



2012

## Saving Cricket: A Proposal for the Legalization of Gambling in India to Regulate Corrupt Betting Practices in Cricket

Rohani Mahyera

Follow this and additional works at: <https://scholarlycommons.law.emory.edu/eilr>

---

### Recommended Citation

Rohani Mahyera, *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 (2012).

Available at: <https://scholarlycommons.law.emory.edu/eilr/vol26/iss1/13>

This Comment is brought to you for free and open access by the Journals at Emory Law Scholarly Commons. It has been accepted for inclusion in Emory International Law Review by an authorized editor of Emory Law Scholarly Commons. For more information, please contact [law-scholarly-commons@emory.edu](mailto:law-scholarly-commons@emory.edu).

# SAVING CRICKET: A PROPOSAL FOR THE LEGALIZATION OF GAMBLING IN INDIA TO REGULATE CORRUPT BETTING PRACTICES IN CRICKET

## INTRODUCTION

In 2010, the International Cricket Council (“ICC”), cricket’s<sup>1</sup> world-governing body,<sup>2</sup> prosecuted three Pakistani players for spot-fixing<sup>3</sup> under its anti-corruption code over a betting scandal that occurred during a cricket match.<sup>4</sup> The Pakistani team’s test captain,<sup>5</sup> Salman Butt, and opening bowlers Mohammad Amir and Mohammad Asif, were paid money by an Indian bookmaker to throw no balls<sup>6</sup> and wide balls<sup>7</sup> in a cricket test match, leading to match-fixing<sup>8</sup> allegations.<sup>9</sup>

---

<sup>1</sup> For a description of cricket, see *infra* Part I.

<sup>2</sup> The International Cricket Council (“ICC”) is the international cricket governing body that makes and enforces cricket’s rules and regulations. See *ICC Members Countries*, INT’L CRICKET COUNCIL, [http://icc-Cricket.yahoo.net/the-icc/icc\\_members/overview.php](http://icc-Cricket.yahoo.net/the-icc/icc_members/overview.php) (last visited Feb. 16, 2012). The ICC is responsible for administering cricket, “including management of playing conditions and officials for Test Match and One-Day International (ODI) cricket.” *Id.* Full members of the ICC govern cricket in their countries and their representative teams qualify to play test matches. *Id.* The full members of the ICC are Australia, Bangladesh, England, India, New Zealand, Pakistan, South Africa, Sri Lanka, West Indies, and Zimbabwe. *Id.*

<sup>3</sup> Spot-fixing occurs when a player fixes details of a game, rather than the entire game itself. See John F. Burns, *Cricket Scandal Rocks Pakistan, Another Blow to Its Spirits*, N.Y. TIMES, Aug. 29, 2010, at A4.

<sup>4</sup> *ICC Bans Salman Butt, Mohammad Asif & Mohammad Amir*, BBC SPORT (Feb. 5, 2011, 3:12 PM), [http://news.bbc.co.uk/sport2/hi/cricket/other\\_international/pakistan/9388422.stm](http://news.bbc.co.uk/sport2/hi/cricket/other_international/pakistan/9388422.stm).

<sup>5</sup> A “test” captain is the captain of a cricket team that plays a test match, where the match is played for five days and the team that scores the most runs wins. Abhishek Choudhari, *Cricket: A Gentlemen’s Game!*, TOP END SPORTS, <http://www.topendsports.com/sport/cricket/basics.htm> (last visited Feb. 16, 2012).

<sup>6</sup> A no ball occurs when the bowling player violates one of the rules for bowling the ball. *Law 24 (No Ball)*, LORD’S HOME CRICKET, <http://www.lords.org/laws-and-spirit/laws-of-cricket/laws/law-24-no-ball,50,ar.html> (last visited Feb. 16, 2012).

<sup>7</sup> A wide ball occurs when the ball passes wide of the batsman, beyond fixed borderlines, such that the batsman cannot hit it with a normal stroke. *Law 25 (Wide Ball)*, LORD’S HOME CRICKET, <http://www.lords.org/laws-and-spirit/laws-of-cricket/laws/law-25-wide-ball,51,ar.html> (last visited Feb. 16, 2012).

<sup>8</sup> Match-fixing occurs when a cricket player plays the match in a way to deliberately alter the outcome, usually for profit. Ravi Krishnan, *Expert Cheat Sheet: All You Need To Know About Cricket Match-Fixing*, LIVEMINT.COM (Aug. 31, 2010, 5:23 PM), <http://www.livemint.com/2010/08/31/172333/Expert-cheat-sheet-All-you-ne.html>.

<sup>9</sup> *Pakistan-England Match-Fixing Scandal: Butt Is Ringleader, Alleges Bookie*, TIMES INDIA (Aug. 29, 2010, 10:01 AM), [http://articles.timesofindia.indiatimes.com/2010-08-29/top-stories/28282129\\_1\\_pakistan-dressing-room-scotland-yard-mohammad-amir](http://articles.timesofindia.indiatimes.com/2010-08-29/top-stories/28282129_1_pakistan-dressing-room-scotland-yard-mohammad-amir). Some news reports refer to the Pakistani players’ activities as spot-fixing while others refer to them as match-fixing. Compare Burns, *supra* note 3 (using “spot fixing”), with Toby Davis, *ICC Vows To Root Out Cheats, Preserve Integrity*, REUTERS, Sept. 3, 2010, available at

The scandal was discovered when an undercover reporter posed as a businessman and paid the equivalent of \$230,000 to a fixer,<sup>10</sup> who told the undercover reporter details of no balls the Pakistani players would bowl in the test match.<sup>11</sup> In the match, the bowlers bowled no balls at the exact time specified by the fixer.<sup>12</sup> The Pakistani team lost the game by a heavy margin, and the ICC initially suspended the players.<sup>13</sup> The case went on trial in front of an ICC tribunal that found the players guilty of corruption.<sup>14</sup> Salman Butt received a ten-year ban from playing cricket, out of which five years were suspended on the conditions that he does not breach the ICC code of conduct again and participates in anti-corruption education.<sup>15</sup> Mohammad Asif received a seven-year ban from cricket out of which two years were suspended on the same conditions as the sentence given to Salman Butt, and Mohammad Amir received a five-year ban.<sup>16</sup> As a result, they were unable to participate in the 2011 Cricket World Cup,<sup>17</sup> and their careers are potentially “completely destroyed.”<sup>18</sup> The United Kingdom also sentenced the players to jail time.<sup>19</sup>

Unfortunately, the Pakistan cricket scandal is only one example of the match-fixing scandals that continue to be a problem in cricket in many countries around the world.<sup>20</sup> One of cricket’s biggest match-fixing scandals took place in 2000, in which South Africa’s<sup>21</sup> then-team captain, Wessell Johannes Cronje (“Hansie Cronje” or “Cronje”) confessed to providing

---

<http://uk.reuters.com/article/2010/09/03/uk-cricket-pakistan-corruption-idUKTRE68169M20100903> (using “match-fixing”). The terms spot-fixing and match-fixing are used interchangeably in this Comment.

<sup>10</sup> The fixer in this story acted as a bookmaker who took money from the undercover reporter. Burns, *supra* note 3. He claimed to have control over certain players of the game and could predetermine details of the game, helping betters win a lot of money. *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*; Davis, *supra* note 9.

<sup>14</sup> *ICC Bans Salman Butt, Mohammad Asif & Mohammad Amir*, *supra* note 4.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> See *Legalise Cricket Gambling in ‘Hub’ India: ICC Chief*, DAWN.COM (Feb. 8, 2011), <http://www.dawn.com/2011/02/07/legalise-cricket-gambling-in-%E2%80%98hub%E2%80%99-india-icc-chief.html>.

<sup>18</sup> *Id.*

<sup>19</sup> *Salman Butt and Pakistan Bowlers Jailed for No-Ball Plot*, BBC NEWS (Nov. 3, 2011 2:24 PM), <http://www.bbc.co.uk/news/uk-15573463>.

<sup>20</sup> See, e.g., *Match-Fixing in Cricket: A Timeline*, NADEEM MALIK (Sept. 14, 2010), <http://nadeemmalik.wordpress.com/2010/09/14/match-fixing-in-Cricket-a-timeline>.

<sup>21</sup> South Africa is a full member of the ICC. See *supra* note 2.

information to an Indian bookmaker to rig a match in exchange for money.<sup>22</sup> The Indian police exposed the scandal by releasing transcripts of phone conversations between Cronje and an Indian businessperson in London.<sup>23</sup> The transcripts indicated that a series of matches played between South Africa and India were fixed through illegal betting.<sup>24</sup> Cronje eventually confessed that he had been involved in illegal betting since 1995<sup>25</sup> and admitted to receiving around \$140,000 from bookmakers, but maintained that he had not thrown any matches.<sup>26</sup> South Africa's cricket board banned him from playing cricket for the rest of his life.<sup>27</sup>

Although the scandals mentioned above involve Pakistani and South African players, India is at the “center of cricket’s illegal gambling industry.”<sup>28</sup> For instance, a major part of the betting deals conducted by Hansie Cronje in South Africa<sup>29</sup> and the Pakistani players in 2010 involved Indian businessmen.<sup>30</sup> A report by India’s Central Bureau of Investigations found that illegal betting in India has boomed since India won the Cricket World Cup in 1983.<sup>31</sup> India is now the main market for the betting that occurs in cricket, with the “market” estimated at \$30 billion.<sup>32</sup> One-day international matches played between India and Pakistan draw bets up to \$20 million, where India is again at the center of the illegal betting syndicate.<sup>33</sup>

---

<sup>22</sup> Maseeh Rahman, *It's Just Not Cricket: Charges That South Africa's Hansie Cronje Took Money To Throw Matches Soil the Image of the Gentleman's Game*, TIME ASIA (Apr. 24, 2000), <http://cgi.cnn.com/ASIANOW/time/magazine/2000/0424/sport.cricket.html>.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> Peter Robinson, *Cronje Finally Comes Clean*, ESPN CRICINFO (June 15, 2000), <http://www.cricinfo.com/ci/content/story/89716.html>.

<sup>26</sup> ‘Cronjagate’: A Timeline, BBC SPORT (June 1, 2002, 1:48 PM), <http://news.bbc.co.uk/sport2/hi/cricket/2020686.stm> [hereinafter *Cronjagate*]. A match is considered “thrown” when played to lose the match deliberately or fix details of the game. See *Pakistan Cricket Team Accused of Throwing Matches*, CTV NEWS (Sept. 5, 2010, 12:31 PM), <http://www.ctv.ca/CTVNews/World/20100905/cricket-pakistan-100905>.

<sup>27</sup> *Cronjagate*, *supra* note 26.

<sup>28</sup> *Illegal Cricket Betting Makes Millions for Indian Gangs*, BBC NEWS (Sept. 6, 2010, 8:31 AM), <http://www.bbc.co.uk/news/world-south-asia-11200235>; Tom Wright, *India Profits from Pakistan Cricket Scam*, INDIA REALTIME WALL ST. J. BLOG (Aug. 30, 2010, 12:13 PM), <http://blogs.wsj.com/indiarealtime/2010/08/30/india-profits-from-pakistan-cricket-scam>.

<sup>29</sup> See Robinson, *supra* note 25.

<sup>30</sup> See Wright, *supra* note 28.

<sup>31</sup> *Id.*

<sup>32</sup> Heena Zuni Pandit, *India's Betting Racket: The Inside Story*, HINDUSTAN TIMES (Sept. 11, 2010, 8:31 AM), <http://www.hindustantimes.com/Cricket/CricketNews/India-s-betting-racket-The-inside-story/Article1-599054.aspx>.

<sup>33</sup> *Legalise Cricket Gambling in 'Hub' India: ICC Chief*, *supra* note 17.

Additionally, gambling in cricket matches has become an easy market to enter in India.<sup>34</sup> A reporter for the *Hindustan Times*, a major Indian newspaper, went undercover to discover the world of illegal betting in cricket, and described it as taking a few easy steps: “several meetings, a tampered cellphone, a code word, and we’re in.”<sup>35</sup>

Gambling is currently banned in India.<sup>36</sup> However, given the Indian match-fixing scandals that have taken place, the ban on betting has not been an effective deterrent to corrupt gambling. Although the nature of cricket is such that it typically requires the involvement of more than one person to sway the match, it is nonetheless highly susceptible to corruption. Bookmakers take bets on every ball and every over or inning in the game.<sup>37</sup> While cricket governing bodies (both at the national and international level) have attempted to minimize corruption issues in the sport, there remains a need for an effective, statutory regulation of the industry within India.<sup>38</sup>

The ICC attempts to regulate the gambling industry by imposing a complete ban on betting for cricket players and personnel,<sup>39</sup> but includes a provision stating that the ICC rules do not undermine or prejudice the application of other laws and regulations,<sup>40</sup> such as national legislation enforced by ICC member countries. To tackle the problem of corruption in cricket, some ICC member countries, including the United Kingdom and South Africa, use gambling laws to regulate cricket matches.<sup>41</sup> However, other ICC members, such as India, impose a complete ban on making bets on sporting events (except for horse racing).<sup>42</sup> Banning gambling activity does not stop it from taking place, but only drives it underground.<sup>43</sup> By working together with

---

<sup>34</sup> See Pandit, *supra* note 32.

<sup>35</sup> *Several Meetings, a Tampered Cellphone, a Code Word, and We’re in*, HINDUSTAN TIMES, [http://www.hindustantimes.com/images/HTPopups/120910/12\\_09\\_10\\_several.html](http://www.hindustantimes.com/images/HTPopups/120910/12_09_10_several.html) (last visited Mar. 17, 2012).

<sup>36</sup> Public Gambling Act § 1, No. 3 of 1867, INDIA CODE (1867).

<sup>37</sup> *Illegal Cricket Betting Makes Millions for Indian Gangs*, *supra* note 28.

<sup>38</sup> See DEP’T FOR CULTURE, MEDIA & SPORT, A SAFE BET FOR SUCCESS—MODERNIZING BRITAIN’S GAMBLING LAWS 3 (2010), [http://www.hblb.org.uk/documents/92\\_WhitePaper\\_A\\_Safe\\_Bet\\_For\\_Success.pdf](http://www.hblb.org.uk/documents/92_WhitePaper_A_Safe_Bet_For_Success.pdf) [hereinafter A SAFE BET FOR SUCCESS].

<sup>39</sup> ICC ANTI-CORRUPTION CODE FOR PLAYERS AND PLAYER SUPPORT PERSONNEL § 2.2, [http://static.icc-cricket.yahoo.net/ugc/documents/DOC\\_C26C9D9E63C44CBA392505B49890B5AF\\_1285831667097\\_391.pdf](http://static.icc-cricket.yahoo.net/ugc/documents/DOC_C26C9D9E63C44CBA392505B49890B5AF_1285831667097_391.pdf) [hereinafter ICC ANTI-CORRUPTION CODE].

<sup>40</sup> *Id.* § 1.7.

<sup>41</sup> See generally Gambling Act, 2005, c. 19 (U.K.); National Gambling Act of 2004 (S. Afr.).

<sup>42</sup> Public Gambling Act, No. 3 of 1867, INDIA CODE (1867).

