
IT IS A RIPE TIME TO REGULATE CRICKET BETTING IN INDIA: AN ANALYSIS IN THE LIGHT OF JUDICIAL REASONING AND BENTHAM'S THEORY

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ABSTRACT

Cricket betting has always been languishing in a legal paradox. Impliedly declared illegal under the Public Gambling Act 1867, but at the very same time makes its presence felt every time, making headlines during the cricketing season. The figures of illegal cricket betting are alarmingly high (approx. ₹8,20,000 crores annually) bringing to light the revenue damage done to the government coffers. It strongly highlights the concern that this money is going into undesired hands which is for sure detrimental to our country. This paper argues that the time is ripe to regulate cricket betting in India as the sole option. The paper is grounded on three critical dimensions- 1. Judicial pronouncement of *K.R. Lakshmanan v. State of Tamil Nadu* (1996) that has progressively recognized horse racing as a skill-based activity, constitutionally protected and thus legal 2. Jeremy Bentham's utilitarian principle demonstrating that regulation maximizes societal welfare in contrast to prohibition. The practical failure of the current prohibitionist legislative approach to cricket betting in India. The paper demonstrates that a comprehensive regulatory framework can successfully balance cricket betting as a commercial activity aimed towards protection of sporting integrity and consumer interest. Thus, balancing National interest with National duty.

The symbioses of judicial precedents, philosophical thinking and analyzing the reasons for failure of present legal apathy towards cricket betting, strongly support the need for a crucial change in the Indian legal system based on the pretext - What cannot be avoided by all possible means through a prohibitionist approach, should instead be accepted into the legal system and be fortified with potent laws, guarding the interests of the vulnerable

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groups and protecting the National interest keeping intact the integrity of cricket.

A tiger in chains is less harmful than the one who roams about freely without any control, especially when the “tiger” becomes an unavoidable part of co-existence.

Keywords: Cricket betting regulation, Bentham utilitarianism, Indian cricket, greatest happiness principle, K.R. Lakshmanan v. State of Tamil Nadu (1996), felicific calculus.

INTRODUCTION

The sport of cricket has been the most cherished gift from the colonizer to the colonized. The sport which had its roots in England blossomed in India. Back in England, Cricket was viewed more like a ritual which imparts values, discipline and poise to its players. That’s the reason perhaps, that it is the only sport which is proudly flaunted as a ‘gentleman’s game’. The coming in of the Indian Premier League (herein after referred as IPL) in 2008 shifted the cricketing action from English jurisdiction to the Indian epicentre. Ashish Nandy very aptly described “Cricket is an Indian game, accidentally discovered by the British” (Ashish Nandy,2001:1). The IPL transformed the passion around cricket, adding to it spice and flavour making it an all-in-one entertainment extravaganza. Having glamour, wealth and talent all put together in a concealed version of T20³, which condensed the madness and thrill of cricket into an action-packed three-hour spectacle. Instantly appealing to the generation next as a faster, aggressive, nail-biting version of cricket. This new league also brought in a lot of money into the sport. The IPL transformed the traditional perception of cricket being a pool of talent, into a perfect business model, bringing in profitable opportunities to all its stakeholders- the broadcasters, advertisers and also the players. Making cricket a “commodity” and its spectators the “consumers.”

Unfortunately, the name of cricket has been tarnished by allegations of betting related corruption. The 2013 IPL spot fixing scandal⁴ stands as a night mare for every cricket fan. It revealed the dirty secret of unethical connection between illegal betting syndicate and sport of cricket. Bringing back to memory the infiltration of the underworld into illegal betting which

