



The Offshore Gambling Boom in India

November 8, 2022

Introduction

Barring a few states in India which have incorporated a licensing regime, games of chance involving real time money are generally illegal in India. This prohibition stems from deep-rooted societal biases (and, to some extent, a paternalistic legislative attitude) against gambling. Though it seems almost trite to say this, bans just do not work in eradicating the supposed “evil” – they merely shift the activity underground. In this article, we refer to what is being marketed as a legitimate solution to the general prohibition on gambling – *Offshore Gambling*. There are a plethora of offshore companies offering games of chance and online sports betting services to persons resident in India – with some companies (having realised the potential market opportunity) targeting their products specifically to Indians. There is also an increasing number of “Indian Rupee Online Casinos”, which, as the name suggests, are offshore gambling websites that let customers wager in Indian Rupees.

The Rise of Offshore Gambling in India

An increasing number of Indians looking for online games of chance are now flocking to offshore gambling websites that are accessible in India.¹ Reports suggest the Indian gambling market is growing at the rate of almost 27% each year driven by the fact that almost 40% of Indian internet users play games of chance. India is the world’s largest mobile gaming market in terms of app downloads and is arguably the fastest growing gaming market by the number of users.² These numbers explain the emergent focus of offshore gambling websites on servicing Indian players.

A vast majority of online gambling services accessible in India are hosted from gaming-friendly jurisdictions such as Curacao, Malta, and the Virgin Islands, which have dedicated regulatory authorities that grant licences to operators with permission to offer ‘offshore services’ – though such permissions are

¹<https://www.sevenjackpots.com/research-papers/regulated-online-gambling-in-india/>

² <https://www.investindia.gov.in/sector/media/gaming>

typically qualified. For instance, gaming licences issued by the Malta Gaming Authority (considered the gold standard in the industry) restrict operators from offering services to players in FATF blacklisted countries and *jurisdictions where online gambling is illegal or a locally issued licence is required*.

Regardless of whether such licences can even permit an operator to offer gambling services in India, the fact remains that offshore gambling (through a “licensed” platform or otherwise) is directly at odds with the Indian law, including the Indian foreign exchange regulations.

What Exactly is the Prohibition on Remittances for Gambling?

The India foreign exchange laws prohibit certain cross border transactions, these include remittances out of *lottery winnings*, remittance of income from *racing / riding, etc.* or *any other hobby* and remittances for purchase of *lottery tickets*, *banned / prescribed magazines*, *football pools*, *sweepstakes, etc.* These restrictions are of wide import and the regulations only provide an illustrative list of the prohibited transactions. Consequently, such restrictions would extend to govern all forms of wagers and games of chance – rendering an overseas remittance for the purposes of gambling or betting, a violation of the Indian foreign exchange laws.

Whilst the Reserve Bank of India does not seem to have issued any advisories to deter Indian residents from remitting monies for such transactions in the wake of the exponential increase in offshore gambling, the authorised dealer banks that we spoke with said that they are indeed monitoring this closely with a view to

identifying and blocking suspicious transactions and accounts.

Operating an Offshore Online Book in India

Offshore gambling websites often operate through a network of local agents who operate as the new age bookkeepers (the infamous ‘bookies’ of the gambling industry). These bookies operate through social media where they administer groups of Indian players guiding them to the games on offer and the payment instructions. To maintain the secrecy of their operations and to circumvent the banking monitoring systems, offshore gambling websites operate a catalogue of similar-looking websites with different URLs all of which are accessible at different points in time. These local bookies then inform their ‘customers’ which game or which website will be accessible at a given point in time.

These websites accept bet amounts through various methods which include funds received through regular banking channels, credit or debit card payments, payment wallets, unified payments interface, and even cryptocurrencies. Such offshore gambling websites do not maintain bank accounts in India for their India operations.

To facilitate betting with Indian Rupees, offshore gambling websites have styled themselves as ‘UPI casinos’ where punters can transfer their bets into the UPI accounts maintained by local bookie agents. These bookies maintain a large set of UPI accounts, often by questionable means³, which are regularly updated on gambling

³<https://www.thenewsminute.com/article/chinese-loan-apps-misuse-kyc-details-indians-set-fake-bank-accounts-151036>

websites to avoid a high volume of fund inflow attracting banking monitoring radars. To add a further layer of camouflage, the bookies use the same UPI account for managing wager funds as well as legitimate transactions to ensure that these UPI accounts are always below the radar. Funds received in the bank accounts linked to these UPI IDs are then laundered outside India. For example, the overseas principal provides the local bookie with details of an affiliated e-commerce website on which this bookie supposedly makes a purchase and pays the purchase amount. The order, as you can expect, is never delivered but monies have been transferred from an Indian bank account into an overseas account. The banking monitors do not flag these transactions as suspicious activities as these transactions are reflected as e-commerce transactions in their records. We hardly need to elaborate why such transfers violate both Indian foreign exchange laws as well as anti-money laundering laws.

Conclusion

The governments, both at the centre and the states, have publicly acknowledged that offshore gambling websites are illegally operating in the country.⁴ The banking system is required to establish robust monitoring and control systems to identify and filter suspicious transactions which are then reported to the country's financial intelligence unit.⁵ The Indian gaming industry also

⁴<https://www.financialexpress.com/brandwagon/government-panel-calls-for-regulatory-body-new-law-for-online-gaming-report/2667588/>

⁵<https://www.thehindubusinessline.com/opinion/online-betting-yes-money-laundering-no/article34254685.ece>

has been pushing the government to act against the gambling industry as it interferes with legitimate business.

As discussed in the preceding paragraphs, offshore online gambling is at odds with the current legal framework in India. While many Indian players erroneously assume that accessing an overseas website lets them evade the strictures of Indian law, the use of real money in games of chance puts them at risk of unintentional violation of the exchange control laws. While the regulators play a catchup game with the fast-evolving tech-enabled gambling industry, the industry is also transforming in its shape and operation. For example, since virtual digital assets are not foreign exchange and provide considerable anonymity, gambling websites are increasingly facilitating payment through such digital assets. This means that punters can bet wholly outside the banking system making it difficult for law enforcement to trace expenditure on offshore gambling websites.

We believe the need of the hour is regulating and not prohibiting online gambling. Whilst there has (finally) been some momentum in the development of policy on online gaming – with an inter-ministerial panel having recently submitted its report to the Government in this regard – such measures are largely focused towards fantasy sports and other games of skill. The mindset around games of chance still largely seems to be what it was back in 1867 when the Public Gambling Act was enacted. Whilst aspects such as “morality” of gambling and its socio-economic impacts can be argued one way or another, the emergence of offshore gambling websites is simply an outcome of the *demand* for such services in India.

The lack of regulation only serves to put the players at greater risk – with the industry being outside the legal system, there is little that the Government can do to address issues like addiction, protection of minors, and customer protection.

This material is for general information only and is not intended to provide legal advice.

For further information, please contact:

Uday Walia

Partner

uday.walia@touchstonepartners.com

Surbhi Soni

Senior Associate

surbhi.soni@touchstonepartners.com

Nikunj Agarwal

Associate

nikunj.agarwal@touchstonepartners.com