<sup>43</sup> TNN, *India Should Legalize Gambling*, TIMES INDIA (Apr. 21, 2010), <http://timesofindia.indiatimes.com/india/India-should-legalize-gambling/articleshow/5838036.cms>. Chris Fisser, a South African gaming industry analyst, stated that “in the previous century the United States of America prohibited the distribution of

the ICC, countries like India, which completely ban sports betting, can effectively combat the problem with regulation.

This Comment analyzes India's current model for combating illegal betting and the benefits of regulating betting practices in cricket. India's laws should allow sports betting to address corrupt betting practices in cricket, rather than ban all types of betting. A regulatory model for India should distinguish between legal and illegal betting—authorizing legal betting practices and criminalizing corrupt betting practices. It should also establish gambling boards or commissions that will police betting practices in cricket, drawing “significant action off the black market.”<sup>44</sup>

The idea of legalizing betting in India has been positively received by the Indian population since the 2010 match-fixing scandal. An author in the *Times of India* wrote an article advocating for the legalization of betting.<sup>45</sup> The article stated that criminalizing the behavior does not prevent people from gambling on sports.<sup>46</sup> By regulating it, the government can keep a check on individuals and prevent future match-fixing issues.<sup>47</sup> Furthermore, the *Times of India* took a poll online, where seventy-three percent of the voters approved of legalizing gambling.<sup>48</sup> Additionally, in a BBC news video from India, a cricket fan advocated for the legalization of betting in cricket, commenting that “if you legalize it . . . the transparency level [for the government] will increase.”<sup>49</sup> Clearly, the social stigma sometimes attached to gambling is not very prevalent in India, where an Indian economist even commented, “Let's not forget the *Mahabharata* is based on gambling.”<sup>50</sup> The government is also looking into the

---

alcohol. This powerful country failed in its effort, and the only inheritance of that era is that it allowed organized crime, the Mafia, to gain a foot-hold in their country.” *Chris Fisser's Address to the PMR Breakfast Meeting*, NAT'L GAMBLING BOARD, <http://web.archive.org/web/20100509193641/http://www.ngb.org.za/home.asp?PID=28&ToolID=2&ItemID=115> (last visited Mar. 25, 2012). The arguments for legalizing gambling are strong and show that criminalizing it only drives the problem underground.

<sup>44</sup> Ari Weinberg, *The Case for Legal Sports Gambling*, FORBES (Jan. 27, 2003, 11:55 AM), [http://www.forbes.com/2003/01/27/cx\\_aw\\_0127gambling.html](http://www.forbes.com/2003/01/27/cx_aw_0127gambling.html).

<sup>45</sup> TNN, *supra* note 43.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> *Should Gambling in India Be Legalized?*, TIMES INDIA (Apr. 21, 2010), <http://timesofindia.indiatimes.com/debateshow/5839360.cms>.

<sup>49</sup> *Illegal Betting Makes Millions for Indian Gangs*, *supra* note 28.

<sup>50</sup> Shloka Nath, *Fixing Match Fixing in Cricket*, FORBES (Oct. 18, 2010, 6:00 PM), <http://www.forbes.com/2010/10/08/forbes-india-legalize-betting-curb-match-fixing.html> (internal quotation marks omitted). The *Mahabharata* is an Indian epic poem considered an important part of the Hindu religion, the major religion of India. *The Mahabharata: The Great Epic of India*, BROWN UNIV., [http://www.brown.edu/Departments/Sanskrit\\_in\\_Classics\\_at\\_Brown/Mahabharata](http://www.brown.edu/Departments/Sanskrit_in_Classics_at_Brown/Mahabharata) (last updated July 30, 2009).

possibility of legalizing betting and finding ways to work around any stigma attached to gambling.<sup>51</sup>

The Council Chief of the ICC also encouraged India to legalize gambling. The Council Chief stated that regulated gambling “is a lot better than if it is not regulated,” pushing India to legalize betting.<sup>52</sup> Although the ICC’s role is to govern international cricket matches, it acknowledges in the Anti-Corruption Code that the conduct covered may be subject to other laws and regulations, such as criminal or judicial enforcements.<sup>53</sup> The ICC rules are not meant to supplement, prejudice, or undermine the application of national laws.<sup>54</sup> Thus, the ICC’s espousal of legalized betting provides India with a support system from the cricket industry to implement sweeping legislation. As a result, India’s national legislation should work concurrently with the ICC to regulate betting practices in cricket.

To formulate a comprehensive model, India should look to the regulatory models of the United Kingdom and South Africa in developing its own regulatory framework for addressing corrupt betting practices. The United Kingdom and South Africa, both full members of the ICC, amended their legislation to regulate gambling following significant match-fixing scandals in cricket.<sup>55</sup> Since they amended their legislation, neither country has been involved in any significant match-fixing scandals. However, India continues to deal with corruption in betting. Rather than criminalizing betting, India should adopt aspects of both the U.K. and South African laws to regulate gambling.

There are two ways the United Kingdom and South Africa govern sports betting: through cricket boards and national legislation.<sup>56</sup> This Comment evaluates the novel issue of regulating betting in cricket by comparing the laws and enforcement mechanisms of the United Kingdom and South Africa and the effect such regulation has on match-fixing and corrupt betting in cricket. Part I discusses cricket. Part II analyzes the already established ICC Anti-Corruption

---

<sup>51</sup> *Govt Look into Possibility of Legalizing Sports Gambling*, ECON. TIMES (Sept. 5, 2010, 9:51 AM), <http://economictimes.indiatimes.com/news/news-by-industry/et-cetera/Govt-look-into-possibility-of-legalizing-sports-gambling/articleshow/6495975.cms>.

<sup>52</sup> *Legalise Cricket Gambling in ‘Hub’ India: ICC Chief*, *supra* note 17.

<sup>53</sup> ICC ANTI-CORRUPTION CODE, *supra* note 39, § 1.6.

<sup>54</sup> *Id.* § 1.7.

<sup>55</sup> *Match-Fixing in Cricket: A Timeline*, *supra* note 21; *see* Gambling Act, 2005, c. 19 (U.K.); National Gambling Act 7 of 2004 § 3 (S. Afr.).

<sup>56</sup> For instance, the United Kingdom has the England Wales Cricket Board and the U.K. Gambling Act. *England and Wales Cricket Board*, ECB, <http://www.ecb.co.uk> (last visited Nov. 21, 2010); Gambling Act, 2005, c. 19 (U.K.).

Code in cricket. Parts III and IV discuss the gambling and anti-corruption laws of United Kingdom and South Africa, respectively. Finally, Part V discusses the current ban in India on betting and Part VI proposes a new regulatory model for India.

## I. BACKGROUND ON CRICKET

Cricket is an international team-oriented sport similar to American baseball and consists of two teams that play against each other.<sup>57</sup> Each team has eleven players, one of whom is the captain of the team.<sup>58</sup> It is a basic bat-and-ball game where one team bowls a ball and the other team hits it with a bat and scores runs.<sup>59</sup> The team that scores the most runs wins the game.<sup>60</sup>

There are two formats for playing cricket: test cricket and one-day cricket.<sup>61</sup> Test cricket is played for five days and the team that scores the most runs wins.<sup>62</sup> One-day cricket is played using 300 balls and the team that scores the highest number of runs wins.<sup>63</sup>

In an organized sport, particularly cricket, there are two main ways corrupt betting practices manifest: match-fixing and spot-fixing. Match-fixing occurs when a player is offered money to alter the outcome of the game.<sup>64</sup> Spot-fixing often occurs when players fix details of one or a few particular plays, instead of the outcome of the entire match, in exchange for money so that individuals betting on the game can win.<sup>65</sup> Such fixed-odds bets tend to attract millions of dollars across Asia.<sup>66</sup> Basically, in spot-fixing, if a team wins or loses a match in a dramatically unexpected way as a result of corrupt underperformance, then

---

<sup>57</sup> Timothy Williams, *Playing a Sport with Balls and Bats, but No Pitcher*, N.Y. TIMES, Apr. 3, 2009, at B4.

<sup>58</sup> *Law 1 (The Players)*, LORD'S HOME CRICKET, <http://www.lords.org/laws-and-spirit/laws-of-cricket/laws> (last visited Mar. 17, 2012). The Marylebone Cricket Club ("MCC") was the original governing body of cricket. *MCC History*, LORD'S HOME CRICKET, <http://www.lords.org/history/mcc-history> (last visited Mar. 17, 2012). Although the ICC is the current governing body for cricket, the MCC still writes and interprets the laws of cricket. *Introduction*, LORD'S HOME CRICKET, <http://www.lords.org/laws-and-spirit/laws-of-cricket> (last visited Mar. 17, 2012).

<sup>59</sup> Choudhari, *supra* note 5.

<sup>60</sup> *An Explanation of Cricket*, DEP'T COMPUTER SCI., PURDUE U., <http://www.cs.purdue.edu/homes/hosking/cricket/explanation.htm> (last updated Dec. 1, 2009).

<sup>61</sup> Choudhari, *supra* note 5.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> Krishnan, *supra* note 8.

<sup>65</sup> Burns, *supra* note 3.

<sup>66</sup> *Id.*

the winnings from the bets increase significantly.<sup>67</sup> Players can also perform poorly at predetermined points during a cricket match to win bets, but still win the match.<sup>68</sup> Such betting practices are mainly organized by bookmakers,<sup>69</sup> who are either a part of an organization or are individuals who take bets from people and pay the winners according to the outcome of the wagering event.<sup>70</sup>

The ICC is the international governing body that works to control such corrupt gambling behavior in cricket. It is in charge of match-playing conditions as well as player conduct.<sup>71</sup> It was formed in the early 1900s and it initially included only England, Australia, and South Africa.<sup>72</sup> However, it has evolved to encompass numerous full member countries, associate members, and affiliates.<sup>73</sup> The ICC establishes rules and regulations for international cricket and imposes sanctions for misconduct that occurs during those matches.<sup>74</sup> In particular, the ICC has an anti-corruption code that monitors corrupt betting practices.<sup>75</sup>

## II. ICC REGULATIONS AGAINST CORRUPTION

The ICC amended its rules for corruption in cricket in 2000 following the match-fixing allegations against Hansie Cronje and captains of other cricket teams.<sup>76</sup> Specifically, the ICC now has an anti-corruption code that applies to cricket players participating in any international match and is focused on

---

<sup>67</sup> Paul Condon, *Report on Corruption in International Cricket*, INT'L CRICKET COUNCIL (Apr. 2001), [http://icc-Cricket.yahoo.net/anti\\_corruption/condon-report.php](http://icc-Cricket.yahoo.net/anti_corruption/condon-report.php), para. 66.

<sup>68</sup> *Id.* Some activities that fall under spot-fixing, or "occurrence fixing": the outcome of the toss at the beginning of a match; the end from which the fielding captain will elect to bowl; a set number of wides or no balls occurring in a designated over; players being placed in unfamiliar fielding positions; individual batsmen scoring fewer runs than their opposite numbers who batted first; batsmen being out at a specific point in their innings; the total runs at which a batting captain will declare; the timing of a declaration; the total runs scored in a particular inning and particularly the total in the first innings of a One Day International. *Id.*

<sup>69</sup> *Legalize Betting in Cricket in India*, MERINEWS (May 24, 2008), <http://www.merineews.com/article/legalise-betting-in-cricket-in-india/134577.shtml>.

<sup>70</sup> *Id.*

<sup>71</sup> See *Rules and Regulations*, INT'L CRICKET COUNCIL, [http://icc-cricket.yahoo.net/rules\\_and\\_regulations.php](http://icc-cricket.yahoo.net/rules_and_regulations.php) (last visited Mar. 17, 2012).

<sup>72</sup> *History*, INT'L CRICKET COUNCIL, [http://icc-cricket.yahoo.net/the-icc/about\\_the\\_organisation/history.php](http://icc-cricket.yahoo.net/the-icc/about_the_organisation/history.php) (last visited Mar. 17, 2012).

<sup>73</sup> *Id.*

<sup>74</sup> See ICC ANTI-CORRUPTION CODE, *supra* note 39.

<sup>75</sup> *Id.* § 1.1.5.

<sup>76</sup> *Anti-corruption Overview*, INT'L CRICKET COUNCIL, [http://icc-Cricket.yahoo.net/anti\\_corruption/overview.php](http://icc-Cricket.yahoo.net/anti_corruption/overview.php) (last visited Nov. 11, 2010).

investigation, education, and prevention.<sup>77</sup> The code purports to level the playing field by counting as an offense any fixing, contriving, or otherwise improperly influencing “the result, progress, conduct, or any other aspect of any international match or ICC event.”<sup>78</sup>

Betting practices are included in the Anti-Corruption Code and banned by the ICC rules for players and player support personnel.<sup>79</sup> Betting practices under the ICC rules are defined expansively and include placing, accepting, laying, and entering into any bet.<sup>80</sup> The bets can be conducted with any other party related to the result, progress, conduct, or any other aspect of any international match or ICC event.<sup>81</sup> Such betting practices can ensure the occurrence of a particular play in an international match or ICC event.<sup>82</sup> The particular play becomes the subject of a bet and a player receives a reward for fixing the play a certain way.<sup>83</sup> Thus, betting practices, such as spot-fixing or match-fixing, are covered under the Anti-Corruption Code. Whether the team with the player involved in betting wins or loses the match is immaterial to the illegality of the betting practice.<sup>84</sup>

Allegations of corruption from any source are reported to the Anti-Corruption and Security Unit (“ACSU”).<sup>85</sup> The ACSU enforces these rules and works with the ICC and criminal or judicial entities of a country to investigate allegations made against any cricket players suspected of betting.<sup>86</sup> When the ICC alleges that an offense has been committed and the accused player disputes the charges, the matter is referred to the ICC Code of Conduct Commission.<sup>87</sup> The ICC Code of Conduct Commission appoints three members to form the Anti-Corruption Tribunal (“Tribunal”), which determines whether an offense has been committed.<sup>88</sup> During the Tribunal’s investigation, to protect the integrity of the sport, the ACSU can provisionally suspend players suspected of betting or corruption while the Tribunal makes a

---

<sup>77</sup> ICC ANTI-CORRUPTION CODE, *supra* note 39, § 1.3; *Anti-corruption Overview*, *supra* note 76.

<sup>78</sup> ICC ANTI-CORRUPTION CODE, *supra* note 39, § 2.1.1.

<sup>79</sup> *Id.* § 2.2.

<sup>80</sup> *Id.* § 2.2.1.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* § 2.2.3.

<sup>83</sup> *Id.*

<sup>84</sup> *Id.* §§ 2.6.1–.6.3.

<sup>85</sup> *Id.* § 4.1.

<sup>86</sup> *Id.* §§ 4.2, 4.5.

<sup>87</sup> *Id.* § 5.1.2.