³ A cricket match of 20 overs for each team

⁴ Full coverage of the IPL spot-fixing allegations which involve three Rajasthan Royals players, ESPNcricinfo, May 17, 2013 also available at <https://www.espnricinfo.com/story/full-coverage-of-the-ipl-spot-fixing-allegations-636375>

flourish on illegal cricket betting which is alarmingly estimated to be worth ₹8,20,000 crores annually⁵. The Times of India reported that India loses revenue of ₹ 2,29,600 crores per annum to illegal cricket betting.⁶ It is estimated that 140 million Indians participate in betting and gambling regularly with this figure sky rocketing to 370 million during IPL season.⁷ These massive figures clearly demonstrates three things- a. Ease of doing cricket betting in India, looking at the high-volume b. A strong desire of people in India to indulge into cricket betting, as the numbers are going higher each year c) Lack of deterrent fear of present laws relating to cricket betting in India.

1. LEGISLATIVE APATHY-

The blatant reality is that Cricket betting is considered to be an illegal activity in India. The Public Gambling Act 1867⁸, is the age old sole central legislation which is applied to curb gambling related activities in India. In this technology driven era where almost every 4 months you have to update your phone to newer safety and updated versions provided by your software provider to keep up to the existing trend and equip the technology to updated software to protect from dangers to its users. It is ironical that this age-old obsolete law still holds good for gambling related acts in India till date. The era of the Public Gambling Act,1867 had never fantasied the world revolving on the axis of internet, digitalization and globalization which have made the world operate without boundaries. The premise of prohibition laid under the Public Gambling Act,1867 is restricted to gambling activity done in ‘common gambling house’. But it has lost its relevance in today’s world wherein everything can be done from the comforts of your home by a click of a button on your laptop. Thus, gambling houses are things of the past. The history behind prohibition of gambling in public places was originally implemented by laws passed by the British Crown to prohibit common Englishmen and royal soldiers and the inhabitants of the colonies under British rule do not waste their working time in such time-exploiting indulgences done in groups publicly. Thus, to curb these activities, laws were enacted around the same time for

⁵ Times of India, Oct 19,2023 also available at <https://timesofindia.indiatimes.com/business/india-business/illegal-betting-and-gambling-tax-authorities-losing-rs-2-lakh-crore-annually-says-report/articleshow/104556382.cms>

⁶ Id.

⁷ Id.

⁸ Public Gambling Act, No. 3 of 1867 (1867)

India too. The Public Gambling Act 1867 and section 30⁹ of the Indian Contract Act, 1872. These two legal attempts can be very well be described as a sly tactic of the crown to prohibit gambling like activities by common man and at the same time give a back door legal privilege to the royal class and their bureaucrats to indulge in their preferred pass time activities. This is clearly visible in section 30 of the Indian Contract Act, 1872¹⁰ which hurriedly declares wagering agreements legally void without even taking the efforts of defining what a wager is! The section also goes out to create an exception in favor of horse racing, which was coincidentally the most favorite indulgence of elite Englishmen. The exception carved out for horse racing under the Indian Contract Act, 1872¹¹ had no legal basis unlike the present judicial stand giving horse racing a legal status based on the reason of involvement of the element of skill.¹² Similarly, the halfhearted and confused legislative attempts in the form of section 12¹³ of the Public Gambling Act, 1867 which expressly exempts games involving skill from the ambit of gambling, but the Act blatantly omitting the definition of ‘mere skill’, which has been responsibly taken up by the judiciary, which seemed to have settled the legal position as - if a game involves both skill and chance, but if skill dominates the element of chance it will qualify as game of skill¹⁴. This settled position has been turbulently over turned by the latest legislation Promotion and Regulation of Online Gaming Act 2025¹⁵. Which has clean-bowled the element of “skill” which has been till date the ultimate legality litmus test for separating legal acts from gambling. The chaos caused due to the Constitutional privilege given to States embark on their individual take on betting and gambling has created a haphazard patchwork of laws adding up to the disharmony in the legislative landscape on betting in India¹⁶. A country derives its strength not only from its armed forces but it inevitably needs a strong network of laws

⁹Sec 30. Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made. Exception in favour of certain prizes for horse-racing—This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

