using the issue of gambling as a tool with which to shame the other. For example, while discussing whether to grant a permit for a new offshore casino in Goa, a representative of the Aam Aadmi Aurat Against Gambling<sup>149</sup> reminded the BJP spokesperson “that the same party led a protest against the casinos headed by the present chief minister Manohar Parikar, who was then the leader of the opposition.”<sup>150</sup> Another Indian news source notes, “[b]oth the Congress and the BJP were equally responsible for promoting casinos in Goa, although both parties opposed these when in opposition . . . .”<sup>151</sup> Regardless of where any given party truly stands on the prudence of expanding gambling in India, both parties’ repeated choice to use the gambling issue against the other as a means of political leverage

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145. See Press Release, Press Info. Bureau: Gov’t of India Election Comm’n, Dynamics of Elevation of Political Parties to State or Nat’l Party (Mar. 8, 2014), available at <http://pib.nic.in/newsite/PrintRelease.aspx?relid=104537> (stating in order for a “state” party to attain “national” status, it must fulfill one of the following three conditions: “[ (1) ] The party wins 2% of seats in the Lok Sabha (11 seats) from at least 3 different States. [ (2) a] t a General Election to Lok Sabha or Legislative Assembly, the party polls 6% of votes in four States and in addition it wins 4 Lok Sabha seats. [ (3) a ] party gets recognition as State Party in four or more States”).

146. See *List of Participating Party and Seats Contested by them in Loksabha 2014*, ELECTION COMM’N OF INDIA, [http://eci.nic.in/eci\\_main1/GE2014/Party\\_Contested\\_GE\\_2014.xlsx](http://eci.nic.in/eci_main1/GE2014/Party_Contested_GE_2014.xlsx) (last visited Sept. 27, 2014); see also *Congress Hails India Poll Victory*, BBC NEWS, [http://news.bbc.co.uk/2/hi/south\\_asia/7962722.stm](http://news.bbc.co.uk/2/hi/south_asia/7962722.stm) (last updated May 16, 2009) (“India’s two main parties, Congress and the Bharatiya Janata Party (BJP), had 145 and 138 seats respectively in the outgoing 543-seater lower house of parliament.”).

147. See *Why are We Entering Politics?*, AAM AADMI PARTY, <http://www.aamaadmi-party.org/page/why-are-we-entering-politics> (last visited Sept. 27, 2014); see also *Manifesto—Sports, Culture and Media*, AAM AADMI PARTY, <http://www.aamaadmi-party.org/manifesto-sports-culture-and-media> (last visited Sept. 27, 2014) (“1. Keeping corrupt [sic] and criminals out of sports administration by ensuring that individuals who have charges framed against them by any court shall not be allowed to contest and/or hold any elected office in any National Sports Federation (NSF).”).

148. Jay Sayta, *BJP Sweeps Goa Polls, Change of Government likely to have an Adverse Impact on the Casino Industry*, GAMBLING LAWS IN INDIA (Mar. 6, 2012), <http://glaws.in/2012/03/bjp-sweeps-go-polls-change-of-government-likely-to-have-an-adverse-impact-on-the-casino-industry/>.

149. AAAAG is an anti-gambling group.

150. *AAAAG Flays BJP over Casinos*, TIMES OF INDIA (Goa) (Aug. 11, 2013, 2:16 AM), [http://articles.timesofindia.indiatimes.com/2013-08-11/goa/41294128\\_1\\_casinos-bjp-spokesperson-flays](http://articles.timesofindia.indiatimes.com/2013-08-11/goa/41294128_1_casinos-bjp-spokesperson-flays).

151. *Both Congress, BJP Responsible for Goa Casinos*, INDIA TV NEWS (Panaji) (Apr. 18, 2013, 3:47 PM), <http://www.indiatvnews.com/politics/national/both-congress-bjp-responsible-for-go-casinos-9564.html>.

is indicative of the unlikelihood that gambling will enjoy any significant political support approximating the predominantly non-partisan agreement to legalize gambling in the U.K. in 2005.