<sup>88</sup> *Id.* § 4.6.1.

determination regarding the offense.<sup>89</sup> Such a suspension bars the player from playing, coaching, or participating in any international match or activity authorized or supported by the ICC.<sup>90</sup> When such a provisional suspension occurs, the ACSU gives the player the opportunity to contest the suspension.<sup>91</sup> To determine whether an offense has been committed, the Tribunal convenes a preliminary hearing and, within forty days of the notice of charge, conducts a full hearing with the ICC and the accused player, along with any legal representatives for either party.<sup>92</sup>

When the Tribunal determines that an offense has been committed, it imposes a sanction, taking into account the seriousness of the offense.<sup>93</sup> The ICC imposes two types of sanctions for corruption and betting. In the first type, the player becomes ineligible to participate or play in an ICC international match, an ICC-sponsored activity, or a National Cricket Federation match.<sup>94</sup> A player's ineligibility to play cricket spans from two years to a lifetime ban.<sup>95</sup> In the second type, the player has to pay a fine<sup>96</sup> that can go up to the value of the reward received by the player in relation to the offense committed.<sup>97</sup> The type of sanction given depends on the seriousness of the violation as well as aggravating and mitigating factors.<sup>98</sup> For corruption in cricket, a player can receive from five years to lifetime ineligibility to play cricket and a discretionary fine.<sup>99</sup> For betting (without corruption) in cricket, a player can be ineligible to play for two to five years.<sup>100</sup> After the Tribunal issues a decision, an accused player has the option of appealing to the Court of Arbitration for Sport.<sup>101</sup>

Despite the ICC's rules and sanctions, other instances of match-fixing in cricket continue to occur. For example, in 2004, Maurice Odumbe, Kenya's

---

<sup>89</sup> *Id.*

<sup>90</sup> *Id.* § 4.6.4.

<sup>91</sup> *Id.* § 4.6.2.

<sup>92</sup> *Id.* §§ 5.1.3, 5.1.4.1.

<sup>93</sup> *Id.* § 6.1.

<sup>94</sup> *Id.* §§ 6.2, 6.5.

<sup>95</sup> *See id.* § 6.2.

<sup>96</sup> *Id.* § 5.2.1.2.

<sup>97</sup> *Id.* § 6.2.

<sup>98</sup> *Id.* § 6.1. Aggravating factors include a lack of remorse, previous offenses, and substantial profits gained from the offense. *Id.* Mitigating factors include admission of guilt, good previous disciplinary record, age and lack of experience, and cooperation with the investigative process. *Id.*

<sup>99</sup> *Id.* § 6.2.

<sup>100</sup> *Id.*

<sup>101</sup> *Id.* § 7.1.

then-team captain, was banned from playing cricket for five years after receiving money from bookmakers.<sup>102</sup> Odumbe was found guilty on twelve charges, including one for receiving \$5,000 for fixing a match played in Zimbabwe.<sup>103</sup> Like previous match-fixing scandals, the connection between this scandal and India became apparent when Odumbe visited India several times and was hosted by known Indian bookmakers.<sup>104</sup> In 2008, Marlon Samuels, a West Indies cricket team player, was found guilty of communicating match-related information to an Indian bookie and banned from playing cricket for two years.<sup>105</sup> In 2010, the ICC again prosecuted cricket players for match-fixing.<sup>106</sup> However, it is important to note that a British tabloid magazine, not the ICC, detected and exposed the match-fixing instance that occurred in 2010 during the match between Pakistan and England.<sup>107</sup> Thus, the ICC is not necessarily the agency that monitors and detects the corrupt activity.

The ICC itself admits that policing corrupt behavior is not easy for it to handle. The Anti-Corruption Code states that illegal betting practices are “carried out under cover and in secret, thereby creating significant challenges for the ICC in the enforcement of rules of conduct.”<sup>108</sup> Additionally, such scandals often involve “vast sums of money”<sup>109</sup> and the ICC does not have the “staff or systems in place to enable the proper governance, leadership or supervision of world cricket.”<sup>110</sup> Furthermore, the ICC rules only apply to cricket players and related personnel,<sup>111</sup> not the general population, so the ICC does not have jurisdiction over individuals who have behind-the-scenes control over the sport. Thus, it is clear that the ICC, even after making amendments to its regulations and setting up the ACSU, is not fully capable of enforcing its

---

<sup>102</sup> Wisden Cricinfo Staff, *Maurice Odumbe Banned for Five Years*, ESPN CRICINFO (Aug. 17, 2004), <http://www.espncricinfo.com/ci/content/story/135253.html>.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.*

<sup>105</sup> Cricinfo Staff, *Samuels Found Guilty of Violating ICC Code*, ESPN CRICINFO (May 13, 2008), <http://www.espncricinfo.com/westindies/content/story/350812.html>.

<sup>106</sup> See *Throwing It All Away*, Editorial, HINDU (Aug. 31, 2010), <http://www.thehindu.com/opinion/editorial/article606002.ece>.

<sup>107</sup> *Id.*

<sup>108</sup> ICC ANTI-CORRUPTION CODE, *supra* note 39, § 1.1.4.

<sup>109</sup> ICC Code of Conduct Commission, INT'L CRICKET COUNCIL, [http://icc-Cricket.yahoo.net/anti\\_corruption/icc-code-of-conduct.php](http://icc-Cricket.yahoo.net/anti_corruption/icc-code-of-conduct.php) (last visited Mar. 17, 2012).

<sup>110</sup> Condon, *supra* note 67, para. 101.

<sup>111</sup> See ICC ANTI-CORRUPTION CODE, *supra* note 39, § 1.3.

regulation to stop illegal betting, especially given the continuing occurrence of betting scandals in cricket.<sup>112</sup>

The ICC members also monitor corrupt betting practices. In addition to enforcing the ICC rules and working with the ICC,<sup>113</sup> there are two ways ICC members police corrupt betting practices. First, the member countries have established their own national regulatory cricket boards.<sup>114</sup> Because such national cricket boards, and even the ICC in general, do not have the policing powers to regulate and monitor corrupt activity in cricket,<sup>115</sup> the use of national legislation to address the problem of corrupt betting becomes essential.<sup>116</sup> Thus, a second way ICC member countries deal with corrupt betting is by applying national gambling laws.

Given India's involvement in such corrupt match-fixing scandals, it should use its national legislation to work with the ICC to address corrupt betting practices. However, such policing cannot take place when there is a blanket ban on every type of betting in cricket, as is the case in India. These problems in India indicate a clear need for regulation. Rather than impose a complete ban, India should follow the regulatory models of the United Kingdom and South Africa to address corrupt betting practices in cricket. The following Parts analyze the gambling laws of the United Kingdom and South Africa to determine the best regulatory model for India to follow.

### III. U.K. LAW

There are two primary ways by which the United Kingdom regulates betting in cricket: through the England and Wales Cricket Board ("ECB" or "Board") and the Gambling Act of 2005 ("U.K. Act"). Although the ECB rules

---

<sup>112</sup> See Condon, *supra* note 67, para. 106; *Rules and Regulations*, *supra* note 71.

<sup>113</sup> See *Rules and Regulations*, *supra* note 71 (providing multiple rules for various aspects of cricket regulation).

<sup>114</sup> See *supra* text accompanying note 2.

<sup>115</sup> Condon, *supra* note 67, para. 104B.

<sup>116</sup> See R. Jagannathan, *Illegal Betting Is the Problem, Not Cricket Match-Fixing*, DAILY NEWS & ANALYSIS (Sept. 2, 2010), [http://www.dnaindia.com/opinion/column\\_illegal-betting-is-the-problem-not-Cricket-match-fixing\\_1432244](http://www.dnaindia.com/opinion/column_illegal-betting-is-the-problem-not-Cricket-match-fixing_1432244).

only apply to cricket players,<sup>117</sup> the U.K. Act applies to all individuals involved in sports gambling.<sup>118</sup>

#### A. Cricket Board

The ECB is the national governing body for cricket in the United Kingdom.<sup>119</sup> It governs cricket matches played in England, Wales, and the Isle of Man.<sup>120</sup> The ECB's rules dictate which cricketers can play on behalf of England in international matches and has the authority to disqualify a cricketer from playing for England if he violates the board's rules and regulations.<sup>121</sup>

The ECB's rules and regulations address match-fixing and betting as part of the board's directives.<sup>122</sup> The rules applicable to match-fixing and betting apply only to cricketers and employees of ECB or parties related to the board, not to ordinary persons who bet on a match.<sup>123</sup> Cricketers and other individuals subject to the rules of the Board cannot make bets on any aspect of the matches themselves or provide information that would give someone an unfair advantage in placing a bet.<sup>124</sup> The Board's primary concern with betting is related to match-fixing, which occurs when a cricketer contrives a predetermined result for any match played under the jurisdiction of the Board or the ICC.<sup>125</sup> Penalties for violation of the Board's rules include a warning against a repeat offense, a reprimand, a fine, suspension, alteration of points awarded in a match, or a contribution to the cost and expenses incurred by the Board regarding the complaint against the cricketer.<sup>126</sup>

---

<sup>117</sup> See ENGLAND & WALES CRICKET BD., REGULATIONS GOVERNING THE QUALIFICATION AND REGISTRATION OF CRICKETERS § 1.7, <http://static.ecb.co.uk/files/2010-regulations-governing-the-qualification-and-registration-of-cricketers-amended-july-2010-10984.pdf> [hereinafter REGULATIONS GOVERNING THE QUALIFICATION AND REGISTRATION OF CRICKETERS].

<sup>118</sup> See Gambling Act, 2005, c. 19 (U.K.).

<sup>119</sup> About ECB, ENGLAND & WALES CRICKET BOARD, <http://www.ecb.co.uk/ecb/about-ecb> (last visited Mar. 17, 2012).

<sup>120</sup> ENGLAND & WALES CRICKET BD., CODE OF PRACTICE OF THE ECB 425, <http://static.ecb.co.uk/files/2356-fc-codeofpractice2010-p425-432-lr-10988.pdf>.

<sup>121</sup> See generally REGULATIONS GOVERNING THE QUALIFICATION AND REGISTRATION OF CRICKETERS, *supra* note 117.

<sup>122</sup> ENGLAND & WALES CRICKET BD., DIRECTIVES OF THE ENGLAND AND WALES CRICKET BOARD § 3.8, <http://static.ecb.co.uk/files/2356-fc-directives2010-p377-404-lr-10986.pdf>.

<sup>123</sup> *Id.* §§ 3.8.2(a)–(g).

<sup>124</sup> *Id.* § 3.8.7.

<sup>125</sup> *Id.* § 3.8.3.

<sup>126</sup> *Id.* §§ 3.8.19–8.29.

The ECB's rules and regulations are designed to address only the problem of corrupt aspects of betting—where cricketers throw the game according to predetermined plays to gain a reward. These rules do not address general gambling regulations that criminalize bets by individuals who do not participate in the match themselves, but are only spectators.<sup>127</sup> Thus, the rules regulating corruption in cricket must be analyzed in conjunction with the United Kingdom's national legislation.

### *B. Legislation*

In 2005, the United Kingdom passed the U.K. Act, which regulates gambling and betting practices by all individuals, including cricketers and spectators of the game.<sup>128</sup> The U.K. Act's gambling regulations cover both gambling games and betting.<sup>129</sup> Its objectives are to prevent gambling from being a source of crime or disorder, ensure that gambling is conducted in a fair and open way, and protect "children and other vulnerable persons from being harmed or exploited by gambling."<sup>130</sup> To facilitate these objectives, the U.K. Act covers any betting practices that include paying an individual to lose a game deliberately to profit from a bet placed on the outcome of the game.<sup>131</sup> It also legalizes gambling for adults above the age of eighteen.<sup>132</sup>

To regulate such betting practices, the U.K. Act differentiates between legal and illegal gambling practices to criminalize only certain types of activities.<sup>133</sup> It defines legal betting as making or accepting a bet on the likelihood of anything occurring or not occurring, or of anything being true or not.<sup>134</sup> The outcome of the bet is irrelevant; it does not matter whether the team with a player engaged in betting wins.<sup>135</sup> This broad definition includes betting on sports.<sup>136</sup>

---

<sup>127</sup> See *id.* § 3.8.2.

<sup>128</sup> Gambling Act, 2005, c. 19 (U.K.).

<sup>129</sup> *Id.* § 3.

<sup>130</sup> *Id.* § 1.

<sup>131</sup> GAMBLING COMM'N, BETTING INTEGRITY: POLICY POSITION PAPER § 1.4 (2009), <http://www.gamblingcommission.gov.uk/pdf/betting%20integrity%20policy%20position%20paper%20-%20march%202009.pdf>.

<sup>132</sup> See Gambling Act, 2005, c. 19, § 46 (U.K.).

<sup>133</sup> Compare *id.* §§ 9(1)(b)–(c), with *id.* § 42.

<sup>134</sup> *Id.* §§ 9(1)(b)–(c).

<sup>135</sup> *Id.* § 42(2).

<sup>136</sup> *Id.* § 9.

Illegal betting practices include cheating, where a person is prohibited to cheat when gambling or enable or assist another person to cheat.<sup>137</sup> Cheating also consists of actual or attempted deception or interference with the process of gambling or events related to the process of gambling.<sup>138</sup> Thus, match-fixing and spot-fixing fall under illegal gambling practices under the U.K. Act, because the bookmakers and players involved cheat themselves and generally assist others in cheating as well. Such practices interfere with cricket, which would fall under an event related to gambling practices. Penalties for committing an offense under the Act can be harsh; a person found guilty can be imprisoned for up to two years and forced to pay a fine.<sup>139</sup>

To regulate such corrupt gambling practices, the U.K. Act establishes a Gambling Commission (“Commission”).<sup>140</sup> The Commission’s goal is to pursue the U.K. Act’s objectives and permit gambling as long as that permission is consistent with the Act.<sup>141</sup> The Commission consists of a chairman and other commissioners appointed by the Secretary of State.<sup>142</sup> The Commission is in charge of reporting to the Secretary of State about incidents, manner, effects, and regulation of gambling.<sup>143</sup> To compile such reports, the Commission has to monitor betting practices.<sup>144</sup>

The Commission regulates gambling activities conducted by betting syndicates and individuals through operating licenses.<sup>145</sup> The Commission issues operating licenses that authorize licensees to provide facilities for betting.<sup>146</sup> The licensees act as betting intermediaries, where they provide services that facilitate making or accepting bets between others.<sup>147</sup> Such betting practices can include betting on the outcome of a competition, event, or a process, other than a game of chance (which focuses more on gambling on games).<sup>148</sup> A personal license can also be issued authorizing an individual to perform functions of the operational management of gambling activities.<sup>149</sup>

---

<sup>137</sup> *Id.* § 42(1).

<sup>138</sup> *Id.* § 42(3).

<sup>139</sup> *Id.* § 42(4).

<sup>140</sup> *Id.* § 20.

<sup>141</sup> *Id.* §§ 22, 1.

<sup>142</sup> *Id.* at sch. 4, § 1.

<sup>143</sup> *Id.* § 26.

<sup>144</sup> *See id.* §§ 27–30.

<sup>145</sup> *Id.* § 65.

<sup>146</sup> *Id.* § 65(2).

<sup>147</sup> *Id.* § 65(2)(e).

<sup>148</sup> *See id.* § 9.

<sup>149</sup> *Id.* § 127.