¹⁰ Supra note 9

¹¹ Id

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

¹³ Supra 8, Sec.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

¹⁴ supra note 12

¹⁵ Sec.2(g) which defines online money game to include games of skill, chance and both. Sec.5 bans such online money games under the present Act

¹⁶ Constitution of India, 1950- Entry 34, List II of Seventh Schedule

which are in tune with the present times – making it a power house of strength both internally and externally. The above discussion very clearly puts forth a malignant legal framework which has primarily anchored itself to an outdated prohibitionist regime relating to cricket betting, having in no way proved its efficacy for achieving its desired goal.

The present laws have failed in giving clarity to the concept of legal status of cricket betting and importance of skill in the determination of a game as a legal activity. The laws have tightly held on to many grey areas without attempting to fill in the gaps, following the British trend. This in turn has acted as narrow escape route for infiltration of illegal betting syndicates operating without fear of law, as the reality is that there are NO proper laws for it. The legal uncertainty has aided in promoting cricket betting in legal voids, detrimental to national interest. India desperately needs a change in its legal stand relating to cricket betting which has become an unstoppable activity. Only regulating cricket betting in a legalized framework will stop the collateral damage to this heartthrob sport of every Indian.

2. JUDICIAL RESOURCEFULNESS

The Indian judiciary has contributed considerably in filling in the gaps created by legislative voids and related concepts. Judicial precedents have infused life into the dead letters of existing laws, clearing the cloud of uncertainty around gambling and betting. The Apex court in the case of *Board of Control for Cricket in India v. Cricket Association of Bihar & Ors.*, (2016) 8 SCC 535 approached the Law Commission of India to venture into the possibility of legalizing cricket betting in India. This approach of the Judiciary is truly worth appreciating as the 276th Law Commission Report titled, “Legal Framework: Gambling and Sports Betting including in Cricket in India” acknowledged the thought in the following words - *“incapability to enforce a complete ban has resulted in rampant increase in illegal gambling, resulting in a boom in black-money generation and circulation. Since it is not possible to prevent these activities completely, effectively regulating them remains the only viable option.”*¹⁷ Thus, it won’t be wrong to say that the Judiciary has effectively performed what was in its control and power but it is infact the legislature which is dormant inspite of the Law Commission Report clearly dismissing the prohibitory regime applied to cricket betting in India.

¹⁷ LAW COMMISSION OF INDIA Report No. 276 LEGAL FRAMEWORK: GAMBLING AND SPORTS BETTING INCLUDING IN CRICKET IN INDIA

K.R. Lakshmanan v. State of Tamil Nadu (1996): The Formative Judgment-

The Supreme Court's verdict in *K.R. Lakshmanan v. State of Tamil Nadu*¹⁸ is a pivotal judicial pronouncement relating to gambling in India. It marked a significant refinement in Indian gambling law which was stagnant. It set the foundation for cricket betting and other sports involving the element of skill, giving sport of horse racing a legal recognition and thus casting away the shadow of gambling associated with it. This case was relating to the legal status of horse racing as a “game of skill or a game of chance”. The apex court opened up each element that is involved in the act of horse racing. It evaluated their respective contribution. Factors like breed and fitness of the animal, training of the jockey and the horse, expertise of the jockey to handle the race etc. the apex court observed that a horse race is a combination of experience, training and the acquired knowledge which goes hand in hand to reach to the finishing line of the race. Horse racing is a clear game of skill and thus does not qualify as gambling. Importantly, inspite of horse racing involving monetary stakes, the demonstration of skill involved in the sport outshined the presence of monetary involvement in its results and granted it the status of game of skill. This judgment created the pathway for cricket betting to come into legal classification of game of skill, as it involves similar parameters as the ones applied to horse racing. Professional cricket bettors use cricket related data, collected from analysts and statisticians who crunch the numbers to reach to probability of results by utilizing high end designed databases¹⁹ - demonstrating that skill clearly predominates over chance in betting in cricket.

