

PUBLIC GAMBLING ACT, 1867

3 of 1867

[25th January, 1867]

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STATEMENT OF OBJECTS AND REASONS "The primary object of this bill, which has been prepared at the desire of the Lieutenant Governor of North- Western Provinces and of the Chief Commissioner of British Burma is to repress public gambling in large towns situate in the territories respectively under their governments, without, at the same time giving rise to oppression

and other mal-practices on the part of the police. In those territories, as the law stands, persons cannot be prosecuted for gambling or keeping gaming-houses and can only be punished under S.290 of Indian Penal Code, 1860, if it can be shown that their acts cause "common injury, danger and annoyance to the public". This of course is a matter of such difficulty that such persons practically enjoy an immunity from punishment. The present Bill is founded on sections 56-S.66 of the Towns Police Act, 1856, which corresponds with sections 10-15 of Act No. XXI of 1857. (The Calcutta and Howrah Police and Conservancy Act (now entitled "The Howrah Offences Act, 1857")). These sections 10-15, have, in the form of rules, been for some years, in force in Oudh the Central Provinces and the Punjab, and they have been found to work satisfactorily. It is obviously desirable to convert these rules into express legislative enactment, and this Bill, if it becomes law, will effect that object. A similar Act has recently been passed by the Governor of Bombay in Council. Under the present Bill, house will only be searched by an Officer of Police not below the rank of Inspector, and under the authority of a warrant from a Magistrate with full powers."-Gaz. of India, 1866, p. 978.

1. Interpretation clause :-

In this Act-

1 [* * * *] "Common gaming-house." "Common gaming-house" means 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 :

2 [* * *]

Explanation.- If any document is recovered from the possession of any person containing words and, or figures. which prima facie appear to evidence bets, it shall be presumed that the words and figures evidence bets and the document was used or intended to be used for gaming unless the person aforesaid proves to the contrary; 'Common gaming house' means any house or room or tent or enclosure or vehicle or vessel or any place whatsoever in which any instruments of gaming are kept or used for gaming purposes
:-

(a) with a view to the profit or gain of any person owning, occupying, or keeping such house, room, tent, enclosure, vehicle, vessel or place whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel, place or instrument or otherwise howsoever,

(b) wither without a view to such profit or gain if the gaming for the purpose of which such instruments are so kept or used in gaming on any figures or numbers or dates to be subsequently' ascertained or disclosed, or on the occurrence or non-occurrence of any natural event." - Him. Pra. Act 30 of 1976, S. 2.

"Explanation.- If any document is recovered from the possession of any person containing words and/or figures, which prima facie appear to evidence bets, it shall be presumed that the words and figures evidence bets and the document was used or intended to be used for gaming, unless the person aforesaid proves to the contrary." - U. P. Act 21 of 1961, S. 2 (7-9-1961).

1. Definitions of "Lieutenant-Governor" and "Chief Commissioner" were omitted by A. O., 1937 (1-4-1937).

2. The clauses relating to "Number" and "Gender" were omitted by the Second Repealing and Amending Act, 1914 (17 of 1914), S. 3 and Sch. II.

2. Power to extend Act :-

¹[section 13 and section 17] of this Act shall extend to the whole of the said ²[States] and it shall be competent to the ²[State Government] whenever ⁴[it] may think fit, to extend, by a notification to be published in three successive numbers of the Official Gazette, all or any of the remaining sections of this Act to any city, town, suburb, railway-station, house and place being not more than three miles distant from any part of such station-house within the ² [States], and in such notification to define, for the purposes of this Act, the limits of such city, town, suburb or station-house, and from time to time to alter the limits so defined. From the date of any such extension, so much of any rule having the force of law which shall be in operation in the territories to which such extension shall have been made, as shall be inconsistent with or repugnant to any section so extended, shall cease to have effect in such territories.

1. Substituted for the words and figures "sections 13. 17 and 18" by the Amending Act. 1891 (12 of 1891).

2. Substituted for the words 'Provinces' or 'Provincial Government'

by A. L. O., 1950.

4. Substituted for the word "he" by A. O., 1937(1-4-1937).

3. Penalty for owning or keeping, or having charge of a gaming-house :-

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

4. Penalty for being found in gaming-house :-

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

5. Powers to enter and authorise police to enter and search :-

If the Magistrate of a district or other officer invested with the full powers of a Magistrate or the District Superintendent of Police, upon credible information, and after such enquiry as he may think necessary, has reason to believe that any house, walled enclosure, room or place, is used as a common gaming house, he may either himself enter, or by his warrant authorise any officer of police, not below such rank as the ¹ [State Government] shall appoint in this

behalf to enter with such assistance as may be found necessary, by night or by day, and by force, if necessary, any such house, walled enclosure, room or place, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not then actually gaming; and may seize or authorise such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming which are found therein; and may search or authorise such officer to search all parts of the house, walled enclosure, room or place with he or such officer shall have so entered when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody: and may seize or authorise such officer to seize and take possession of all instruments of gaming found upon such search.