### C. *Economic and Practical Considerations*

#### 1. **Corruption in Society and in the Government, in General**

Payment of “grease money” in order to ensure the accomplishment of regular, everyday tasks has become a near certainty in India, namely in the urban areas.<sup>152</sup> One non-profit organization<sup>153</sup> estimates the average bribe paid by an urban Indian in one year to be ₹26,932, currently approximately US\$450.<sup>154</sup> The total estimated amount of bribe money paid per year is ₹6,29,675, or approximately US\$129 billion.<sup>155</sup> Examples of typical bribes paid, as cited by this organization, include bribes to register property, obtain a passport, obtain a driving license, or escape a traffic citation.<sup>156</sup> This atmosphere of corruption is pervasive, having been prevalent long before India’s independence from England,<sup>157</sup> and having only increased from 1947 through the late twentieth century’s “License Raj” period.<sup>158</sup> Overcoming corruption in India would require a complete cultural revolution. Such a drastic change would likely involve increased wages overall in order to combat income inequality, as well as greater criminal liability for corrupt officials. However, as the situation stands, bribes remain an integrated part of urban Indian daily life.

#### 2. **Betting and Bowling: Behind the Scenes**

Since most gaming and gambling is illegal in India, and since a great deal of betting still takes place there, logic dictates the conclusion that the betting industry exists primarily on the black market. More specifically, bribes and the sport of cricket have become inextricably linked in recent years, largely due to the

152. TRANSPARENCY INT’L, CORRUPTION PERCEPTIONS INDEX 2012 (2012), *available at* [http://www.transparency.org.ro/politici\\_si\\_studii/indici/ipc/2012/CPI2012\\_map%20and%20country%20results.pdf](http://www.transparency.org.ro/politici_si_studii/indici/ipc/2012/CPI2012_map%20and%20country%20results.pdf) (reflecting that India recently ranked 94th out of 176 nations assessed for transparency).

153. I PAID A BRIBE, <http://www.ipaidabribe.com> (last visited Sept. 27, 2014).

154. Damayanti Datta, *The Bribe Republic: How Rampant Bribery is Corroding India’s Core*, INDIA TODAY (July 12, 2013), <http://indiatoday.intoday.in/story/bribery-in-india-bribe-republic-anti-corruption-bureau/1/291074.html>.

155. *Id.*

156. *Id.*

157. Beina Xu, *Governance in India: Corruption*, COUNCIL ON FOREIGN REL., <http://www.cfr.org/corruption-and-bribery/governance-india-corruption/p31823> (last updated Sept. 4, 2014) (“Corruption in India can be traced back the country’s colonial past, analysts say. The British Raj period, beginning in 1858, excluded Indian citizens from political participation by dividing the country into districts with provincial governments controlled by a commissioner.”).

158. *Id.* (“After India gained independence in 1947, the new regime implemented heavy economic regulations intended to develop domestic markets . . . The policy limited foreign investment and stifled competition, and bribery became part and parcel to doing business.”).

influence of urban organized crime leaders, such as Dawood Ibrahim [Kaskar].<sup>159</sup> Through their intricate and extensive crime rings, often in Mumbai or Delhi, these leaders orchestrate cricket betting and spot-fixing, receiving immense payouts, almost always remaining undetected, and sometimes remaining outside of India altogether.<sup>160</sup> Forbes listed Dawood Ibrahim as the fifty-seventh most powerful person in the world in 2011 and the sixty-third in 2010,<sup>161</sup> and his net worth is estimated to be around US\$15 billion.<sup>162</sup> Although he provides only one example, he illustrates the point that such wealthy, powerful, and determined forces as are behind illegal cricket-betting would very likely not cease their black market activities even if gambling were to be legalized.