The Commission conducts its regulatory actions by reviewing and authorizing gambling activities and individuals involved through an application process for the operating license.<sup>150</sup> Betting intermediaries must submit an application to obtain an operating license.<sup>151</sup> The submitted application must specify activities that will take place in the gambling facility, state the history of the applicant's prior offenses, and contain other information that the Commission may request.<sup>152</sup> The Commission has sole discretion to issue licenses with conditions restricting the nature of the activities conducted in the gambling facilities, the circumstances in which they are conducted, or their extent.<sup>153</sup> These operating licenses are given only to a small group of individuals because they are issued on the condition that bets may be accepted on behalf of the licensee, only by the licensee, the person employed by the licensee, or the holder of another general betting operating license.<sup>154</sup> Thus, the Commission has a record of all activities taking place in gambling facilities, the individuals facilitating the gambling practices, and the opportunity to review the betting practices before bets are made to ensure that they are legal.

The Commission also regulates betting practices after the application process is complete by keeping a record of and monitoring gambling activities.<sup>155</sup> For instance, the Commission maintains a register of the operating licenses it issues.<sup>156</sup> The holder of an operating license must also provide records relating to licensing activities if requested by the Commission.<sup>157</sup> Additionally, the Commission visits and makes phone calls to licensed operators to ensure compliance.<sup>158</sup> The Commission specifically monitors betting in sports as well. The Commission may require a person, as a condition to an operating license, to provide any information to the Commission about breaches of rules applied by sporting bodies.<sup>159</sup> Additionally, the Commission maintains a confidential hotline to gain information about suspicious betting

---

<sup>150</sup> *See id.* §§ 69–73.

<sup>151</sup> *Id.* § 69.

<sup>152</sup> *Id.*

<sup>153</sup> *Id.* §§ 75–79.

<sup>154</sup> *Id.* § 92.

<sup>155</sup> *See id.* §§ 106, 116, 122.

<sup>156</sup> *Id.* § 106.

<sup>157</sup> *Id.* § 122.

<sup>158</sup> GAMBLING COMM'N, ANNUAL REPORT AND ACCOUNTS 2009/10, at 15 (2010), <http://www.gamblingcommission.gov.uk/pdf/Annual%20report%20and%20accounts%202009%202010.pdf> [hereinafter ANNUAL REPORT 2009/10].

<sup>159</sup> Gambling Act, 2005, c. 19, § 88(2)(b)(ii) (U.K.).

activity.<sup>160</sup> Through these procedures, the Commission maintains a record of the betting practices that occur and has the ability to keep track of the individuals involved.

One of the challenges to monitoring gambling activities, however, is the “culture of secrecy” bookmakers maintain. Bookmakers typically oppose licensing conditions that require them to divulge confidential information to the Commission, feeling a sense of loyalty toward their customers.<sup>161</sup> However, at least one bookmaker requires its customers “to waive their data-protection rights” so it can offer the Commission information for investigations.<sup>162</sup> Nonetheless, this issue poses a challenge for regulators that rely on this reporting system to monitor corrupt betting practices. The Commission must stay vigilant in addressing such problems to ensure that the integrity of cricket is not compromised.

To further address illegal sports betting, the United Kingdom also developed the Sports Betting Intelligence Unit (“SBIU”) as part of the Commission. SBIU works with sports governing bodies to help keep corruption out of sports betting and encourage the flow of information.<sup>163</sup> The SBIU does this by requiring license holders to inform the Commission anytime a bet occurs that the Commission would want to void.<sup>164</sup> The license holders also have to report any violations of the laws of sports governing bodies.<sup>165</sup> The SBIU collects and develops information about corrupt sports betting activities.<sup>166</sup> It has jurisdiction over sporting events that take place in Great Britain, involve parties based in Great Britain, and activities that occur with a Commission licensed operator.<sup>167</sup>

Furthermore, the Commission protects the integrity of sports by exercising police power over betting offenses through the SBIU.<sup>168</sup> The U.K. Act

---

<sup>160</sup> *Sports Betting Intelligence Unit*, GAMBLING COMMISSION, [http://www.gamblingcommission.gov.uk/licensing\\_compliance\\_\\_enfo/intelligence/sbiu.aspx](http://www.gamblingcommission.gov.uk/licensing_compliance__enfo/intelligence/sbiu.aspx) (last visited Mar. 18, 2012).

<sup>161</sup> Matt Scott, *Sporting Bodies Struggle To Match Challenge of Betting*, GUARDIAN (Oct. 30, 2007), <http://www.guardian.co.uk/sport/2007/oct/30/sport.sport1>.

<sup>162</sup> *Id.*

<sup>163</sup> ANNUAL REPORT 2009/10, *supra* note 158, at 5.

<sup>164</sup> *Sports Governing Bodies*, GAMBLING COMMISSION, [http://www.gamblingcommission.gov.uk/gambling\\_sectors/betting/operating\\_licence\\_holders\\_-\\_wh/information\\_that\\_must\\_be\\_provi/sports\\_governing\\_bodies.aspx](http://www.gamblingcommission.gov.uk/gambling_sectors/betting/operating_licence_holders_-_wh/information_that_must_be_provi/sports_governing_bodies.aspx) (last visited Mar. 18, 2012).

<sup>165</sup> *Id.*

<sup>166</sup> *Sports Betting Intelligence Unit*, *supra* note 160.

<sup>167</sup> *Id.*

<sup>168</sup> *Id.*

empowers the Commission to prosecute betting offenses and void bets.<sup>169</sup> The Commission works with cricket governing bodies, betting operations, and the police to ensure compliance.<sup>170</sup>

To enforce its regulations, the Commission issues sanctions for violations of the operating licenses it issues. The Commission may review the manner and arrangements of the licensed activities and ensure compliance with the U.K. Act.<sup>171</sup> The Commission monitors compliance through “customer complaints, website reviews, test purchase exercises, previous compliance visits and assessments.”<sup>172</sup> The Commission can suspend or revoke a gambling license if conditions imposed in the license are not met, such as failing to provide information on a breach of rules applied by a sporting body.<sup>173</sup> It can issue a warning, attach an additional condition, suspend or revoke a license, or issue a penalty.<sup>174</sup> It can also enforce a financial penalty if a condition of the license has been breached.<sup>175</sup> The Commission also allows its local authorities to enforce provisions of the U.K. Act.<sup>176</sup> These local authorities have a new role in inspecting gambling premises to enforce the law.<sup>177</sup> They can impose sanctions, such as limiting the hours of operation for bookmakers and reducing the number of gaming machines.<sup>178</sup> Thus, the Commission keeps records of and monitors legal and illegal betting practices, and enforces provisions of the U.K. Act.

The U.K. model can effectively deter cheating in cricket in several ways. Firstly, by differentiating between legal and illegal betting,<sup>179</sup> the U.K. Act distinguishes a normal activity for individuals from activities that change the outcome of a sport. While betting is legal, cheating is not because it involves interference with how a cricket match should actually be played. Thus, the act

---

<sup>169</sup> GAMBLING COMM'N, THE GAMBLING COMMISSION'S BETTING INTEGRITY DECISION MAKING FRAMEWORK 3 (2010), <http://www.gamblingcommission.gov.uk/pdf/Betting%20integrity%20decision%20making%20framework%20-%20December%202010.pdf> [hereinafter BETTING INTEGRITY DECISION MAKING FRAMEWORK].

<sup>170</sup> *Id.* at 4.

<sup>171</sup> Gambling Act, 2005, c. 19, § 116 (U.K.).

<sup>172</sup> ANNUAL REPORT 2009/10, *supra* note 158, at 15.

<sup>173</sup> Gambling Act, 2005, c. 19, § 120 (U.K.).

<sup>174</sup> *Id.* § 117(1).

<sup>175</sup> *Id.* § 121.

<sup>176</sup> A SAFE BET FOR SUCCESS, *supra* note 38, at 9.

<sup>177</sup> OUT-LAW.COM, *UK Gambling Act Is Now in Force*, REGISTER (Sept. 4, 2007, 10:57 AM), [http://www.theregister.co.uk/2007/09/04/gambling\\_act\\_in\\_force](http://www.theregister.co.uk/2007/09/04/gambling_act_in_force).

<sup>178</sup> *Id.*

<sup>179</sup> *See* Gambling Act, 2005, c. 19, §§ 9(1)(b)–(c), 42 (U.K.).

criminalizes only corrupt behavior such as match-fixing and spot-fixing in cricket.

Secondly, the Commission uses regulation of legal betting to monitor individuals with the propensity to gamble. Through operating licenses issued to bookmakers, the Commission tracks gambling activities taking place, rather than criminalizing them and driving them underground. In particular, the application process effectively keeps records of individuals involved in sports betting.<sup>180</sup> Although this process does not guarantee that individuals involved in illegal betting will also engage in legal betting, monitoring and recording legal activities provides a link between the Commission and individuals involved in corrupt betting practices. In addition, by recording instances of prior offenses, the Commission has discretion to investigate and remove individuals who may want to engage in illegal betting practices and throw cricket matches. Additionally, having a standardized system with trained employees protects against actual or perceived unequal treatment of participants.<sup>181</sup>

Thirdly, the SBIU creates a network among the different sports governing bodies to monitor illegal betting practices.<sup>182</sup> When the SBIU receives information about a potential violation, it either prosecutes the violation itself or, if it is a less serious violation of a sports rule, refers the issue to the appropriate sports governing body.<sup>183</sup> For instance, if the possibility of criminal activity is high, the Commission will work with the police to address the problem.<sup>184</sup> However, if a sports governing body, such as a cricket board, can quickly address the issue, then the Commission provides them with information to sanction the illegal behavior.<sup>185</sup> Thus, the Commission both effectively opens lines of communication between different governing bodies to encourage better flow of information and efficiently handles potential violations of betting practices.

---

<sup>180</sup> See *id.* § 106.

<sup>181</sup> See ANNUAL REPORT 2009/10, *supra* note 158, at 36.

<sup>182</sup> See BETTING INTEGRITY DECISION MAKING FRAMEWORK, *supra* note 169, at 6.

<sup>183</sup> *Id.* at 7–8.

<sup>184</sup> *Id.*

<sup>185</sup> *Id.*

Furthermore, although this regulatory model was implemented in 2007,<sup>186</sup> 108 cases of suspicious betting activities were reported to the Commission between 2007 and 2010, including thirty-seven new cases between October 2009 and March 2010.<sup>187</sup> Seventy-four of the suspicious activity reports were made by betting operators under a licensing condition, while thirty-four came from other sources such as sports governing bodies, the media, and the public.<sup>188</sup> Thus, the regulatory model includes the betting operators in enforcing regulations and monitoring illegal betting practices, and overcomes the issue of the “culture of secrecy.”

In addition, the Commission has taken enforcement actions against illegal gamblers. Between April 2009 and March 2010, the Commission had 251 pending actions against illegal gambling, out of which thirty-two involved betting.<sup>189</sup> Six of the betting cases were criminal, but the Commission chose not to prosecute five cases and cautioned one betting syndicate.<sup>190</sup> The rest of the cases were regulatory, where the Commission did not take action beyond the referral in thirteen cases, added a license condition in one, gave advice about conduct in four instances, warned two, warned three with conditions, required two betting syndicates to surrender their licenses, and the Commission revoked one license.<sup>191</sup> Clearly, the Commission has been able to implement different sanctions it has at its disposal to ensure that illegal betting practices do not take place.

One critique of legalized gambling is that it can lead to problem gambling. Problem gambling is defined as gambling to a point where it “compromises, disrupts or damages family, personal or recreational pursuits.”<sup>192</sup> When the U.K. Act was set to pass, BBC published an article stating that the number of adult problem gamblers could double or even quadruple, as a result of a “free-

---

<sup>186</sup> GAMBLING COMM’N, COMPLIANCE AND ENFORCEMENT IMPACT ASSESSMENT 3 (2007), <http://www.gamblingcommission.gov.uk/pdf/Compliance%20and%20enforcement%20impact%20assessment%20-%20Nov%202007.pdf>.

<sup>187</sup> GAMBLING COMM’N, INDUSTRY STATISTICS 2009/10, at 9 (2011), <http://www.gamblingcommission.gov.uk/pdf/Gambling%20Industry%20Statistics%202009%202010%20WEB%20-%20January%202011.pdf>.

<sup>188</sup> *Id.*

<sup>189</sup> ANNUAL REPORT 2009/10, *supra* note 158, at 18.

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> HEATHER WARDLE ET AL., NAT’L CTR. FOR SOC. RESEARCH, BRITISH GAMBLING PREVALENCE SURVEY 73 (2011), <http://www.gamblingcommission.gov.uk/PDF/British%20Gambling%20Prevalence%20Survey%202010.pdf> [hereinafter BRITISH GAMBLING PREVALENCE SURVEY].

for-all” gambling act.<sup>193</sup> To address this issue, the Commission established the Responsible Gambling Strategy Board (“RGSB”).

RGSB advises the “Commission . . . on the research, education and treatment elements in a national responsible gambling strategy[.]”<sup>194</sup> The RGSB also promotes responsible gambling by encouraging licensed operators to provide socially responsible gambling products and players to have control over their play.<sup>195</sup> Such a model of legalizing gambling and providing responsible gambling strategies is effective; according to a recent report on gambling prevalence, in 2010, over seventy-three percent of the population engaged in some form of gambling, which was a return to rates from 1999, before gambling was regulated by the U.K. Act.<sup>196</sup> Problem gambling did increase, from 0.6% of the surveyed population in 1999 and 2007 to 0.9% in 2010.<sup>197</sup> However, the report did not find conclusive evidence of whether it was a random fluctuation or an actual jump in problem gambling,<sup>198</sup> and problem gambling is a “low prevalence activity.”<sup>199</sup> Given that the increase was only 0.3% in ten years, it likely is not a significant increase in gambling and could relate to other factors. For instance, the Commission found that broadly, people gambled for social reasons, monetary reasons, excitement, amusement, to be challenged, to learn, or as an avoidance mechanism.<sup>200</sup> The reasons for gambling did not involve the fact that gambling was now more available after it was regulated.<sup>201</sup> These individuals would gamble regardless of whether gambling was legalized. Additionally, it is not nearly the double or quadruple increase, as the BBC news article predicted.<sup>202</sup>

Furthermore, bookmakers take responsibility when they run betting syndicates by placing safeguards against problem gambling. For instance, one betting syndicate is set up so customers protect themselves from gambling too much by placing limits in gambling accounts they may open with the

---

<sup>193</sup> *Problem Gambling ‘Set to Explode,’* BBC NEWS (Sept. 9, 2004), <http://news.bbc.co.uk/2/hi/science/nature/3641512.stm>.

<sup>194</sup> *Frequently Asked Questions*, RESPONSIBLE GAMBLING STRATEGY BOARD, <http://www.rgsb.org.uk/frequently-asked-questions.html> (last visited Feb. 27, 2011).

<sup>195</sup> *Id.*

<sup>196</sup> BRITISH GAMBLING PREVALENCE SURVEY, *supra* note 192, at 9.

<sup>197</sup> *Id.* at 11.

<sup>198</sup> *Id.* at 11–12.

<sup>199</sup> *Id.* at 84.

<sup>200</sup> *Id.* at 114.

