

**THE NEED FOR CRIMINALIZING MATCH-FIXING AND SPOT-FIXING –
A CRITICAL STUDY concerning CRICKET**

- Praveen James Antony¹

ABSTRACT

It is a well-known fact that match/spot-fixing has been sanctioned as a very serious wrong by the International Olympic Committee and the Sport's Governing Bodies governing every sport for which the penalties are very serious in nature. Being mindful of the said fact, players, coaches, team managers, team owners etc. still blatantly engage in these wrongs for different reasons.

Match/Spot-fixing will not cease to exist as long as sports-betting is not decriminalized. Due to this reason, the organized crime syndicates go in search of jurisdictions where neither betting is legalized nor match/spot-fixing is criminalized to launder as well as double their ill-gotten gains. As a result, the profits generated from match/spot-fixing helps in funding many other heinous crimes such as organized crimes and terrorism. Speaking about match/spot-fixing from an Indian perspective, the concept of "fair play" has vanished away from cricket due to illegal betting carried on by the organized crime syndicates. It is a great disappointment that though the cricket world has been rocked by numerous spot-fixing scandals, till date, nothing much has been done to prevent cricket from being victimized by such malpractices. It is a high time that these malpractices ought to be criminalized and recognized as cognizable offences. Hence, this issue will be dealt in this paper in two parts. The first part consists of: -

- 1. History of match/spot-fixing and the reasons for the occurrence of the same;*
- 2. A brief study of the match/spot-fixing incidents in cricket;*
- 3. A critical review of the powers of the BCCI and ICC in curbing the malpractices;*
- 4. A comparative study of the laws: -*
 - governing betting in India and other cricket playing nations; and*
 - criminalizing match/spot-fixing in India and other cricket playing*

¹Junior Lawyer, Adv. Manumon A. & Associates, Thrissur, Kerala

nations

5. *A critical review of the existing penal legislations in India to curb match/spot-fixing;*
6. *The need for recognizing such malpractices as cognizable offences;*
7. *A critical review of the powers of the inquiry commissions laid down in Commissions of Inquiry Act, 1952; and*
8. *The final part consists of suggestions for curbing this menace from the gentleman's game.*

Brief History of Match/Spot-Fixing

“Corruption in Sports” more popularly known as “Match-Fixing”² and "Spot-Fixing" was prevalent throughout recorded history. The ancient Olympic Games was constantly being affected by allegations of athletes being bribed to throw competition and the involvement of city-states to manipulate the outcome of the competitions with huge sums of money. Anyone who was found cheating was fined and the money received was used for a statue erected in the name of Zeus. The statue would include inscriptions of the offences committed and would serve as a warning to others not to cheat by skill or money and reinforcing the importance of piety, the Olympic Spirit, and fair competition.³ Chariot racing which was one of the only major events during the ancient Olympics was also affected by corruption. Soon, boxing became a victim to match-fixing as it was a game which could be fixed without being noticed because

² Match-fixing involves the manipulation of the outcome or contingency by competitors, teams, sports agencies, support staff, referees, and officials, and venue staff. Such conduct includes:

- a) The deliberate fixing of the results of a contest, or an occurrence within the contest, or of a point spread;
- b) Deliberate underperformance;
- c) Withdrawal (tanking);
- d) An official's deliberate misapplication of the rules of a contest;
- e) Interference of the play or playing surfaces by venue staff; and
- f) Abuse of insider information to support a bet placed by any of the above or placed by a gambler who has recruited such people to manipulate an outcome or contingency;

See National Policy on Match-Fixing in Sport, Sport, Australian Government Of Health; *available at* <https://www1.health.gov.au/internet/main/publishing.nsf/Content/national-policy-on-match-fixing-in-sport> (Last visited on 22/1/2020)

³ M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 200 (Springer International Publishing, Switzerland, 2013)

it involved individual participants.⁴ Today, there is no sport which is free from corruption.