As another example, on October 14, 2013, police in the state of Andhra Pradesh arrested three people and confiscated approximately ₹6,000 in cash and twelve mobile phones after tips that the three were taking bets on the India-Australia one-day cricket series.<sup>163</sup> Another very recent instance of cricket corruption involved three Rajasthan Royals players—S. Sreesanth, Ajit Chaudhary, and Ankeet Chavan, as well as fifteen bookies and famous Indian actor, Vindoo Dara Singh.<sup>164</sup> Delhi police arrested the players for spot-fixing in two matches in May of 2013. They have been banned from cricket and are under criminal investigation.<sup>165</sup> Police charged Vindoo Dara Singh with illegal betting; however, they also believe he was passing information to bookies from within a cricket team.<sup>166</sup>

Ultimately, the size, organization, and power of the individuals and organizations deeply entrenched in the world of cricket-betting will likely preclude the legalization of gambling from affecting illegal activities of this magnitude. Comprehensive and continued pushes for transparency, both in Indian government and within the Board of Control for Cricket in India (“BCCI”),<sup>167</sup> will be required in order to motivate players not to succumb to the temptation of corruption, and significantly greater penalties will be required before organized criminals will be financially motivated to cease their cricket-betting and spot-fixing activities.

159. Shoaib Ahmed, *How Exactly does Betting in Cricket Work?*, IBN LIVE (May 22, 2013, 1:08 PM), <http://ibnlive.in.com/news/cricketnext/how-exactly-does-betting-in-cricket-work/393184-78.html>.

160. *Id.*

161. *World's Most Powerful People*, FORBES, <http://www.forbes.com/profile/dawood-ibrahim-kaskar/> (last visited Sept. 1, 2014).

162. Qaswar Abbas, *The Sultan doesn't Live Here Any More*, INDIA TODAY (May 27, 2011), <http://indiatoday.intoday.in/story/dawood-ibrahim-white-house-in-clifton-road-karachi/1/139562.html>.

163. *Three Held for Betting on India-Australia Cricket Match*, HINDU BUS. LINE (Oct. 14, 2013), <http://www.thehindubusinessline.com/news/three-held-for-betting-on-indiaaustralia-cricket-match/article5233268.ece>.

164. Rashmi Rajput, *IPL Betting Case: Police Present Sides before Panel*, THE HINDU (Nov. 7, 2013), <http://www.thehindu.com/todays-paper/tp-national/ipl-betting-case-police-present-slides-before-panel/article5324003.ece>.

165. *Id.*

166. *Id.*

167. See generally BOARD OF CONTROL FOR CRICKET IN INDIA, <http://www.bcci.tv> (last visited Sept. 27, 2014).

Therefore, unlike valid arguments in favor of the legalization, government regulation, and taxation of other types of criminal activities, the oft-relied-upon argument that gambling legalization will eliminate criminal gambling activity is, unfortunately, flawed. The error lies in the underlying premise that the organized and powerful criminal forces that drive illegal gambling in India would legitimize their betting circles if gambling became legal. This argument is simply not persuasive.

## VI. AN ANALYSIS OF THE FUTURE OF GAMBLING IN INDIA

### A. *The Significance of the Legalization Debate*

A survey by the Federation of Indian Chambers of Commerce and Industry ("FICCI")<sup>168</sup> of 200 businesses reported that seventy-four percent of respondents believe that "legalizing sports betting will help curb match fixing problem."<sup>169</sup> Eighty-three percent of respondents agreed that regulating sports betting with proper laws was better than banning it, and sixty-eight percent indicated that betting in sport could be controlled.<sup>170</sup> However, popular opinion in favor of gambling legalization does not equate to the prudence thereof. Rather, the issue of whether to legalize gambling requires careful consideration of the likely effects of any such decision.