<sup>201</sup> *See id.*

<sup>202</sup> *Problem Gambling ‘Set to Explode,’ supra* note 193.

bookmaker.<sup>203</sup> However, this does not mean that the bookmaker or licensed operator owes a duty of care to the gambler.<sup>204</sup> For instance, in *Calvin v. William Hill Credit Limited*, a bookmaker did not owe a broad duty of care toward problem gamblers as a class and was not liable for losses a gambler incurred as a result of his gambling problem.<sup>205</sup>

Regardless of the benefits of legalized gambling, establishing a regulatory model can be costly. The Commission's annual expenditures from 2008 to 2009 were approximately £14 million.<sup>206</sup> However, this figure is a 9.2% reduction from the previous year.<sup>207</sup> Additionally, as the Commission continues to perfect its administration, the startup costs will be offset by application and annual fees collected from licensed operators.<sup>208</sup> Thus, the United Kingdom's regulatory model should be used as one of the examples for India to model a new gambling law and curb the prevalence of corrupt betting practices.

#### IV. SOUTH AFRICA'S LAW

India should also use South Africa's law to model its own new regulation. There are two primary ways by which South Africa regulates betting in cricket: its cricket board called Cricket South Africa ("CSA") and the National Gambling Act 7 of 2004 ("South African Act").

##### A. Cricket Board

CSA is the national governing body for cricket.<sup>209</sup> The rules and regulations for CSA governing betting largely follow the ICC Anti-Corruption Code.<sup>210</sup> South Africa also regulates cricket through national legislation.<sup>211</sup>

---

<sup>203</sup> Cf. *Hillside (New Media) Ltd. v. Baasland*, [2010] EWHC (Comm) 3336, [19] (U.K.).

<sup>204</sup> See *Calvert v. William Hill Credit Ltd.*, [2008] EWHC (Ch) 454, [172] (U.K.).

<sup>205</sup> *Id.* at [169]–[174].

<sup>206</sup> ANNUAL REPORT 2009/10, *supra* note 158, at 27.

<sup>207</sup> *Id.*

<sup>208</sup> *Id.* at 28.

<sup>209</sup> See *About CSA*, CRICKET S. AFR., [http://www.cricket.co.za/csa\\_articles.aspx?id=1](http://www.cricket.co.za/csa_articles.aspx?id=1) (last visited Mar. 18, 2012).

<sup>210</sup> Sharda Ugra, *Robust Security Measures Assured for CLT20*, ESPN CRICINFO (Sept. 3, 2010), <http://www.espnricinfo.com/t20champions2010/content/story/475713.html>. For a discussion of the ICC's rules and regulations, see *supra* Part II.

<sup>211</sup> *National Gambling Board*, NGB, <http://www.ngb.org.za> (last visited Mar. 18, 2012).

## B. Legislation

Gambling in South Africa is governed by the South African Act,<sup>212</sup> which applies to all gambling activity that takes place in the Republic.<sup>213</sup> South Africa had initially banned betting in sports, but in 2004, it established the act to regulate it instead.<sup>214</sup> The South African Act purports to supervise matters related to casinos, gambling, betting, and wagering, and to promote uniform norms and standards related to gambling throughout South Africa.<sup>215</sup> It achieves uniformity by coordinating national and provincial legislation to regulate all matters related to gambling.<sup>216</sup>

The South African Act achieves its purpose by regulating gambling.<sup>217</sup> Under the act, gambling includes “placing or accepting a bet or wager.”<sup>218</sup> A person “places or accepts a bet or wager when that person . . . stakes money or anything of value on a fixed-odds bet, or an open bet, with a bookmaker on any contingency.”<sup>219</sup> In a fixed-odds bet, a bookmaker, prior to the event, calculates the different ways a game could be played based on a particular event happening.<sup>220</sup> Thus, the way a game will be played is predetermined. In an open bet, a bookmaker does not agree to any fixed odds when the bet is laid, but the amount that the bookmaker pays out depends on other possibilities that are not predetermined.<sup>221</sup> Informal bets conducted on a noncommercial basis are also included in the definition of legal gambling.<sup>222</sup> An informal bet consists of a bet, wager, undertaking, promise, or agreement, contemplated in Section 4 of the South African Act, between or among two or more persons.<sup>223</sup> None of the parties involved can be a bookmaker, derive a significant portion of his livelihood from gambling, and no one is paid a fee or gains anything

---

<sup>212</sup> The National Gambling Act 7 of 2004 repealed the National Gambling Act of 1996. *Id.*

<sup>213</sup> See National Gambling Act 7 of 2004 pmbl. (S. Afr.).

<sup>214</sup> *National Gambling Board*, *supra* note 211.

<sup>215</sup> *Id.*

<sup>216</sup> M. Carmelley, *Gambling, Gaming and Lotteries*, in 10 *THE LAW OF SOUTH AFRICA* 163, 165 (WA Joubart & JA Faris eds., 2d ed. 2005).

<sup>217</sup> See National Gambling Act 7 of 2004 § 3 (S. Afr.).

<sup>218</sup> *Id.* § 3(a).

<sup>219</sup> *Id.* § 4(1)(a).

<sup>220</sup> *Phumelela Gaming & Leisure Ltd. v. Grundlingh* 2006 (8) BCLR 883 (CC) at para. 7 (S. Afr.).

<sup>221</sup> *Id.*

<sup>222</sup> National Gambling Act 7 of 2004 § 1 (S. Afr.).

<sup>223</sup> *Id.*

other than winning the bet itself from the activity.<sup>224</sup> This type of gambling is legal and can be licensed.<sup>225</sup>

The South African Act distinguishes between illegal and legal gambling.<sup>226</sup> Gambling is illegal when a person engages in, conducts, or makes available a gambling activity, when the outcome of that activity depends in some way on a contingency related to an event or activity that is itself unlawful.<sup>227</sup> One cannot bet on something that is itself illegal, such as corruption in sports. Thus, if someone bets on particular plays in a match or the outcome of a match and predetermines those plays and outcomes to win, such activity would not be considered legal betting, because the bet would depend on an activity that is illegal. On the other hand, legal gambling refers to licensed gambling activity, permitted social gambling, or an informal bet, unless the party intends to establish a contractual relationship through the gambling activity, in which case it would not be considered an informal bet.<sup>228</sup>

The South African Act regulates legal gambling by requiring national licenses.<sup>229</sup> A national license specifies the identity of the licensee, the activities permitted or available to the licensee, and the premises from where the licensee will operate.<sup>230</sup> A person cannot engage in any work within the gambling industry unless that person has a valid national or provincial employment license permitting that work.<sup>231</sup> The licensee cannot hire an employee or allow an existing employee to engage in any work unless the employee meets the requirements of the South African Act.<sup>232</sup> An employer holding such a license must provide the licensing authorities with “any prescribed information that concerns a licensed employee or agent of the employer.”<sup>233</sup> These national licenses authorize certain legal gambling activities anywhere in the country.<sup>234</sup> They allow placing or accepting a bet or

---

<sup>224</sup> *Id.*

<sup>225</sup> *See id.* §§ 3–4.

<sup>226</sup> *Id.* §§ 3, 7.

<sup>227</sup> *Id.* § 7(a).

<sup>228</sup> *Id.* § 8.

<sup>229</sup> *Id.* §§ 8, 28.

<sup>230</sup> Carnelley, *supra* note 216, at 200.

<sup>231</sup> National Gambling Act 7 of 2004 § 28 (S. Afr.).

<sup>232</sup> *Id.*

<sup>233</sup> *Id.* § 28(3).

<sup>234</sup> *See id.* § 37; Carnelley, *supra* note 216, at 194.

a wager.<sup>235</sup> A person can also stake money on a fixed-odds bet with a bookmaker.<sup>236</sup>

Provincial licensing authorities can also issue licenses under the South African Act.<sup>237</sup> Both the national and provincial legislatures have concurrent legislative powers with regard to gambling so they can both make laws related to it.<sup>238</sup> Provincial licensing authorities follow provincial laws that govern the regulation of gambling, provided the provincial laws comport with the national act.<sup>239</sup> There are nine provincial gambling statutes that also regulate gambling and wagering in South Africa.<sup>240</sup> The provincial authorities that enforce such statutes investigate and consider applications, and issue national licenses within their jurisdiction.<sup>241</sup> Such national licenses are used for any activity or purpose to which national licenses apply and for which they are required, or are optional under the South African Act.<sup>242</sup> The provincial authorities also conduct inspections to ensure compliance with the act, provincial law, and conditions of provincial and national licenses.<sup>243</sup> By issuing licenses, the National Gambling Board (“NGB”)<sup>244</sup> and provincial authorities keep track of gambling and the individuals involved.<sup>245</sup> Licenses are renewable on an annual basis, subject to compliance with the license.<sup>246</sup>

Apart from issuing licenses, provincial authorities also ensure compliance with and maintain records of licensing activities.<sup>247</sup> They have exclusive jurisdiction within their provinces and ensure, among other things, that unlawful gambling activities are prevented, detected, or prosecuted; that undertakings made by national and provincial licenses are carried out; and that industry employees are licensed.<sup>248</sup> An essential component of ensuring compliance is maintaining a record of each registered individual with a national or provincial license, including the activities permitted under each

---

<sup>235</sup> National Gambling Act 7 of 2004 §§ 3, 37 (S. Afr.).

<sup>236</sup> *Id.* § 4.

<sup>237</sup> *Id.* §§ 1, 39.

<sup>238</sup> Camelley, *supra* note 216, at 211.

<sup>239</sup> See National Gambling Act 7 of 2004 § 44 (S. Afr.).

<sup>240</sup> Camelley, *supra* note 216, at 164.

<sup>241</sup> National Gambling Act 7 of 2004 § 30(1)(a)(i) (S. Afr.).

<sup>242</sup> *Id.* § 30(1)(a)(ii).

<sup>243</sup> *Id.* §§ 30(1)(b)(i)–(iii).

<sup>244</sup> See *infra* notes 255–59 for a discussion of the National Gambling Board.

<sup>245</sup> National Gambling Act 7 of 2004 §§ 31, 48, 65 (S. Afr.).

<sup>246</sup> *Id.* § 53.

<sup>247</sup> *Id.* § 30.

<sup>248</sup> *Id.* §§ 30–31.

license, the address of the premises where licensed activities take place, and a record of individuals who own a five percent or more financial interest in the license.<sup>249</sup> This type of information is reported to the NGB at certain intervals.<sup>250</sup> The NGB also submits information reported to it to provincial authorities, if requested.<sup>251</sup>

To enact rules and monitor gambling practices, the South African Act establishes the National Gambling Policy Council (“NGPC”) and the NGB.<sup>252</sup> The NGPC consists of members from both the national and provincial governments who meet to establish national gambling policy and laws.<sup>253</sup> The NGPC has the power to oversee the NGB and it can request reports and recommendations on matters under its authority.<sup>254</sup>

The NGB consists of members appointed by the Minister of the Department of Trade and Industries<sup>255</sup> and has the power to monitor and investigate provincial licenses.<sup>256</sup> Specifically, the NGB evaluates the issue of provincial licenses, monitors licensees for compliance with the provincial authorities, ensures uniformity in the application of the South African Act, and assists the authorities in detecting unlicensed gambling activities.<sup>257</sup> It also receives information recorded and maintained by the provincial authorities about the national licenses it issues.<sup>258</sup> If it believes that illegal gambling is taking place, the NGB can engage with provincial licensing authorities to detect and suppress such activities.<sup>259</sup>

The NGB works with the NGPC to establish national gambling policies.<sup>260</sup> It can advise the NGPC on national policy related to gambling along with national norms and anything related to the South African Act.<sup>261</sup> The NGB also

---

<sup>249</sup> *Id.* § 35.

<sup>250</sup> Carnelley, *supra* note 216, at 176–77.

<sup>251</sup> *Id.*

<sup>252</sup> National Gambling Act 7 of 2004 §§ 61–62, 64 (S. Afr.).

<sup>253</sup> *Id.* § 62.

<sup>254</sup> *Id.*

<sup>255</sup> *National Gambling Board of South Africa*, DEP’T TRADE & INDUSTRY, <http://www.dti.gov.za/thedti/ngbsa.htm> (last visited Mar. 18, 2012).

<sup>256</sup> National Gambling Act 7 of 2004 § 33 (S. Afr.).

<sup>257</sup> *Id.*

<sup>258</sup> *Id.* § 35.

<sup>259</sup> *Id.* § 66(2).

<sup>260</sup> *Id.* § 65(1)(b).

<sup>261</sup> *Id.* § 65(1).

provides a broad public education program to teach people about the addictive and socioeconomic effects of gambling.<sup>262</sup>

Both the NGB and the provincial licensing authorities enforce the South African Act and impose sanctions for violating it.<sup>263</sup> The provincial authorities suspend or revoke a license, for instance, if the licensee is found in violation of the act or has contravened a condition of the license.<sup>264</sup> A licensee who breaches a condition of a license is liable for an “administrative penalty not exceeding ten per cent of the annual turnover of the license.”<sup>265</sup> The NGB has inspectors who can enter licensed or unlicensed gambling premises unannounced, conduct inquiries, and act on behalf of the NGB.<sup>266</sup> The sanctions are harsh: anyone who commits an offense under the South African Act can be punished by a fine not exceeding R 10,000,000 (about \$1.4 million), or imprisonment for a term not exceeding ten years, or both.<sup>267</sup>

Apart from differentiating between legal and illegal gambling and criminalizing only a subset of betting practices, one of the advantages of the South African legislation is that it provides a “fair use” provision.<sup>268</sup> It specifically allows for informal, noncommercial bets that permit individuals to make bets with each other without the threat of criminalization.<sup>269</sup>

However, the South African Act does not clearly outlaw betting activities that lead to corruption in sports, which the United Kingdom’s model addresses through the SBIU.<sup>270</sup> Although the South African model allows for fixed-odds and open bets made by licensed bookmakers,<sup>271</sup> such bets have the potential to lead cricket players to throw matches to win money. The South African Act indirectly addresses this issue by stating that illegal activity consists of a gambling activity whose outcome depends on a contingency related to the unlawful activity.<sup>272</sup> This potentially includes betting practices that result in a thrown cricket match. However, the act does not specifically target betting practices that harm the integrity of a sport. Although the statute is

---

<sup>262</sup> See *id.* § 65(1)(d).

<sup>263</sup> *Id.* §§ 33, 43, 77.

<sup>264</sup> *Id.* § 43.

<sup>265</sup> Camelley, *supra* note 216, at 208.

<sup>266</sup> National Gambling Act 7 of 2004 § 77 (S. Afr.).

<sup>267</sup> *Id.* § 83(1).

<sup>268</sup> *Id.* § 1 (defining informal bet).

<sup>269</sup> *Id.* §§ 1, 8(c).

<sup>270</sup> See *Sports Betting Intelligence Unit*, *supra* note 160.

<sup>271</sup> National Gambling Act 7 of 2004 § 4 (S. Afr.).

<sup>272</sup> Camelley, *supra* note 216, at 179.

unambiguous, it should be interpreted to include corrupt betting practices in sports, because those activities are made unlawful, at least by the ICC.