When dealing with this issue from an Indian perspective, cricket, a sport is also known as Gentleman's game about which Indians go crazy, is also very badly affected. Match-Fixing, however, in cricket has a history that is more than 200 years old. In 1806, match-fixing was very rife in English Cricket. Some illegal bookmakers put up their shops beneath the stands at Lord's cricket grounds, and gradually became trustworthy in paying their customers and extremely willing to fix games to cheat their rivals and their customers.⁵

A Recap of the Match/Spot-Fixing Incidents in Cricket

Though numerous allegations regarding match-fixing and spot-fixing incidents that have occurred in cricket before the 1990s have popped up, the most recent incidents that rocked Indian as well as International Cricket are:-

- a) the banning of Hansie Cronje, Mohammed Azharuddin and Ajay Jadeja⁶;
- b) the banning of Kenyan cricketer, Maurice Odumbe⁷;
- c) the acquittal of Danish Kaneria and conviction of Mervyn Westfield⁸;

⁴Match-Fixing, Wikipedia, available at https://en.wikipedia.org/wiki/Match_fixing (Last visited on 20/2/2020)

⁵ Declan Hill, *The Fix-Soccer And Organized Crime*, 146 (McClelland and Stewart, Canada 2010)

⁶Hansie Cronje, the Captain of the South African Cricket Team and an Indian bookie were caught red-handed by the Delhi Police by intercepting their phone conversation and were later charged for fixing cricket matches. Following their arrests, Hansie Cronje confessed to the Delhi Police that Indian Cricketers Mohammed Azharuddin ("Azharuddin") and Ajay Jadeja and Pakistani Cricketer Saleem Malik were involved. Soon, all the above-mentioned cricketers were banned from all sorts of cricket. But it took a long gap of 13 years for the Delhi Police to file a charge-sheet due to the lack of a clear law which criminalizes the acts of manipulating sporting competitions; See M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 200 (Springer International Publishing, Switzerland, 2013)

⁷ In 2004, the Kenyan cricketer, Maurice Odumbe was caught and banned by the Kenyan Cricket Association ("KCA") for a period of five years for fixing a match in Zimbabwe and accepting an amount of Five Thousand Dollars as consideration; See Maurice Odumbe Banned For Five Years, *Espnricinfo* <http://www.espnricinfo.com/magazine/content/story/135253.html> (Last visited on 20/2/2020)

⁸ In May 2010, the Pakistani leg-spinner Danish Kaneria and English Right-handed Batsman Mervyn Simon Westfield ("Mervyn Westfield") were apprehended by the British authorities for allegedly conspired to fix spots in a match about NatWest Pro 40 which was conducted in September 2009. Danish Kaneria was cleared of all the charges and Mervyn Westfield pleaded guilty and sentenced to four months for indulging in spot-fixing; Kaneria And Westfield Arrested In Fraud Probe, BBC News, available at http://news.bbc.co.uk/2/hi/uk_news/england/essex/8684965.stm (Last visited on 20/2/2020); See also Kaneria Cleared By Essex Police In Cricket Match Probe, BBC News, available at <http://www.bbc.com/news/uk-england-essex-11234007>; See also Mervyn Westfield Jailed For Four Months Over Cricket Scam, BBC News <http://www.bbc.com/news/uk-england-essex-17073699> (Last visited on 20/2/2020)

- d) the arrest and conviction of Salman Butt, Mohammed Asif, Mohammed Amir and a British Bookmaker, Mazhar Majeed⁹;
- e) The alleged involvement of three players of a team and two team owners in spot-fixing and illegal betting respectively¹⁰; and
- f) Pitch-fixing and betting scandal in 2018.¹¹

⁹ In August 2010, the Cricket World was again rocked by another spot-fixing scandal when Pakistani cricketers-Salman Butt, Mohammed Asif, Mohammed Amir and a British Bookmaker Mazhar Majeed were caught for committing spot-fixing in the fourth Test match between England and Pakistan which was scheduled to be played at Lord's Cricket Ground. Following this news report, the players and the bookmaker were immediately apprehended by New Scotland Yard and an investigation was kick-started. Later, in November 2011, the players and the bookmaker were found guilty by the Crown Court on charges of conspiracy to accept corrupt payments and conspiracy to cheat at gambling, respectively; Salman Butt and Pakistan bowlers jailed for no-ball plot, BBC News, available at <http://www.bbc.com/news/uk-15573463> (Last visited on 20/2/2020)