#### 1. **The High Financial Stakes**

The FICCI estimates that the illegal Indian cricket-betting industry is worth ₹12-20,000 annually, or around US\$3 billion.<sup>171</sup> Negativity in cricket could seriously affect India's financial situation domestically, its perception globally, and therefore, its ultimate growth as a world power. For instance, Lalit Modi, who created the IPL, the Indian Premier [Cricket] League in 2008 (which is currently valued at US\$4 billion),<sup>172</sup> had previously entered into a distribution agreement with ESPN in 1994.<sup>173</sup> Modi is also the President and Managing Director of Modi

168. See generally FED'N OF INDIAN CHAMBERS OF COM. & INDUSTRY, <http://www.ficci.com> (last visited Sept. 27, 2014).

169. Rama Lakshmi, *India Considers Legalizing Sports Gambling as Way to Curb Match-fixing*, WASH. POST (Jun. 25, 2013), <http://www.washingtonpost.com/blogs/worldviews/wp/2013/06/25/india-considers-legalizing-sports-gambling-as-way-to-curb-match-fixing>.

170. Steven Patterson, *Sports Betting Regulation Discussed in India*, INNOVATE GAMING (Nov. 4, 2013), <http://www.innovategaming.com/legalising-sports-betting-india>.

171. See FED'N OF INDIAN CHAMBERS OF COM. AND INDUSTRY, FICCI REPRESENTATION TO GOVERNMENT ON GIVING INDUSTRY STATUS TO SPORTS SECTOR 6 (2012), available at <http://www.ficci.com/SEdocument/20206/sports-ficci-to-govt.pdf>; see also *FII's Pump Rs 20,000 Crore in Debt Market in May, Best Show in 29 Months*, DECCAN CHRON. (June 8, 2014, 11:06 AM), <http://www.deccanchronicle.com/140608/business-economics/article/fiis-pump-rs-20000-crore-debt-market-may-best-show-29-months> (reflecting that as of June 2014, 20,000 crore Rupees is equivalent to approximately US\$3.35 billion).

172. Lalit K. Modi, *About LKM*, LALITMODI, <http://www.lalitmodi.com/about.php> (last visited Sept. 27, 2014).

173. *Id.*



Enterprises,<sup>174</sup> which formed a partnership with Walt Disney in 1993.<sup>175</sup> “Through a series of innovative partnerships with leading global brands and broadcasters including Nike, Sahara, Sony, ESPN and Viacom, Indian cricket’s revenues increased seven fold between 2005 and 2008.”<sup>176</sup> As evidenced by these examples, the interconnectedness between the world of Indian cricket and enormous financial investments is undeniable.

Furthermore, the financial repercussions of even losing a cricket match, much less unearthing a deep-rooted scandal, affect the Indian economy in tangible ways. For instance:

if a spectator . . . watches his team lose an international one-day match he will feel pessimistic and hence end up selling more (or buying less) stocks than what otherwise would have been the case based on a cognitive analysis of the stock market. Because a one-day cricket match is such a substantial event in India and affects the mood of so many people, the optimism or pessimism caused by the result of the game may be large enough to make the market swing in an upward or downward direction . . . .<sup>177</sup>

Most notably, “[because] people put a bigger emphasis on losses, the downward movement in the market following a loss should be much larger than an upward swing following a victory.”<sup>178</sup> Ultimately, be it directly through foreign investment or indirectly through the market, cricket’s effect on the Indian economy is undeniable.

## 2. The Effect of Corruption on India’s Prominence as a Global Cricket Power

Cricket unifies the former commonwealth nations under a banner of tradition and honor. The U.K. Deputy High Commissioner to Sri Lanka, Robby Bulloch, recently remarked, “[t]his extraordinary game . . . unites a disparate group of cricket-mad nations as one of the more curious and positive legacies of Britain’s colonial past.”<sup>179</sup> If England and other commonwealth cricket nations in which gambling is legal believe their gentlemen’s sport is rigged by illegal betting and match- and spot-fixing in India, playing against Indian teams will become less desirable. For example, Shaun Tait—Australian cricketer and teammate of the

174. *Modi Enterprises*, MODI.COM, <http://www.modi.com/our-brands.html> (last visited Sept. 27, 2014).