Nevertheless, the South African Act monitors all individuals within the gambling industry because it not only receives information about bookmakers, but also has information about the bookmakers' employees working within the gambling industry.<sup>273</sup> Such employees may not be licensed, so the national licenses issued require employers to submit information about employees and agents.<sup>274</sup> Furthermore, through provincial licenses, the South African Act establishes local control over gambling by delegating its authority to local enforcement officials who monitor and investigate legal and illegal betting practices on a local level, thereby expanding the legislation's reach.<sup>275</sup>

Additionally, by creating the NGB and the NGPC, the South African Act allows for a free flow of information between regulators and policymakers.<sup>276</sup> For instance, the NGPC can receive information from the NGB and use it to make policy decisions regarding South Africa's gambling laws.<sup>277</sup> Furthermore, by creating a gambling board to monitor provincial licenses, the NGB advises the NGPC on gambling issues that come up on a local level and informs the NGPC on new norms developing throughout the country.<sup>278</sup> Furthermore, the NGB works with the provincial licensing authorities to research, publish, educate, train, and focus on staff development to strengthen the role of the NGB and the provincial authorities.<sup>279</sup> The NGB also works with provincial authorities to address illegal gambling activities occurring across provincial boundaries.<sup>280</sup> Thus, the NGB and the NGPC, together with the provincial authorities, determine and administer gambling policies in a "co-operative, coherent and efficient manner."<sup>281</sup>

By having the power to impose sanctions, the NGB has police power that cricket boards alone do not. In this way, the South African Act, through the NGB and the NGPC, addresses the problem of corrupt betting in cricket and regulates it, rather than criminalizing all aspects of sports betting.

---

<sup>273</sup> See National Gambling Act 7 of 2004 § 28 (S. Afr.).

<sup>274</sup> *Id.* § 28.

<sup>275</sup> *Id.* § 30.

<sup>276</sup> *Id.* §§ 61–62, 65.

<sup>277</sup> *Id.* § 65.

<sup>278</sup> See *id.*

<sup>279</sup> Camelley, *supra* note 216, at 174.

<sup>280</sup> *Id.* at 175.

<sup>281</sup> *Id.* at 165.

Lastly, the South African government created the South African Advisory Council on Responsible Gambling (“SAACREG”) to promote responsible gambling throughout the country.<sup>282</sup> The SAACREG works with the National Responsible Gambling Programme (“NRGP”) that is controlled by a public–private partnership that represents both the government and the gaming industry.<sup>283</sup> The NRGP is funded by voluntary contributions from the private gambling industry<sup>284</sup> and supervised concurrently by the gambling industry and the regulators.<sup>285</sup> It combines education, research, and treatment into one program.<sup>286</sup> The NRGP ultimately answers to the government, through the SAACREG.<sup>287</sup> Furthermore, trends in South Africa show an increase in private sector and government funding towards research, treatment, and education about responsible gambling.<sup>288</sup> Thus, the South African government takes an active role in checking on compulsive gamblers and taking proactive steps to minimize such consequences. This responsible gambling initiative is effective, where the prevalence rates for pathological gambling have remained fairly consistent, varying slightly depending on the availability of gambling.<sup>289</sup> This suggests that a change in the availability of gambling does not significantly change the number of people who gamble irresponsibly.<sup>290</sup>

Practically, South Africa’s comprehensive regulatory model effectively prevents corrupt betting practices. In 2002, before the South African model was implemented,<sup>291</sup> there were 168 case convictions and only 190 admissions of guilt.<sup>292</sup> However, after the South African law changed, in 2006, there were forty convictions that took place and 214 admissions of guilt.<sup>293</sup> In 2008–2009,

---

<sup>282</sup> *CEO’s Message*, NAT’L GAMBLING BOARD, <http://www.ngb.org.za/home.asp?pid=45> (last visited Mar. 18, 2012).

<sup>283</sup> *See What Is the NRGP?*, NAT’L RESPONSIBLE GAMBLING PROGRAMME, <http://www.responsiblegambling.co.za/content.asp?id=13> (last visited Mar. 18, 2012).

<sup>284</sup> *Id.*

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> *See id.*

<sup>288</sup> *SA’s Gambling Dispensation Has Delivered Significant Benefits, but Concern Remains About Illegal and Informal Betting*, NAT’L RESPONSIBLE GAMBLING PROGRAM (Oct. 14, 2010), <http://www.responsiblegambling.co.za/content.asp?id=23&pr=121>.

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*; *Problem Gambling Numbers Stay Constant*, NAT’L RESPONSIBLE GAMBLING PROGRAMME (Aug. 24, 2009), <http://www.responsiblegambling.co.za/content.asp?id=23&pr=114>.

<sup>291</sup> *National Gambling Board*, *supra* note 211.

<sup>292</sup> *See Illegal Gambling Statistics*, NAT’L GAMBLING BOARD, <http://www.ngb.org.za/home.asp?pid=138> (last visited Mar. 18, 2012) (follow hyperlinks for 2002 quarterly reports).

<sup>293</sup> NAT’L GAMBLING BD., *ILLEGAL GAMBLING STATISTICS* (2006), <http://www.ngb.org.za/home.asp?pid=138> (follow “National gambling statistics for the financial year ending 31 March 2006” hyperlink).

there were forty-six convictions and 549 admissions of guilt for illegal gambling.<sup>294</sup> These statistics show an increase in the number of corrupt gambling practices that are caught as the new regulation continues to work, which bolsters the argument for the effectiveness of the South African model. Although the number of case convictions has decreased, there is a significant increase in the number of admissions of guilt, indicating that individuals are more inclined to confess their involvement in illegal gambling after the implementation of the regulatory model. Thus, the regulatory model works not only to deter illegal betting practices, but also to persuade individuals to confess and settle matters rather than adjudicate the charges.

Apart from official illegal gambling statistics for both the United Kingdom and South Africa, the number of international cricket scandals involving these countries has significantly decreased.<sup>295</sup> Since 2004, when South Africa amended its legislation, and 2005, when the United Kingdom amended its legislation, none of the major cricket scandals has involved either the United Kingdom or South Africa.<sup>296</sup> The only recent scandal involving South African cricket involved the chief executive officer of CSA, who partook in inappropriate staff bonuses.<sup>297</sup> In response to this scandal, the South African team captain replied, “We’ve [the cricketers] successfully stayed away from that sort of stuff.”<sup>298</sup> Thus, the U.K. and South African models have effectively deterred corrupt betting practices. India can utilize both comprehensive regulatory models to address corrupt sports betting practices.

## V. INDIA’S LAW

India currently outlaws gambling in sports. Gambling in cricket is regulated only through the Board of Control for Cricket.

---

<sup>294</sup> NAT’L GAMBLING BD., ILLEGAL GAMBLING STATISTICS IN THE REPUBLIC OF SOUTH AFRICA (2009), <http://www.ngb.org.za/home.asp?pid=138> (follow “Illegal Gambling Statistics, F09, April 2008 - March 2009” hyperlink).

<sup>295</sup> See *Match-Fixing in Cricket: A Timeline*, *supra* note 20.

<sup>296</sup> *Id.*

<sup>297</sup> *Another Cricket Scandal Hits SA*, THE SOUTH AFRICAN.COM (Jan. 20, 2011, 3:15 PM), <http://www.thesouthafrican.com/news/another-cricket-scandal-hits-sa-2.htm>.

<sup>298</sup> *Id.* (internal quotation marks omitted).

### A. Cricket Board

The Board of Control for Cricket (“Board”) in India governs nationally played cricket.<sup>299</sup> When it was established, some of the objectives of the Board were to advance and control cricket played in India and foreign countries, and to control India’s cricket representatives playing abroad.<sup>300</sup> To achieve these objectives, the Board adopted the ICC Anti-Corruption Code.<sup>301</sup>

### B. Legislation

Apart from the Board of Control for Cricket and the ICC rules, gambling in India is also governed by The Public Gambling Act of 1867 (“Public Act”).<sup>302</sup> The Public Act prohibits both public gambling and the “keeping of common gaming-houses.”<sup>303</sup> A common gaming-house is described as

any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever.<sup>304</sup>

Prohibition on gaming-houses, on its face, prohibits activities such as card games and typical casino-style games, or games that depend on chance. The Public Act specifically does not apply to “any game of mere skill.”<sup>305</sup> However, the Public Act does not define gambling or explain what a game of skill might be,<sup>306</sup> and does not address betting in general or sports betting specifically.<sup>307</sup>

The Indian police enforce compliance with the Public Act.<sup>308</sup> If the magistrate, an officer, or Superintendent of the Police has reason to believe,

---

<sup>299</sup> *The BCCI—A History*, BOARD CONTROL FOR CRICKET INDIA, <http://www.bcci.tv/bcci/bccitv/index/history> (last visited Mar. 18, 2012).

<sup>300</sup> *Id.*

<sup>301</sup> *Anti-corruption policy*, INDIAN PREMIER LEAGUE § 1.6, <http://www.iplt20.com/about/anti-corruption-policy> (last visited June 4, 2012). For a discussion of the ICC’s rules and regulations, see *supra* Part II.

<sup>302</sup> The Public Gambling Act § 3, No. 3 of 1867, INDIA CODE (1867).

<sup>303</sup> *Id.* § 1.

<sup>304</sup> *Id.*

<sup>305</sup> *Id.* § 12.

<sup>306</sup> *Cf. id.* (providing no definition of “game of skill”).

<sup>307</sup> *Cf. id.* § 1.

<sup>308</sup> *Id.* § 5.

based on credible information and necessary inquiry, that a gaming-house has been established, he may enter himself or authorize certain ranked officers, by force if necessary, to take individuals in the gaming-house into custody.<sup>309</sup> Proof of playing for stakes is unnecessary.<sup>310</sup>

The penalties for association with a common gaming-house are outdated. Anyone who owns, occupies, is in charge of, or uses such a gaming-house, or anyone in the care or management of, or someone assisting in conducting the business of a gaming-house, and anyone advancing money for gaming, is liable for a fine not exceeding 200 rupees (about four to five dollars) and three months in jail.<sup>311</sup> Whoever is only *found* in the gaming-house for gaming can be fined up to 100 rupees and sentenced to one month in jail.<sup>312</sup> Any person found in a gaming-house “shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.”<sup>313</sup>

Although the Public Act itself does not explain what gambling is and does not mention betting, gambling and betting have been discussed in Indian Supreme Court cases.<sup>314</sup> The court in *Lakshmanan v. State of Tamil Nadu & Anr*<sup>315</sup> used the Encyclopedia Britannica’s definition to describe gambling as

[t]he betting or staking of something of value, with consciousness of risk and hope of gain on the outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better’s miscalculations.<sup>316</sup>

In a nutshell, gambling under the Indian law is payment of a price for a chance to win a prize.<sup>317</sup> The games involved in making gambling bets are based on chance or skill.<sup>318</sup> Although there are elements of chance in a game of skill, it primarily depends upon the “superior knowledge [and] training . . . of the player.”<sup>319</sup> Such games include golf and chess. Games of chance and skill are not mutually exclusive, but games of chance predominantly involve chance

---

<sup>309</sup> *Id.*

<sup>310</sup> *Id.* § 9.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.* § 4.

<sup>313</sup> *Id.*

<sup>314</sup> *Lakshmanan v. State of Tamil Nadu*, (1996) 1 S.C.R. 395 (India).

<sup>315</sup> *Id.*

<sup>316</sup> *Id.* at 404.

<sup>317</sup> *Id.*

<sup>318</sup> *Id.*

<sup>319</sup> *Id.* at 405.

and games of skill predominantly involve skill, although either can have elements of the other as well.<sup>320</sup>

Games of skill do not fall under the Public Act.<sup>321</sup> The court in *Lakshmanan v. State of Tamil Nadu & Anr* analyzed only gambling in the context of horse racing as a game of skill and found that gambling in games such as horse racing was not contemplated by the Public Act.<sup>322</sup> Horse racing is a systematic sport in which a participant is supposed to have full knowledge about the horse, jockey, trainer, and the race.<sup>323</sup> Thus, India allowed betting on horse racing.<sup>324</sup> However, because the Public Act does not define game of skill, it is unclear whether gambling in cricket is governed by the Public Act. Arguably, cricket is a game of skill; however, federal legislation does not address this issue clearly and leaves the scope of the act ambiguous.

Nonetheless, the government of India considers betting on cricket illegal.<sup>325</sup> Only two states allow casino gambling and legal gambling in other states is restricted to horse racing.<sup>326</sup> Some cities in India can also enforce their own gambling laws and make gambling, including betting on cricket, illegal.<sup>327</sup> For instance, the Delhi High Court found individuals guilty of betting on a cricket match and violating the Delhi Public Gambling Act.<sup>328</sup> A secret informer told police that certain individuals were betting on cricket.<sup>329</sup> The police then obtained search warrants and apprehended the individuals. One of them confessed to taking bids on a cricket match.<sup>330</sup> The statute did not require any further allegations of match-fixing or spot-fixing for conviction.<sup>331</sup> Additionally, a Delhi Court justice argued for the legalization of betting to

---

<sup>320</sup> *Id.*

<sup>321</sup> The Public Gambling Act § 12, No. 3 of 1867, INDIA CODE (1867).

<sup>322</sup> *Lakshmanan v. State of Tamil Nadu*, 1 S.C.R. at 405, 410 (India).

<sup>323</sup> *Id.* at 421.

<sup>324</sup> *Id.* at 427, 438.

<sup>325</sup> *See, e.g., V. Narayan Swamy, Govt Game To Legalize Gambling in Sports?*, TIMES INDIA (Sept. 5, 2010, 12:18 PM), <http://timesofindia.indiatimes.com/sports/more-sports/others/Govt-game-to-legalize-gambling-in-sports/articleshow/6493623.cms>.

<sup>326</sup> John B. Monteiro, *Why Not Legalise Betting?*, DAIJIIWORLD.COM (Sept. 20, 2010), [http://www.daijiworld.com/chan/exclusive\\_arch.asp?ex\\_id=1412&ex\\_title=Why+Not+Legalise+Betting%3F](http://www.daijiworld.com/chan/exclusive_arch.asp?ex_id=1412&ex_title=Why+Not+Legalise+Betting%3F).

<sup>327</sup> *See, e.g., The Delhi Public Gambling Act § 2, No. 9 of 1955 (India)* (banning betting in cricket).

<sup>328</sup> *See District Court of Delhi Issues Judgement on State v/s Prashant Kumar Malik, Oths. Case*, U.S. FED NEWS SVC., June 5, 2010, available at ProQuest Doc. ID 357290201.

<sup>329</sup> *Id.* para. 1.

<sup>330</sup> *Id.*

<sup>331</sup> The Delhi Public Gambling Act § 9, No. 9 of 1955 (India).

“check the lucrative business in organised crime,”<sup>332</sup> indicating that sports betting in India is currently illegal.