1. Substituted for the words "Provincial Government" by A. L. O., 1950.

6. Finding cards, etc., in suspected houses, to be evidence that such houses are common gaming-houses :-

When any cards, dice, gaming-tables, cloths, boards or other instruments of gaming are found in any house, walled enclosure, room or place entered or searched under the provisions of the last preceding section, or about the person of any of those who are found therein, it shall be evidence, until the contrary is made to appear, that such house, walled enclosure, room or place, is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police officer, or any of his assistants.

7. Penalty on persons arrested for giving false names and addresses :-

If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested, by any such officer or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may upon conviction before the same or any other Magistrate be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on

the non-payment of such penalty and costs, or in the first instance, if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

8. On conviction for keeping a gaming-house, instruments of gaming to be destroyed :-

On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

9. Proof of playing for stakes unnecessary :-

It shall not be necessary, in order to convict any person of keeping a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing at any game was playing for any money, wager or stake.

10. Magistrate may require any person, apprehended to be sworn and give evidence :-

It shall be lawful for the Magistrate before whom any persons shall be brought, who have been found in any house, walled enclosure, room or place entered under the provisions of this Act, to require any such persons to be examined on oath or solemn affirmation, and give evidence touching any unlawful gaming in such house, walled enclosure, room or place, or touching any act done for the purpose of preventing, obstructing or delaying the entry into such house, walled enclosure, room or place or any part thereof, of any Magistrate or officer authorised as aforesaid. No person so required to be examined as a witness shall be excused from being so examined when brought before such Magistrate as aforesaid, or from being so examined at any subsequent time by or before the same or any other Magistrate, or by or before any Court on any proceeding or trial in any way relating to such unlawful gaming or any such acts as aforesaid, or from answering any question put to him touching the matters aforesaid, on the ground that his evidence will tend to criminate himself. Any such person so required to be examined as a witness, who refuses to make oath or

take affirmation accordingly or to answer any such question as aforesaid, shall be subject to be dealt with in all respects as any person committing the offence described in section 178 or Section 179 of the Indian Penal Code, 1860

11. Witnesses indemnified :-

Any person who shall have been concerned in gaming contrary to this Act, and who shall be examined as a witness before a Magistrate on the trial of any person for a breach of any of the provisions of this Act relating to gaming, and who, upon such examination, shall in the opinion of the Magistrate make true and faithful discovery, to the best of his knowledge, of all things as to which he shall be so examined, shall thereupon receive from the said Magistrate a certificate in writing to that effect, and shall be freed from all prosecutions under this Act for anything done before that time in respect of such gaming.

12. Act not to apply to certain games :-

Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.

13. Gaming and setting birds and animals to fight in public streets :-

A police officer may apprehend without warrant - any person found playing for money or other valuable thing with cards, dice, counters or other instruments of gaming, used in playing any game not being a game of mere skill in any public street, place or thoroughfare situated within the limits aforesaid or any person setting any birds or animals to fight in any public street, place or thoroughfare situated within the limits aforesaid or any person there present aiding and abetting such public fighting of birds and animals. Such person when apprehended shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month; Destruction of instruments of gaming found in public street. and such police officer may seize all instruments of gaming found to such public place or on the person of those whom he shall so arrest, and the Magistrate may on conviction of the offender order such instruments to be forthwith destroyed.

14. Offences by whom triable :-

Offences punishable under this Act shall be triable by any Magistrate having jurisdiction in the place where the offence is

committed. But such Magistrate shall be restrained within the limits of his jurisdiction under Code of Criminal Procedure, 1908, as to the amount of fine or imprisonment he may inflict.

15. Penalty for subsequent offence :-

Whoever, having been convicted of an offence punishable under section 3 or section 4 of this Act, shall again be guilty of any offence punishable under either of such sections, shall be subject for every such subsequent offence to double the amount of punishment to which he would have been liable for the first commission of an offence of the same description : Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

16. Portion of fine may be paid to informer :-

The Magistrate trying the case may direct any portion of any fine which shall be levied under Section 3 and section 4 of this Act, or any part of the moneys or proceeds of articles seized and ordered to be forfeited under this Act. to be paid to an informer.

17. Recovery and application of fines :-

All Fines imposed under this Act may be recovered in the manner prescribed by S.61 of Code of Criminal Procedure, 1973 [* * *].

18. Offences under this Act to be "offences" within the meaning of Penal Code :-

Repealed by the Repealing Act. 1874 (16 of 1874), S. 1 and Schedule, Part 1.]