175. *About LKM*, *supra* note 172.

176. *Id.*

177. Vinod Mishra & Russell Smyth, *An Examination of the Impact of India’s Performance in One-day Cricket Internationals on the Indian Stock Market* 18 PACIFIC-BASIN FIN. J. 319, 322 (2010), available at [http://ac.els-cdn.com/S0927538X10000181/1-s2.0-S0927538X10000181-main.pdf?\\_tid=a03c3a2c-4db1-11e4-979a-00000aab0f01&acdnat=1412638782\\_f2b36d7a847d06dd54ea570889b280fe](http://ac.els-cdn.com/S0927538X10000181/1-s2.0-S0927538X10000181-main.pdf?_tid=a03c3a2c-4db1-11e4-979a-00000aab0f01&acdnat=1412638782_f2b36d7a847d06dd54ea570889b280fe).

178. *Id.*

179. Robbie Bulloch, *Cricket and the Commonwealth*, FOREIGN & COMMONWEALTH OFFICE BLOG (Oct. 2, 2012), <http://blogs.fco.gov.uk/robbiebulloch/2012/10/02/cricket-and-the-commonwealth>.

three Rajasthan Royals being investigated for spot-fixing on May 5, 2013—considered taking legal action<sup>180</sup> after numerous media sources reported that he, alongside his Royals teammates, was involved in cricket corruption in the form of spot-fixing.<sup>181</sup> Delhi Police officials eventually determined Tait was not involved.<sup>182</sup> Although this is only one instance, if the risk of association with the IPL, or even with Indian cricket players on U.K. or Australian teams, becomes a professional liability, such a risk will seriously impact the desirability of playing with Indian cricketers or even playing matches in India. Recognizing the impact of a negative global perception of Indian sport, India's legislature has recently drafted two proposed bills—the Draft National Sports Development Bill, 2013,<sup>183</sup> proposing an Appellate Sports Tribunal and a Sports Election Commission, and the Prevention of Sporting Fraud in Sport Bill, 2013, increasing organizational responsibility for corrupt acts<sup>184</sup>—likely in an effort to bolster India's sporting reputation.

In addition to the financial effects a negative perception could have on Indian cricket, the risk of association with corrupt cricketers stands only to isolate the subcontinent from the other commonwealth cricket organizations, rather than to serve as a unifying factor, as Indian cricket has done in the past.

## B. *Alternatives to Legalizing Gambling*

### 1. **Increased Transparency**

This author asserts that the legalization of gambling in India is not the appropriate response to the systemic issue of illegal gambling. The legalization

180. *Angry Tait Slams Incorrect Spot-fixing Reports*, ABC.NET.AU (May 17, 2013, 11:49 AM), <http://www.abc.net.au/news/2013-05-17/shaun-tait-speaks-on-india-scandal/4695394> (“I’m in discussions with my manager and legal representatives to examine how this episode unfolded and any further action I may take.”).

181. Richard Earle, *How False IPL Match-fixing Innuendo Made Shaun Tait's Life a Living Hell*, DAILY TELEGRAPH (Nov. 9, 2013, 12:00 AM), <http://www.dailytelegraph.com.au/sport/cricket/how-false-ipl-matchfixing-innuendo-made-shaun-taits-life-a-living-hell/story-fni2fnmo-1226756071630>.

182. Rakesh Ramachandran, *Spot Fixing: Sreesanth Arrested*, EAST HAM MALAYALEE CRICKET CLUB (May 19, 2013, 10:39 PM), <http://emccuk.com/index.php/achievements/8-latest-leauge-news/128-spot-fixing-sreesanth-arrested> (“[When a]sked whether Australia’s Shaun Tait or any other player is involved, [Delhi Police Commissioner] Kumar said[,] ‘[w]e have no such evidence. According to us, Shaun Tait is not involved.’”).