Not only is the criminalization of betting a problem within this model, but the penalties are also not severe enough to deter people from betting illegally. A police officer in India remarked, “How much can we do? . . . The maximum punishment under Indian law is a 250 Rupee fine or three months in jail.”<sup>333</sup> Considering that the Public Gambling Act was enacted in 1867, the laws clearly need to be updated and improved. A trial court judge in Delhi proposed regulation of betting, stating that “[i]t does not need divine eyes to see that ‘satta’ [betting] in cricket and other games is reaching an alarming situation.”<sup>334</sup>

Betting and match-fixing in cricket have been rampant in India.<sup>335</sup> Although betting is banned in India,<sup>336</sup> people clearly indulge in it.<sup>337</sup> For instance, during the Cricket World Cup in 2011, the Indian police arrested nine individuals for running illegal gambling syndicates and seized gambling equipment used by bookies to accept and record bets.<sup>338</sup> Such corrupt betting practices have led to a debate in India about whether betting in sports, especially cricket, should be legalized.<sup>339</sup> The current model of policing gambling in India remains ineffective and the need for regulation of betting in cricket in India is clear.

Regulating betting in cricket, rather than criminalizing it, would ensure that the Indian government keeps track of bookmakers and individuals involved in betting on cricket matches. India should combine characteristics of the U.K. and South African models, and regulate betting by authorizing and criminalizing certain betting practices to police corruption in cricket. By adopting laws similar to those in the United Kingdom, India can exercise

---

<sup>332</sup> Cricinfo Staff, *Legalize Sports Betting in India, Says Delhi Court*, ESPN CRICINFO (Sept. 1, 2010), <http://www.espnricinfo.com/india/content/story/475479.html>.

<sup>333</sup> Dileep Premachandran & Owen Gibson, *India Looks To Legalise Betting on Sport After Spot-Fixing Scandal*, GUARDIAN (Sept. 5, 2010, 5:50 PM), <http://www.guardian.co.uk/sport/2010/sep/05/pakistan-cricket-betting-scandal-cricket>.

<sup>334</sup> Cricinfo Staff, *supra* note 332.

<sup>335</sup> See Wright, *supra* note 28.

<sup>336</sup> See The Public Gambling Act § 3, No. 3 of 1867, INDIA CODE (1867).

<sup>337</sup> Wright, *supra* note 28.

<sup>338</sup> Nirmala George, *Arrests in India over Cricket World Cup Gambling*, 3 NEWS (Feb. 22, 2011, 7:35 AM), <http://www.3news.co.nz/Arrests-in-India-over-Cricket-World-Cup-gambling/tabid/415/articleID/199261/Default.aspx>.

<sup>339</sup> E.g., *Should Gambling in India Be Legalized?*, *supra* note 48.

stronger police power to monitor individuals engaged in betting practices and prevent corruption in cricket. One of the rationales behind the U.K. Act is to keep crime out by having “appropriate barriers to entry for those wanting to join the industry, and having effective mechanisms for policing new and existing gambling operations.”<sup>340</sup> Thus, by employing tactics from the U.K. model, India can better regulate the corrupt betting industry in cricket.

At the same time, India faces a problem similar to that faced by South Africa in 1994.<sup>341</sup> Prior to 1994, South Africa made all forms of gambling illegal, except for betting in horse racing.<sup>342</sup> After 1994, the government decided to legalize all forms of gambling.<sup>343</sup> Currently, the government in India is contemplating a transition from a complete ban of gambling in cricket to legal betting to solve match-fixing problems in cricket.<sup>344</sup> To aid the government in this endeavor, clear laws regulating betting practices, similar to South Africa’s, are essential.

## VI. PROPOSED LAWS FOR INDIA

To combat the problem of corrupt betting practices in cricket, this Comment proposes that India should amend its Public Gambling Act to include provisions authorizing certain gambling activities and outlawing corrupt practices. By amending the current law, India can modernize its national legislation and consolidate its laws into a simple and flexible national scheme. Cricket governing bodies such as the national cricket boards and the ICC can provide only the initial effort in deterring and sanctioning corrupt betting behavior. To address serious, chronic issues of betting offenses and match-fixing, criminal sanctions and prosecutions by India’s national government, in conjunction with cricket’s governing bodies, should work to prevent, deter, and sanction corrupt betting practices. To achieve this, India should follow the U.K. and South African models, as analyzed below.

---

<sup>340</sup> A SAFE BET FOR SUCCESS, *supra* note 38, at 27.

<sup>341</sup> See *Racing and Betting*, NAT’L GAMBLING BOARD, <http://www.ngb.org.za/home.asp?pid=59> (last visited Feb. 21, 2012).

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *India Contemplates Sports Gambling To Prevent Corruption*, *TAIPEI TIMES* (Sept. 6, 2010), <http://www.taipetimes.com/News/biz/archives/2010/09/06/2003482240>.

### A. *Scope of the New Legislation*

Similar to the United Kingdom and South Africa, which both enacted laws regulating gambling,<sup>345</sup> India should repeal the Public Act and enact a new law legalizing gambling. The new gambling act should regulate both gambling and betting practices to ensure that “gambling is conducted in a fair and open way.”<sup>346</sup>

To facilitate this objective, the new act should differentiate between legal and illegal betting practices and criminalize only certain types of activities. By differentiating between the two, the act can separate criminal activities from permissible gambling and ensure that gambling is conducted honestly. By doing this, India’s new legislation can follow the U.K. model to ensure that gambling, which occurs regardless of criminalization, is conducted free of illegality.<sup>347</sup> Additionally, in analyzing the rules and regulations of the United Kingdom, South Africa, and India’s cricket boards, it is apparent that the concern with betting in sports is the effect of the betting on the actual plays during a cricket match itself, not generic sports betting. Thus, the separation between legal and illegal gambling will also allow monitoring and regulation of legal activities, ensuring compliance with the new act, and consequently reducing the chances of corruption in betting. As a result, certain betting practices can still be legitimate in the cricketing world.

Legal and illegal betting practices should be defined according to the parameters set forth in the U.K. and South African acts. Legal betting practices should refer to betting or gambling on the likelihood of the occurrence of certain events in a game or sport,<sup>348</sup> or the general placing or accepting of a bet or wager.<sup>349</sup> Such definitions ensure that individuals are placing bets on the probability of certain events occurring without predetermining the odds through cheating.

Certain betting practices, such as cheating, should be illegal, as they are in the United Kingdom.<sup>350</sup> The types of offenses covered can be broad—where any attempt to interfere with the events to which the betting practices relate

---

<sup>345</sup> See Gambling Act, 2005, c. 19 (U.K.). South Africa’s National Gambling Act 7 of 2004 repealed the National Gambling Act of 1996. *National Gambling Board*, *supra* note 211.

<sup>346</sup> See Gambling Act, 2005, c. 19, § 1(b) (U.K.).

<sup>347</sup> *Id.* § 1; see *supra* text accompanying notes 28–33.

<sup>348</sup> *Id.* §§ 9(1)(b)–(c).

<sup>349</sup> National Gambling Act 7 of 2004 § 3 (S. Afr.).

<sup>350</sup> Gambling Act, 2005, c. 19, § 42 (U.K.).

should be criminalized—under a cheating provision. Such a definition should cover actions such as spot-fixing, match-fixing, and protecting the integrity of cricket as a sport.

In addition, a new Indian gambling act should include a provision similar to the South African Act's provisions for noncommercial betting, like an informal bet, so that individuals who are betting without bookmakers or without gaining any livelihood from the bet can do so without the threat of criminalization or an effect on the integrity of cricket. For instance, a survey conducted by India's Associated Chamber of Commerce and Industry found that several students and young adults in major Indian cities were betting large amounts of money on the Cricket World Cup in 2011 with the stakes depending on which country India was playing.<sup>351</sup> Stakes ranged anywhere from approximately \$200 to \$2,000 per match.<sup>352</sup> The students set up the bets without using official bookmakers or attempting to fix the odds of the match.<sup>353</sup> These were informal bets among friends to make some money during the World Cup.<sup>354</sup> It would be unfortunate to criminalize such activity that does not affect the integrity of the sport. Thus, the new act should include a provision allowing for casual, noncommercial betting practices.

### *B. Structure*

Similar to the U.K's Gambling Commission or South Africa's NGB, India should establish a similar gambling commission to monitor and police betting practices, ensuring compliance with the new act.<sup>355</sup> The commission should consist of members appointed by India's Ministry of Youth Affairs and Sports. Because the ministry specializes in promoting excellence in sports,<sup>356</sup> it can appoint experts from the sports industry who can work together to protect the integrity of cricket. This new commission would be responsible for implementing the objectives of the new act by reviewing gambling activities taking place in the country, monitoring compliance with the act, keeping

---

<sup>351</sup> Rajan Walia, *City Youths in Big Bet League*, TIMES INDIA (Feb. 25, 2011, 1:59 AM), <http://timesofindia.indiatimes.com/city/chandigarh/City-youths-in-big-bet-league/articleshow/7566731.cms>.

<sup>352</sup> *Id.*

<sup>353</sup> *Id.*

<sup>354</sup> *Id.*

<sup>355</sup> *See, e.g.*, Gambling Act, 2005, c. 19, § 20 (U.K.).

<sup>356</sup> *About Department*, DEP'T SPORTS, <http://yas.nic.in/index1.asp?langid=1&linkid=10> (last visited Mar. 19, 2012).

records of individuals and activities in the gambling industry, and issuing sanctions.

In addition, the new act should establish a policy council similar to South Africa's NGPC. The council can work with the new commission to establish and amend gambling laws, report information to each other, and stay updated with current trends and norms. The commission can also report information to the council about trends in gambling and the types of licenses it issues and the council can advise the board on the implementation of the act's provisions.

Furthermore, India should also adopt South Africa's model in establishing local authorities for issuing national licenses. South Africa is divided into nine provinces and each province has its own legislature.<sup>357</sup> India is divided into twenty-eight states and seven union territories.<sup>358</sup> States and union territories tend to be diverse, with varied cultures, festivals, languages, and demographics.<sup>359</sup> It would make more sense for India, rather than only having one national authority to oversee its population, to allocate authority to states and union territories to ensure compliance with the new act. Thus, local people can offer their own perspectives in the decision-making process, and local licensing authorities can be accountable to the country's population for the decisions they make regarding gambling.<sup>360</sup> Similar to South Africa, such local authorities should have jurisdiction not only to issue licenses, but also to suspend or revoke licenses and issue penalties.<sup>361</sup>

Lastly, similar to the United Kingdom's SBIU, India should create a similar unit within the new act to address corrupt betting practices in sports specifically, with a focus on cricket. Unlike the South African model, which

---

<sup>357</sup> SOUTH AFRICA YEARBOOK 2009/10, at 6 (Delien Burger ed., 2010), available at [http://www.gcis.gov.za/resource\\_centre/sa\\_info/yearbook/2009-10/Land%20and%20its%20people.pdf](http://www.gcis.gov.za/resource_centre/sa_info/yearbook/2009-10/Land%20and%20its%20people.pdf).

<sup>358</sup> *State and Union Territories*, INDIA.GOV.IN (June 2, 2010), [http://india.gov.in/knowindia/state\\_uts.php](http://india.gov.in/knowindia/state_uts.php). India's central government is called the union government and the parliament controls the legislation. See INDIA CONST. art. 79. In addition, there are states and union territories. The states are run by a governor, who is in charge of the executive and legislative functions of the state. *Id.* arts. 153, 162, 239, 239A. Union territories are administered by the President of India. *Id.* art. 239. Each level of government has its own assigned powers and, in certain areas, the powers of the Union and the local government overlap. See, e.g., *id.* arts. 53, 131, 135, 154 (allocating responsibilities and powers to different branches and levels of Indian government). This is the same way that South Africa sets up the powers of the national and provincial governments, where the national government and provincial governments have separate and overlapping powers depending on the subject matter. CONSTITUTIONAL LAW OF SOUTH AFRICA 146 (S. Woolman, T. Roux & M. Bishop eds., 2d ed. 2002).

<sup>359</sup> *State and Union Territories*, *supra* note 358.

<sup>360</sup> See A SAFE BET FOR SUCCESS, *supra* note 38, at 9 (encouraging local regulation of gambling).

<sup>361</sup> National Gambling Act 7 of 2004 § 43 (S. Afr.).

does not specifically address sports betting,<sup>362</sup> the United Kingdom's SBIU targets corruption issues such as match-fixing and spot-fixing.<sup>363</sup> Considering the large market in India for betting on cricket, a targeted unit for cricket will ensure that problems of match-fixing and spot-fixing will be addressed, especially in light of worldwide events such as the Cricket World Cup in February 2011,<sup>364</sup> hosted by India, Sri Lanka, and Bangladesh.<sup>365</sup> The new SBIU should focus on maintaining records of betting activities taking place in cricket and track bookmakers involved in cricket bets to prevent corruption. Then, the SBIU can collect information about both legal and corrupt betting practices. Using this information, the SBIU can work with the Board of Control for Cricket in India, as well as the new gambling board, to implement an effective system that prevents and deters corrupt betting practices by prosecuting and sanctioning offenses under the commission's jurisdiction.

### C. *Licensing*

Similar to the United Kingdom's Gambling Commission and South Africa's NGB and provincial authorities,<sup>366</sup> India should issue national operating licenses to bookmakers that allow them to conduct certain betting practices. If individuals engage in betting without an operational license, their actions should be unlawful and individuals engaged in this unlawful activity should be subject to penalties imposed by the new act. By holding bookmakers without licenses liable, the new act will ensure that betting practices remain monitored and India can prevent corrupt betting practices.

India's application process for a national license should allow both individuals and betting syndicates to apply for a license.<sup>367</sup> By allowing this, the application process monitors and tracks individuals and groups involved in betting, similar to the U.K. Act.<sup>368</sup> For example, like South Africa's licenses,<sup>369</sup> India's licenses could require reports of specific information about the betting

---

<sup>362</sup> See *supra* text accompanying notes 270–73.

<sup>363</sup> See ANNUAL REPORT 2009/10, *supra* note 158, at 5.

<sup>364</sup> *Opening Ceremony of 2011 World Cup on Feb 17 in Bangladesh: ICC*, DAILY NEWS & ANALYSIS (Sept. 2, 2009, 3:48 PM), [http://www.dnaindia.com/sport/report\\_opening-ceremony-of-2011-world-cup-on-feb-17-in-bangladesh-icc\\_1287222](http://www.dnaindia.com/sport/report_opening-ceremony-of-2011-world-cup-on-feb-17-in-bangladesh-icc_1287222).

<sup>365</sup> Cricinfo Staff, *India To Host 2011 World Cup Final*, ESPN CRICINFO (July 8, 2006), <http://www.espnricinfo.com/ci/content/story/252718.html>.

<sup>366</sup> National Gambling Act 7 of 2004 § 37 (S. Afr.); Gambling Act, 2005, c. 19, § 65 (U.K.).

<sup>367</sup> See Gambling Act, 2005, c. 19, §§ 127, 65(2), 93 (U.K.).

<sup>368</sup> *Id.* §§ 27–28, 69.

<sup>369</sup> National Gambling Act 7 of 2004 § 48 (S. Afr.).

operators, such as their names, the location of the betting premises, and specific permissible activities. In maintaining this type of control over the issuance of licenses, the government will have the sole discretion to issue licenses and maintain a register of the licenses issued to keep records of the betting syndicates and individuals involved in betting practices.

