

# Indian Commission Reveals Inaction Over Online Betting Review

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A freedom of information request to the Law Commission of India about its work on draft regulations for a licensed online betting market suggests the process is much further behind schedule than expected and unlikely to yield results this year.

Following a request from the federal Supreme Court, India's Law Commission has been assessing the shape of a potential licensed online betting market.

Issues under the microscope include setting up a gaming regulatory commission, providing all-India licences to operators, player protection checks such as details of financial background and limits on stakes, and a tax rate in excess of 20 percent.

Last June, the commission ended a call for responses to the plans, but there have been no concrete updates since.

"Almost a year has gone by without any further indication from the commission. To know whether they are studying the matter at all, I filed the Right to Information [RTI]," said lawyer Jay Sayta.

On Thursday, the commission, which is approaching the end of its three-year tenure on August 31, stated in response to the RTI that it had not prepared the report or come to any conclusions based on the public consultation.

The RTI reply, seen by GamblingCompliance, states that the commission received 194 responses from the consultation, but they have yet to be separated on the basis of "in favour" or "against" the legalisation process. It also stated there exists "no timeline or targets for finalisation of the report".

"If the report is not done by August, then it will depend on the new commission whether they want to deal with this issue at all. It seems that they want to put this matter into cold storage," said Sayta.

Indian legislation currently recognises two categories of gambling: games of skill, where there is "a preponderance of skill over chance"; and games of chance. Although the former is legal, the latter is not, and supports an unregulated market worth around \$60bn.

Any hopes for legal online betting in India must face the reality of an impending national election in 2019, as well as other serious political hurdles.

"The election is definitely one thing, but also by all indications the current government is not in favour of this reform," said Sayta. "And any party that comes into power will look at it when there aren't controversial things happening, so right now betting is a low priority."

The status of poker in India, and whether it qualifies as a game of skill, is also a hot button in Indian gambling. Multiple states have issued diverse court rulings on variations of poker that paint an uncertain picture for the legal future of the game.

In the state of Maharashtra, the Bombay High Court recently commented during a hearing that it considered poker to be a game of chance, a widely reported development that raised fears of a blanket ban in the state.

However, in its ruling on March 28, the court restricted the comment to the specific "game of cards" in the case without mentioning poker.

Poker has been recognised as a game of skill, and therefore not gambling, in previous judgments by the high courts of Karnataka and Calcutta.

In the Maharashtra case, a raid took place at a private residence where a game of poker was allegedly taking place, leading to the police filing charges and a First Information Report (FIR) under the Bombay Prevention of Gambling Act 1887.

Gowree Gokhale, a Mumbai-based lawyer with Nishith Desai, told GamblingCompliance: "The matter before the High Court was limited to whether or not criminal proceedings that were initiated against the local party under the Bombay Act should continue. In this case, the court examined the First Information Report for an explanation of the game played.

"The petition says 'poker' was played, but the description in the FIR does not appear to be of poker variations that are typically played, such as Texas Hold'em and Omaha Hold'em," she said.

"Since multiple variations of poker exist, the court limited its observation to only the game described in the FIR, and then based on prima facie evidence ruled it as a game of chance.

"The court will let the police continue the criminal investigation without interfering. It is now the magistrate's duty to see if the facts are true in the trial on game of chance versus skill in relation to the accused," she added.

Other legal experts, however, see the ruling as having implications for the chances of poker being recognised as a game of skill.

"It's definitely a setback," Sayta said.

"The word poker has not been mentioned but it shows how poker will be pursued by the judiciary and that it won't be positive.

"It now goes to trial, but the FIR mentioned the word 'poker' so one can interpret it in many ways and one of them is that the court doesn't believe poker to be legal."

Unlike Gokhale, Sayta does not consider the semantic change from poker to "game of cards" to have robbed the ruling of its impact.

The ruling "was on the point of whether this particular investigation should continue or not, but nevertheless, the court gave its clear and unequivocal order that they do not believe poker to be a game of skill, which coming from the High Court, has a certain amount of binding", he said.

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