183. Press Release, Gov’t of India Ministry of Skill Dev., Entrepreneurship, Youth Affairs & Sports, Draft Nat’l Sports Dev. Bill, 2013 (July 10, 2013), *available at* <http://pib.nic.in/newsite/erelease.aspx?relid=97118>. A revised version of a bill was initially drafted in 2011.

184. Desh Gaurav Sekhri, *A Critique of India's 'Prevention of Sporting Fraud Bill, 2013'*, LAW IN SPORT (Jan. 22, 2014), <http://www.lawinsport.com/articles/anti-corruption/item/a-critique-of-india-s-prevention-of-sporting-fraud-bill-2013> (“Section 8 of the Anti-fixing bill sets out offences by companies or association of individuals, unequivocally putting the onus of sporting fraud in the context of companies, on the entire company especially the persons in charge of and/or responsible to the company for the conduct of business of the company.”).

approach treats illegal gambling as the problem instead of acknowledging that it is merely the symptom of widespread corruption and economic inequality. Ultimately, the time is not yet ripe for generalized gambling legalization in India. Rather than removing the laws prohibiting gambling, India should make more specific laws with stricter penalties, while simultaneously focusing on improving administrative transparency and law enforcement mechanisms.

Outlets currently exist through which gambling occurs, albeit in limited quantities, including legal outlets such as horse-track betting and limited “holiday” casino gambling, as well as currently illegal but nonetheless growing outlets like online betting.<sup>185</sup> Based simply on the availability of such opportunities, this author believes gambling and punting will inevitably continue to occur. However, India, a religious country with foundational beliefs in the prohibition of gambling, is not yet ready for its government to universally approve the practice. Much like gambling is permitted once a year on Diwali because it symbolizes enjoying an activity in moderation without over-indulgence therein, gambling in India should remain limited to its current confines.

Furthermore, the inefficacy of an enforcement system does not convincingly suggest that the removal of that system altogether would prove to be a better alternative.<sup>186</sup> In fact, illegal cricket-betting is not the underlying problem; rather, it is merely the symptom of a deeper, systemic problem—widespread corruption based on economic inequality. Greater transparency in every aspect of Indian administration is required for bribes and corruption to cease, and such transparency will not occur immediately or even swiftly. However, until India reaches a place of economic equilibrium in which a person in a position of power stands to gain no significant advantage from accepting a bribe, enforcement is unlikely as to both existing and future laws. A severe disincentive—such as political scorn or an increase in the penalty for receiving a bribe—will be required to make corruption economically unviable.<sup>187</sup>

For the same reasons, legalizing gambling would not eliminate illegal betting. Rather, the wealthiest punters would continue to accept the risks associated with illegal betting because the likelihood and severity of negative consequences is significantly lower than the potential financial gain.<sup>188</sup> Instead of deterring the deep-pocketed punter, bookmaker, or organized crime leader, who is the true driving force behind cricket corruption, the government would be condoning, in a very public way and on a large scale, an activity traditionally scorned by India’s religion, politics, and society.

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185. See BUDD, *supra* note 68; see also *Queen’s Speech 2013*, *supra* note 73.

186. See A. Mitchell Polinsky & Steven Shavell, *The Theory of Public Enforcement of Law*, 1 HANDBOOK L. & ECON. 403, 441 (2007), available at <http://www.law.harvard.edu/faculty/shavell/pdf/07-Polinsky-Shavell-Public%20Enforcement%20of%20Law-Hdbk%20LE.pdf>.

187. *Id.*

188. *Id.*

As to cricket, the ICC, formerly housed in London and now housed in Dubai, administers the regulation of cricket at the international level.<sup>189</sup> In 2000, the ICC set up the Anti-Corruption Unit (renamed the Anti-Corruption Unit and Security Unit in 2003) to combat the growing threat of illegal gambling and match fixing.<sup>190</sup> Critics maintain, however, that implementation attempts have been weak at best.<sup>191</sup> One sports blogger recently noted, “[t]he BCCI has announced a slew of measures to clean up the game in India. These are expected to be implemented as early as the week after never.”<sup>192</sup> This sardonicism may not be a vehicle universally shared amongst cricket fans; the skepticism, however, is relatively widespread. More optimistic individuals also believe a successfully implemented increase in transparency in sport will help India rise globally as an economic powerhouse.<sup>193</sup>