Using these licenses, India can pre-assess applicants for risks such as propensity to commit crimes.<sup>370</sup> The application process can require bookmakers to report information about the employees that work in the betting facility and state the criminal history of individuals applying for the license and employees, while giving the government the power to request any additional information from the applicant.<sup>371</sup> By assessing applicants, the Indian government can limit the number of individuals involved in betting practices and maintain a log of prior offenses committed by such persons to highlight any propensity for illegal activity.

Licenses can also include conditions for the operation of the betting or gambling facilities. One of the conditions can impose a duty upon the licensees to report potential criminal activities that may be taking place in the facility and provide information about suspects.<sup>372</sup> If the conditions are violated, the board can invoke its police power and issue warnings, attach additional conditions, or issue penalties. However, as discussed above in the U.K. Act,<sup>373</sup> India may face a challenge from bookmakers in getting past a “culture of secrecy” that incentivizes them to hide their customers’ activities to make money. The current process for betting on cricket is itself very secretive, in which one must know someone within the betting market to be introduced to bookmakers.<sup>374</sup> However, by legalizing bookmaking, the bookmakers will have recourse with the government because their activities will be legal and they can seek the government’s help. Additionally, private bookmakers can openly charge their customers fees for booking services, significantly lessening their incentive to make extra cash by lying or hiding illegal gambling activities.

---

<sup>370</sup> See ANNUAL REPORT 2009/10, *supra* note 158, at 4 (discussing progress in the United Kingdom’s risk-based approach to gambling regulation).

<sup>371</sup> See Gambling Act, 2005, c. 19, § 69 (U.K.).

<sup>372</sup> See *id.* § 88.

<sup>373</sup> For a discussion of the “culture of secrecy,” see *supra* text accompanying notes 160–62.

<sup>374</sup> Ben Doherty, *Wagers of Sin: India Fires Up for a Cricket Betting Bonanza*, SYDNEY MORNING HERALD (Feb. 19, 2011), <http://www.smh.com.au/sport/cricket/wagers-of-sin-india-fires-up-for-a-cricket-betting-bonanza-20110218-1azos.html>.

Legalization would make it easier to resist the temptation to enter into corrupt betting practices.<sup>375</sup>

Additionally, similar to the provincial authorities in South Africa,<sup>376</sup> the new Indian act should also give regional authorities jurisdiction to issue national and provincial licenses. Given the size and population of India,<sup>377</sup> establishing local authorities would ensure that all segments of the gambling population are regulated. These provincial authorities should report any suspicious betting practices within their provinces to the newly established board, so it can track and address corrupt betting activities taking place. At the same time, the board can stay updated about different activities and developments in the gambling industry, as well as work with the new policy council to amend and update the provisions of the new act. Thus, local authorities would also, as in South Africa, work concurrently with the board to establish national gambling policies and provide the board with information about the licenses it issues.<sup>378</sup> If the board suspects illegal betting practices, it can work with the local authority to detect and suppress illegal gambling activity.<sup>379</sup>

#### *D. Sanctions*

To deter individuals from engaging in such illegal gambling activity, the Indian government needs to update the sanctions for them. The enforcement of sanctions is perhaps the most important part of this proposal because sanctions provide the incentive for bookmakers to obtain licenses and operate gambling syndicates legally. The alternative to legal betting would be hefty punishments. The current sanctions for illegal gambling, a penalty of 200 rupees (less than five dollars) and three months in jail, do not effectively deter corruption in betting practices.<sup>380</sup> This is clear from the current problem India faces with corrupt betting practices in cricket discussed above.<sup>381</sup> The sanctions should be modified and, similar to the United Kingdom, start with a warning, then suspension or revocation of the license, and then financial penalties.<sup>382</sup> Similar

---

<sup>375</sup> *Id.*

<sup>376</sup> National Gambling Act 7 of 2004 § 30 (S. Afr.).

<sup>377</sup> Cent. Intelligence Agency, *India*, WORLD FACTBOOK, <http://www.umsI.edu/services/govdocs/wofact2008/geos/in.html> (last updated Dec. 18, 2008).

<sup>378</sup> National Gambling Act 7 of 2004 §§ 35, 65 (S. Afr.).

<sup>379</sup> *Id.* § 66(2).

<sup>380</sup> The Public Gambling Act § 3, No. 3 of 1867, INDIA CODE (1867).

<sup>381</sup> *See supra* text accompanying notes 30–35.

<sup>382</sup> *See* Gambling Act, 2005, c. 19, §§ 117–21 (U.K.).

to the ICC's rules, the financial penalties should range up to the amount the individual earned from the illegal gamble or bet.<sup>383</sup> For repeat offenses, the sanctions can be harsher, similar to those in South Africa, where the sanctions include a heftier fine and imprisonment.<sup>384</sup> Imprisonment should vary depending on the seriousness of the crime and range from no jail time to several years. Thus, the new act can impose sanctions that seek to deter individuals from violating the act.

### *E. Responsible Gambling*

Although sanctions help deter individuals from engaging in risky behavior, critics of legalized gambling worry that allowing people to gamble leads to compulsive gambling behaviors.<sup>385</sup> Both the U.K. and South African governments recognized this issue when they legalized gambling and sought to promote responsible gambling.<sup>386</sup> There are two ways to address this issue: statutory governmental safeguards imposed by the government and corporate responsibility.<sup>387</sup>

In implementing the governmental safeguards, India can follow models of both the United Kingdom and South Africa. It can set up a gambling strategy board, similar to that of the United Kingdom, to advise the new gambling commission on responsible gambling tactics through research, prevention, and treatment policies.<sup>388</sup> The commission can use this advice when enforcing the new regulations and amending or creating new provisions.

Additionally, similar to South Africa, India should create a separate responsible gambling program to further implement the policies of a gambling strategy board and the gambling commission.<sup>389</sup> The program should conduct research and create treatment programs for individuals with gambling addictions. However, unlike the South African model, which is only funded by the private gambling industry<sup>390</sup> and supervised concurrently by the gambling

---

<sup>383</sup> ICC ANTI-CORRUPTION CODE, *supra* note 39, § 6.2.

<sup>384</sup> See National Gambling Act 7 of 2004 § 83 (S. Afr.).

<sup>385</sup> Gregory Gibbs, *Anchorage: Gaming Capital of the Pacific Rim*, 17 ALASKA L. REV. 343, 372–73 (2000).

<sup>386</sup> CEO's Message, *supra* note 282; *Problem Gambling*, GAMBLING COMMISSION, [http://www.gamblingcommission.gov.uk/gf-useful\\_links/problem\\_gambling.aspx](http://www.gamblingcommission.gov.uk/gf-useful_links/problem_gambling.aspx) (last visited Mar. 20, 2012).

<sup>387</sup> *Calvert v. William Hill Credit Ltd.*, [2008] EWHC (Ch) 454, [4] (quoting A SAFE BET FOR SUCCESS, *supra* note 38, 29–30) (Eng.).

<sup>388</sup> *Frequently Asked Questions*, *supra* note 194.

<sup>389</sup> *What Is the NRG?*, *supra* note 283.

<sup>390</sup> *Id.*

industry and the regulators,<sup>391</sup> India's program should use more input from private industry, which should play a major role in creating responsible gambling policy. The private actors in the gambling industry remain closest to the individuals who participate in the gambling process and can add valuable input about individual behaviors and needs to the government programs.

Furthermore, India should promote corporate responsibility to ensure responsible gambling. Legislators can require bookmakers to promote responsible gambling through their advertisements and promotions, staff training, customer communication, and general customer support.<sup>392</sup> Even if a staff member at a betting syndicate notices a problem gambler, he or she can provide advice for stopping gambling or help the gambler individually.<sup>393</sup> At the same time, even the private operators should ultimately be answerable to the government. Thus, the new Indian regulations can provide assurance that the government is holding itself to the highest standards of responsible gambling and, at the same time, the government can keep a check on compulsive gamblers and take proactive steps to minimize the negative consequences of compulsive gambling.

#### *F. Limitations on Legalized Gambling*

In implementing a responsible gambling regulation, the legalization of sports betting and gambling should be limited to adults above the age of eighteen, similar to the United Kingdom.<sup>394</sup> Early exposure to gambling can be harmful to children who may not have the maturity level to recognize the negative repercussions of risky behavior and cannot necessarily afford the monetary consequences.<sup>395</sup> Such a provision goes hand-in-hand with responsible gambling, where the government should provide "proper controls and protections" for those who may be damaged by gambling.<sup>396</sup> Although young individuals can still engage in informal bets on sports, they should not form parts of the official betting syndicates, where the exposure to harm is

---

<sup>391</sup> *Id.*

<sup>392</sup> J.D. Pratten & S. Walton, Policy and Reality: Corporate Social Responsibility in the UK Gaming Industry 5 (unpublished paper, Corp. Responsibility Research Conference 2008), available at <http://www.crrconference.org/downloads/prattenwalton.pdf>.

<sup>393</sup> *Id.* at 7.

<sup>394</sup> Gambling Act, 2005, c. 19, § 48 (U.K.).

<sup>395</sup> See A SAFE BET FOR SUCCESS, *supra* note 38, at 29–30.

<sup>396</sup> *Id.* at 29.

greater. Thus, India's law should limit gambling to adults above the age of eighteen.

### CONCLUSION

By implementing the above regulations, India should protect cricket from match-fixing and spot-fixing scandals, which have a deep impact not only on the integrity of the game, but also the spirit of the sport in general. The passion for cricket is demonstrated by a university student in Pakistan, who, in voicing his opinion about the 2010 match-fixing charges against Pakistani players, said “[t]hey should be hanged.”<sup>397</sup> Countries like Pakistan and India treat cricket like a religion—the impact of corrupt betting practices becomes real when one hears the response from disappointed fans.

The need for regulation of cricket in India is clear. Given the 2010 ICC trial over match-fixing, previous scandals that took place in India and other countries, and the fact that most of the time, Indian bookmakers are involved in throwing cricket matches, a strong regulatory model will effectively prevent and deter corrupt betting practices and preserve the integrity of cricket as a sport. The nature of unlawful betting is such that it is fragmented and secretive.<sup>398</sup> Under a complete ban on betting, betting on corrupted matches has flourished.<sup>399</sup>

To remedy the rampant corrupt betting practices in India, the national government needs to step in and police such practices to protect the integrity of the sport. A report by the ICC on corruption in cricket stated that the lawful betting industry has a much stronger chance to monitor and detect betting scams.<sup>400</sup> The lawful betting industry is “regulated and often subject to money laundering regulations. This industry is also better placed through record keeping and analysis to detect individuals and events linked to cricket corruption.”<sup>401</sup> Ultimately, the gambling industry is “important in its own right, meeting the legitimate desires of many millions of people and providing many thousands of jobs.”<sup>402</sup>

---

<sup>397</sup> Carol Gristani, *Match-Fixing Bombshell Stuns Pakistan*, NBC NEWS (Aug. 30, 2010, 1:59 PM), [http://worldblog.msnbc.msn.com/\\_news/2010/08/30/5001712-match-fixing-bombshell-stuns-pakistan](http://worldblog.msnbc.msn.com/_news/2010/08/30/5001712-match-fixing-bombshell-stuns-pakistan) (internal quotation omitted).

<sup>398</sup> Condon, *supra* note 67, para. 71.

<sup>399</sup> *Id.*

<sup>400</sup> *Id.* para. 70.

<sup>401</sup> *Id.*

<sup>402</sup> A SAFE BET FOR SUCCESS, *supra* note 38, at 29.

Furthermore, not only would the regulation of betting practices protect cricket, but it could also be a revenue source for India, creating a strong incentive for the government to adopt this plan. For example, the holder of an operating license in the United Kingdom is required to pay an annual fee to the Commission<sup>403</sup> and may have to pay an annual levy to the Secretary of State.<sup>404</sup> Such fees not only generate revenue, but they curb the expenditures of establishing a new regulatory board. Additionally, financial penalties can be imposed upon the licensees for violations under the new act. Given that the cricket betting industry is estimated to be worth several million dollars,<sup>405</sup> the Indian government cannot afford to forfeit a strong revenue source.

Furthermore, after legalizing gambling, India should also become a member of the International Association of Gambling Regulators (“IAGR”), in which numerous ICC members participate.<sup>406</sup> India would have the opportunity to discuss gambling regulations and policy issues with other ICC members, cooperate with them on rules and regulations about sports betting, and gain a central point of contact with other countries.<sup>407</sup> This will provide India with a forum to discuss betting issues with non-ICC members in the IAGR who can offer additional perspectives.<sup>408</sup> This way, India will not have to work in isolation from other countries and, along with other ICC members, can stay updated on current developments in the gambling industry.

Thus, India should adopt a regulatory framework similar to the U.K. and the South African models. By establishing a national board, a policy council, and a sports betting intelligence unit, the government can ensure that it has a record of the betting practices taking place and can monitor individuals involved in the betting industry. Additionally, considering the diversity and difference in culture among the local states and an estimated 1.2 billion population,<sup>409</sup> establishing local authorities and having them work concurrently

---

<sup>403</sup> Gambling Act, 2005, c. 19, § 100 (U.K.).

<sup>404</sup> *Id.* § 123.

<sup>405</sup> *Legalise Betting, Say Indian Lawyers*, HINDUSTAN TIMES (Sept. 3, 2010), <http://www.hindustantimes.com/Legalise-betting-say-Indian-lawyers/Article1-595376.aspx>.

<sup>406</sup> *See Mission*, INT’L ASS’N GAMING REGULATORS, <http://www.iagr.org/AboutUs/mission.html> (last visited Mar. 23, 2012). Members of IAGR include South Africa, Australia, New Zealand, and the United Kingdom. *Members*, INT’L ASS’N GAMING REGULATORS, <http://www.iagr.org/members/members.html> (last visited Mar. 23, 2012).

<sup>407</sup> *Mission*, *supra* note 406.

<sup>408</sup> *See Members*, *supra* note 406. Countries including Hungary, Latvia, Lithuania, and Poland are members of the IAGR, but are not members of the ICC. *Compare id.*, with *ICC Members Countries*, *supra* note 2.

<sup>409</sup> Cent. Intelligence Agency, *supra* note 377.

with the national board to put a stop to corrupt betting practices will ensure compliance with the national act.

India's new regulatory model will also enforce the legitimacy of a sport. As a news article stated, "There is nothing that destroys a sport's soul as surely as the suspicion that what's being viewed isn't authentic."<sup>410</sup> However, by regulating legal betting, as well as preventing and deterring illegal betting practices, India can effectively protect the integrity of an international sport.

ROHANI MAHYERA\*

---

<sup>410</sup> *Throwing It All Away*, *supra* note 106.

\* Executive Articles Editor, *Emory International Law Review*; J.D. Candidate, Emory University School of Law (2012); B.A., The College of William and Mary (2007). The Author would like to thank Johan D. van der Vyver, I.T. Cohen Professor of International Law and Human Rights, for his guidance throughout the Comment-writing process and the staff of the *Emory International Law Review* for their help. The Author would also like to thank her family for their unconditional love and support.