3. BENTHAM'S UTILITARIAN ANALYSIS-

Jeremy Bentham, popularly called as the “father of utilitarianism,” gave the world a simple but effective thought. In the words of Bentham “*Nature has placed mankind under the governance of two sovereign masters, pain and pleasure.*”²⁰ Thus Bentham connected actions to two very practical variables of “Pleasure” and “Pain”. According to him legislations should work towards facilitating “the greatest happiness for greatest number”²¹. Thus, Bentham’s Utilitarianism evaluated laws on the basis of their ability to promote greatest happiness for

¹⁸ AIR 1996 SC 1153

¹⁹ IPL and Data: How Analytics is Used in the Game Prediction also available on <https://logandata.com/ipl-and-data-how-analytics-is-used-in-the-game-prediction/>

²⁰ Introduction to the Principles of Morals and Legislation-Jeremy Bentham, also available at <https://www.laits.utexas.edu/poltheory/bentham/ipml/ipml.c01.html#:~:text=I.%20Nature%20has%20place>

²¹ Id.

greatest number of people. Laws should be made in such a way that they aim to achieve the goal of pleasure and avoid pain. Bentham believed in protecting individual liberty, as a person is best judge of his welfare and individual interest. Thus, his liberty should be curtailed only if it will result in greater harm to society and not otherwise. To put it in other words curtailment of individual freedom is justified only if will result in happiness of greater number. According to Bentham, prohibitions through legislations reflect adversely on individual welfare which is more likely to reduce rather than increase happiness. Betham also provided a systematic system of measurement called as '*felicific calculus*'²² for evaluation of pleasure-pain based on seven dimensions: 1. Intensity 2. Duration 3. Certainty 4. Propinquity (nearness in time), 5. Fecundity (tendency to produce more pleasure), 6. Purity (freedom from accompanying pain), and 7. Extent (number of persons affected).

Leading the discussion forward finding the answer to a utilitarian question –

Does Prohibition or Regulation of cricket betting produce greater net happiness?

A. Applying the Felicific Calculus to Cricket Betting

Pleasures from Regulated Cricket Betting-

a. Consumer Satisfaction and Entertainment-

Cricket betting in today's scenario is more of pleasure and thrill seeking activity. Giving the bettor an enhanced experience of involvement in the game and resulting joy which is statistically arrived at based on his calculations and experience put into the game through his stakes. This monetary involvement adds on to the entertainment quotient by making the bettor more than a mere spectator. Bringing in a connect to the game being played.

Prohibition on the other hand in no way cuts down the strong desire of deriving pleasure and thrill in the form of entertainment. But it definitely results into forcing the activity of cricket betting underground in a vulnerable environment.

b. Economic benefit- Revenue generation-

Prohibition on cricket betting has explored illegal means of doing it. Thus, depriving a big

²² Bentham's Felicific Calculus Explained - <https://www.scribd.com/document/482306228/LESSON-2-1>

amount of revenue which would have been in the government coffers. Generating black money. Option of regulated betting would facilitate rechanneling substantial lost tax revenue for India which is presently diverted offshores. In spite of ban on cricket betting in India, the illegal betting market in India is estimated to be worth \$100 billion annually²³, with a projected growth rate of 30% according to a report by Centre for Knowledge Sovereignty, which is a public policy think tank.²⁴ Since cricket betting is considered illegal in India there is no official statistical data available on the subject, but never the less independent statistics suggest that this market grew at 7% CAGR from 2012 to 2018²⁵. In addition to this, it is expected that the illegal betting market to grow at an annual rate of 30% in the years to come due to regulatory void surrounding it.²⁶ Even by applying a 20% tax rate annually would generate more than sufficient revenue that could fund education, healthcare, infrastructure, and sports development, creating widespread happiness gains. Additionally, legal betting would create legitimate employment opportunities in areas like operations, compliance, analytics, and customer service to name a few. Leading to more happiness.