## 2. Increased Judicial Participation

To clarify, it is not the author’s assertion that gambling legalization in India will never be appropriate, but rather that the time is not ripe for such legalization until the country achieves a significantly increased level of economic stability and a thorough evolution of its traditional socio-political oppositions to gambling. Furthermore, even if legalization does occur, a statutory overhaul would not be the ideal method. One major benefit of a common law legal system, such as India’s, is its ability to adapt to societal changes and evolving cultural norms while not adapting too abruptly. If the Indian courts continue to interpret the current laws more broadly, cautiously legalizing specific categories of gambling activities,<sup>194</sup>

189. Williams & Alston, *supra* note 12.

190. *Anti Corruption Overview*, INT’L CRICKET COUNCIL, <http://www.icc-cricket.com/about/46/anti-corruption/overview> (last visited Sept. 27, 2014) (“The unit was set up in 2000 following a corruption crisis which represented the gravest challenge it had faced since the Packer Revolution of the 1970s and the Bodyline series of the 1930s. Cricket’s reputation and integrity were tarnished and in danger of being destroyed. Decisive action was called for in the wake of match-fixing allegations and revelations about South Africa captain Hansie Cronje and the captains of India and Pakistan, Mohammed Azharuddin and Salim Malik. Eventually all three were banned for life from international cricket. Other players were suspended, fined and warned about their future conduct following judicial and Board enquiries in several major cricket countries. . . . [F]rom July 2003, the Anti-Corruption Unit was renamed as the ICC Anti-Corruption and Security Unit.”)

191. Indo-Asian News Service, *ICC Anti-Corruption Officer’s Links with Indian Bookie Alleged*, NDTV SPORTS, <http://sports.ndtv.com/cricket/news/224497-icc-anti-corruption-officers-links-with-indian-bookie-alleged> (last updated May 21, 2014) (“As the International Cricket Council (ICC) reviews the role of its Anti-Corruption and Security Unit (ACSU), a top officer of the unit was reportedly found having links with an Indian bookie during the ICC World Twenty20 in Dhaka in March-April this year.”); Ross McNaughton, *ICC Units Draw Criticism*, 3NEWS.CO.NZ (May 16, 2014, 5:21 PM), <http://www.3news.co.nz/sport/icc-units-draw-criticism-2014051617>.

192. Sidin Vadukut, *Fighting Corruption? Look to American Sport*, ESPNCRICINFO (Sept. 3, 2013), <http://www.espnricinfo.com/blogs/content/story/667587.html>.

193. Dinesh Narayanan, *Vinod Rai: Exposing Corruption*, FORBES INDIA (Dec. 29, 2010), <http://forbesindia.com/article/person-of-the-year-10/vinod-rai-exposing-corruption/20742/1>.

194. See *Dir. Gen. of Police v. Mahalakshmi Cultural Ass’n*, W.A.No.2287 of 2011 (Madras H.C.) ¶ 24 (Mar. 22, 2012); *Writ Petition, Indian Poker Ass’n v. Karnataka* (2013) (WP Nos. 39167 to 39169), ¶ 3 available at <http://judgmenthck.kar.nic.in/judgments/bitstream/123456789/902507/1/WP39167-13-08-10-2013.pdf>.

this will give society and the economy time to steadily and more successfully adjust to legalization.