c. Enhanced Consumer Protection:

Regulated platforms provide transparency, guaranteed payouts, dispute resolution mechanisms, and protection against related fraudulent acts. There is a law in place which will take care of the mischiefs created. Current illegal betting involves significant risks of non-payment, possible manipulation, and exploitation. Leaving takers stranded and destroyed with no place to go, creating immense pain and helplessness. The happiness gained from security from manipulative acts and a consequential redressal mechanism in case of deceit is of substantial importance and always a desired outcome of every Welfare State.

d. Integrity Enhancement:

Paradoxically, legalization will better protect the integrity of cricket. Licensed operators have commercial incentives and a legal obligation to prevent fixing and related corruption. The legislation can demand mandatory responsibility required to share suspicious transaction details to concerned authorities. Sophisticated monitoring algorithms can detect irregular

²³ Gambling away India's sovereignty, report by Centre for Knowledge Sovereignty, India- also available at https://cksindia.org/gambling-away-indias-sovereignty/#_Toc165628282

²⁴ *id*

²⁵ *Id.*

²⁶ *Id.*

betting patterns. At the same time digital payment mechanism between the licensed betting operator and the legal bettor will also help the investigation machinery to find the trail of suspicious transactions and nab the culprit with ease and evidence which is not possible in today's invisible hawala oriented payment system. This in turn would create transparency and responsibility. The United Kingdoms' system, where operators report unusual activity to sporting integrity units under the relevant statute, has proven its purpose and utility²⁷. Illegal markets, on the other hand, operate covertly in India where fixers place large bets anonymously.

e. Reduced Criminal Enterprise:

Currently, the illegal betting markets unjustly enrich organized criminal syndicates including the Dawood Ibrahim's D-Company²⁸ and many more, who use this massive illegal wealth for funding other criminal activities. Legalization along with regulation would transfer this economic transaction from the hands of criminals to legitimate, taxpaying businesses. This in turn will result in reduction of criminal wealth, bringing down their funding corpus and thus get down the associated violence, corruption, and social harm which in turn will help to generate significant positive utility in society. Making it much safer and livable. A society which is low on crime has always been a prime objective of every Nation irrespective of its geography and history.

Pains from Prohibition (Status Quo)

a. Criminalization of Millions:

Cricket betting in today's era is more of recreation. Prohibition makes millions of people engaging in betting as a mere recreational activity tagged as 'criminals.' This in turn breeds in disrespect for law, increasing incidents of police corruption and hence posing greater risks on otherwise law-abiding citizens. The consequent arrest and implication of social stigma, adversely impact the bettor psychologically and socially. The pain thus created generates a much adverse impact creating apathy towards the prevailing legal system rather than expected

²⁷ Gambling Act, 2005 (United Kingdom)

²⁸ A dark, murky world of the mafia and cricket, India Today- also available at <https://www.indiatoday.in/sports/ipl-6/story/ipl-spot-fixing-betting-match-fixing-mafia-link-dawood-163476-2013-05-16>

deterrence.

b. Consumer Exploitation:

Illegal bookmakers frequently refuse to pay winning bets, manipulate odds, or disappear with the funds. In fact, physically they are not traceable too as they operate in secrecy as to place and identity. There is a legislative void regarding online betting which is greatly down from offshore betting sites. Thus, the Bettors have no legal remedy in any form. This in turn generates significant pain through financial losses and legal helplessness.

c. Lost Public Revenue:

Every rupee flowing into the pockets of illegal operators adds up to the lost tax revenue that could have been used for funding underfunded schools, hospitals, and sports infrastructure. This creates a feeling of frustration.

d. Match-Fixing/ Spot fixing Scandals:

The nightmares of cricketing scandals have every time wounded the diehard cricket fans. Examples of fixing relating to favorite South African captain Hansie Cronje²⁹ and 2013 IPL fixing³⁰ has clearly exposed the deeply infiltrated corruption into this gentleman's sport. These incidents cause widespread ache to fans feeling betrayed, players suffering reputational damage, and the adverse impact on the credibility of this celebrated sport.

e. Problem Gambling Without Support:

In spite of ban on cricket betting in India it has big takers here. Thus, illegality does not impact its indulgence. But the illegal status has created no scope for having mechanism facilitating responsible practices around cricket betting. Problem gamblers currently have no system facilitating self-exclusion programs, deposit limits, or treatment facilities as the activity is illegal and thus banned. Illegal operators conveniently ignore problematic users as they are only interested in the monetary returns. The pain suffered by compulsive gamblers and their families in terms of financial ruin, relationship breakdown, mental health deterioration,

²⁹ Hansie Cronje, match-fixing and plane crash that left a complex legacy, Timothy Abraham, BBC Sports also available <https://www.bbc.com/sport/cricket/articles/cly8ypwd48po#:~:text=Hansie%20had%20just%20given%20evidence,he%20was%20at%20the%20centre>.

³⁰ *Supra note 4*

stigmatization gets intensified when the existing prohibition-centric legislations are in no mood to consider addiction as a public health problem. This badly impacts the victims of betting underlining the need for effective regulations through legalization of cricket betting which will have provisions for the victims who are invisible in the prohibitionist legislative attitude.

B. The Utilitarian Verdict-

Applying Bentham's seven dimensions systematically to legalization of cricket betting:

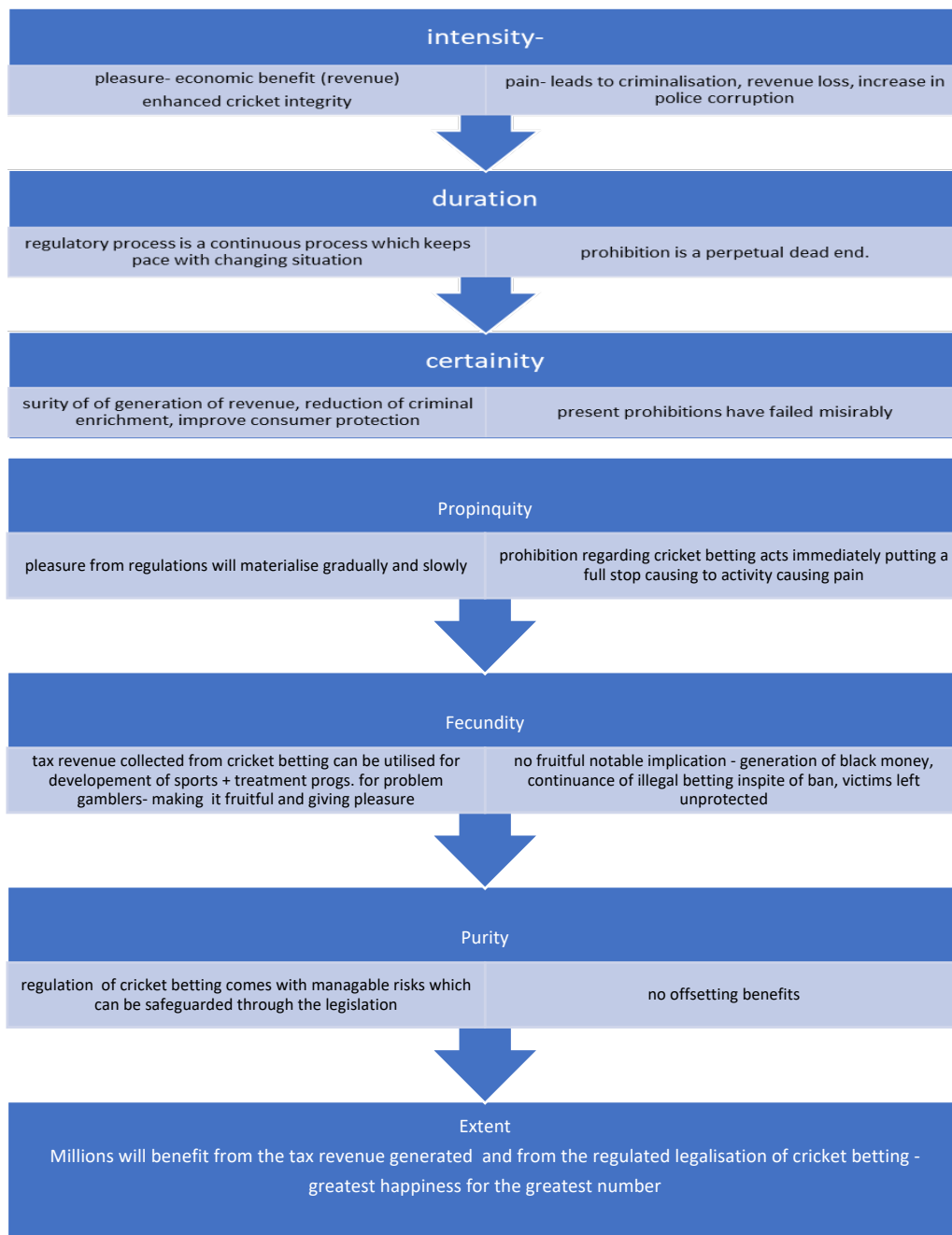


Fig:1 Chart showing Pleasure and Pain derived from Regulation of Cricket betting- Felicific Calculus

CONCLUSION

This paper has demonstrated through three analytical angles, that India has reached a dead end relating to cricket betting wherein only a comprehensive regulation has remained as the viable option, guarding the loyalty and integrity of the sport on one hand and protecting the confidence of fans on the other. The judicial analysis on horse racing as a sport involving skill by the Supreme Court's reasoning in *K.R. Lakshmanan*, has meticulously given the formula which can be applied to solve the legal equation surrounding cricket betting. Primarily, demonstrating that skill will not qualify as gambling. Clearly demonstrating the legal foundation favouring regulation of cricket betting in contrast to prohibition.

The utilitarian analysis, applying Bentham's felicific calculus to cricket betting in India, has systematically tilted towards the verdict that regulated betting leads to maximum societal welfare. The paper has given incidents of miserable failure of the present prohibitionist regime and at the same time has acknowledged the efficacy of certain degree of prohibitionist attitude necessary to control certain risk factors associated with cricket betting, but this can instead be achieved by framing a legislation which will have a zero tolerance objective when it comes to certain crucial aspects concerning the integrity of cricket, black money generation, infiltration of criminal syndicates into cricket betting.

The time to change is now! The recently passed Promotion and Regulation of online gaming Act, 2025 which outrightly bans online real money gaming irrespective of skill involved, clearly reflects on the escape mechanism adopted by Indian law givers on issues risking their public image. It is the need of the hour that cricket betting should be seen through the lens of the changing world. Cricket and cricket betting are no more National agendas, but have gone global. India needs to think globally and adapt to the changing times and technology.

The present reality relating to prohibition of cricket betting mirrors the exact situation regarding prohibition forced on alcohol in the 1920's in America, which resulted in a widespread public non-compliance, rampant organized crime, immense enforcement difficulties, and massive economic losses leading to its historical failure³¹.

I would conclude by quoting Justice D P Madon which was cited in the 276th Law

³¹ Prohibition- American society in the 1920's, BBC also available at <https://www.bbc.co.uk/bitesize/guides/z7spn9q/revision/1>

Commission Report³² - “*As the society changes, the law cannot remain immutable*” and that “*the law exists to serve the needs of the society which is governed by it.*” (Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr., AIR 1986 SC 1571)

³² supra note.17