*C. Lessons from the U.K.*

Notably, even after the 2005 U.K. Act legalized gambling generally, illegal betting still occurs in the U.K.<sup>195</sup> Despite the historical penchant for gambling and for cricket amongst England's elite social classes, the relatively low occurrence of corruption within the U.K., and the U.K.'s sophisticated legal sports betting framework, cricket corruption still lurks in the shadows.<sup>196</sup> Observers cite low pay for local cricketers combined with an increasingly large international television viewership (especially in India) as the combined root of the problem.<sup>197</sup> Therefore, in concluding this paper, it seems worth noting that, while pro-legalization advocates in India point to the U.K. as an example of a legal gambling system that works, experts in the U.K. seem to point fingers at India as the underlying reason for the flaws in their would-be perfect U.K. betting system. Furthermore, on a cautionary note, the true repercussions of legalized gambling in the U.K. are only now surfacing.<sup>198</sup> This paper is written less than one decade after legalization in the U.K.; therefore, any conceptual failures in the system and any unexpected societal consequences may yet remain undetected.<sup>199</sup>

As was the case in eighteenth-century England, gambling in modern day India is the gin of the aristocracy, and exposure to its dangers should remain limited to those wealthy enough to cover the immense financial costs and risks associated with gambling. The fact that the law cannot yet create an effective disincentive for those wealthy enough to bear the risks of gambling does not mean the costs of that activity should be passed on to and borne by India's citizenry as a whole. Legalizing gambling in India would merely send a signal that the government sanctions the activity but would fail to combat the underlying problem. The more appropriate response would be to reform India's gambling laws to include increased penalties, while universally supplementing legal enforcement mechanisms. In sum, while respectfully disagreeing with the pro-legalization stance taken by Ranjit Sinha, the director of India's Central Bureau of Investigation ("CBI"), this author does agree with one portion of Mr. Sinha's recent statement that, "[l]aws should be strictly enforced and absence of enforcement does not mean that laws should not be made."<sup>200</sup> The author fully

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195. Owen Gibson, *Global Illegal Betting Market Threatens Heart of Domestic Cricket*, GUARDIAN (Jan. 12, 2012, 3:38 PM), <http://www.theguardian.com/sport/2012/jan/12/illegal-betting-threatens-domestic-cricket> (discussing the story of "Mervyn Westfield, the former Essex fast bowler, [who] dramatically admitted to accepting £6,000 to give away a predetermined number of runs in the first over of a Pro40 match at Durham in September 2009 . . .").

196. *See id.*

197. *See id.*

198. *See* CONNARTY, *supra* note 118.

199. *See id.*

200. Joanna Sugden, *CBI Director's Rape Reference Backfires*, WALL ST. J.: INDIA REAL TIME (Nov. 13, 2013, 2:29 PM), <http://blogs.wsj.com/indiarealtime/2013/11/13/cbi-directors-rape-reference-backfires>.

agrees with the seemingly minority opinion of S. N. Srivastava, special commissioner of the Delhi City Police, who aptly observed, “[b]etting is still not seen as a behavior that enjoys social approval . . . . Should we legalize it only because we are not able to enforce the ban fully? The country is not ready.”<sup>201</sup>

## VII. CONCLUSION

Ultimately, the author asserts that, rather than using the U.K. as a model for legalizing gambling in India, the proper response is for India to focus its efforts on three goals: reformed gambling laws with stricter penalties, administrative transparency, and general enforcement of all laws. Although significant similarities exist between the U.K. and India, even more prevalent are the cultural differences that would prevent the U.K.’s system of legalized gambling from effectively translating to India. Therefore, India should not cater to the exceedingly wealthy, powerful, and often highly organized criminals for whom it will remain economically opportunistic to disregard any gambling law, be it a prohibition or a regulation. If India acquiesces to such pressures, it will merely open the floodgates for exponentially intensified law enforcement problems by placing increased pressure on the already strained enforcement mechanisms currently in place. Ultimately, before deciding on the issue of gambling legalization, India should heed the cautionary words of Arjuna just before the fateful dice game depicted in the Mahābhārata: “take care. A river in flood will overturn every tree that grows beside it.”<sup>202</sup>

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201. Lakshmi, *supra* note 169.

202. WILLIAM BUCK, THE MAHABHARATA 96 (1973).









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NUMBER 2

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