¹⁰ The most controversial amongst all the scandals was the spot-fixing which allegedly occurred during the sixth edition of Indian Premier League ("IPL"). The incident came to the limelight when three players of the team Rajasthan Royals were arrested by the Delhi Police as a result of constant surveillance of phone lines from April 2013 onwards. They had received a tip-off from Intelligence Agencies that certain phone calls would be made from certain International numbers purported to be owned by some mafia bosses. The entire scandal started grabbing more attention, once the police apprehended many bookies who stated that MrGurunath Meiyappan, son-in-law of Mr N. Srinivasan, the Managing Director of India Cements Ltd. which owns Chennai Super Kings ("CSK") and then President of Board of Control for Cricket in India ("BCCI") was involved in a conspiracy to commit spot-fixing. Similarly, Mr. Raj Kundra, the husband of actress Mrs. Shilpa Shetty and Co-owner of Rajasthan Royals confessed to the Police during interrogation that he was involved in illegal betting. Later, Mukul Mudgal, J., Committee imposed a life ban on Gurunath Meiyappan and Raj Kundra which was subsequently upheld by R.M. Lodha, C.J. (Retd) Committee. Out of the three players who were banned for spot-fixing, Sreesanth's lifetime ban was later set aside by the Supreme Court; See *S. Sreesanth v. The Board for Control of Cricket in India &Ors.*, (2019) 4 SCC 660; See also R.M. Lodha, C.J., Committee's Report on Spot-Fixing (July 2015), 29 & 38

¹¹ On 26 May 2018, Qatar based channel, Al-Jazeera made a shocking revelation through an investigative documentary that the pitch of Galle International Stadium, during the home test matches involving Sri Lanka against Australia in 2016 and against India in 2017, was tampered. The news channel also stated that through monitoring the pitch conditions the fixers managed to make money easily. Match-fixers, Robin Morris, a former Indian domestic cricketer along with Dubai based business person, Gaurav Rajkumar, Galle groundsman, Tharanga Indika and Sri Lankan first-class cricketer, TharinduMendis were also been investigated by the ICC for attempting another pitch tampering at Galle in Sri Lanka's forthcoming first test match against England as a part of England's upcoming series against Sri Lanka in November 2018. Concerns were also raised by the English & Wales Cricket Board whether to play away series against Sri Lanka over the planned pitch tampering at the Galle Cricket Stadium for the first Test match. Again in October 2018, Al-Jazeera made one more jaw-dropping revelation that an Indian Match-Fixer, Aneel Munawar ("Munawar"), who works in the match-fixing division of D-Company, has scripted 26 fixes in 15 matches. It also states that 25 out of the 26 predictions made by Munawar were correct; See *Plot to fix England v Sri Lanka cricket test in Galle uncovered*, Stuff, available at <https://www.stuff.co.nz/sport/cricket/104237661/plot-to-fix-england-v-sri-lanka-cricket-test-in-galle-uncovered> (Last visited on 20/2/2020); See also *Plot to fix England's first Test against Sri Lanka exposed by groundsman claims he can make a draw impossible by damaging wicket*; Mail Online, available at <https://www.dailymail.co.uk/sport/cricket/article-5773343/Plot-fix-Englands-Test-against-Sri-Lanka-exposed.html> (Last visited on 20/2/20); See also *Galle Stadium curator named in fixing scandal, admits to doctoring pitches to benefit bookmakers in sting operation*, FirstPost, available at <https://www.firstpost.com/firstcricket/sports-news/galle-stadium-curator-named-in-fixing-scandal-admits-to-doctoring-pitches-to-benefit-bookmakers-in-sting-operation-4483531.html> (Last visited on

Critical Review of the Powers of Tthe ICC and BCCI in Curbing Match/Spot-Fixing

The International Cricket Council (“ICC”) and the Board for Control of Cricket in India (“BCCI”) have designed detailed procedures for conducting investigation and serving notice of the charge, suspending a player provisionally¹², responding to a notice of charge¹³, hearings conducted¹⁴, and decisions are taken by the Anti-Corruption Tribunal into allegations such as:-

- a) Match/Spot-fixing;
- b) Betting on cricket;
- c) Misuse of inside information;
- d) Failing to report an ‘approach’ or corrupt conduct to the ICC/BCCI ACU; and
- e) Failing to cooperate with, or obstructing an investigation or proceedings.

The sanctions¹⁵ to be imposed if a participant¹⁶ is found guilty for the acts proscribed¹⁷ have been prescribed by the respective Anti-Corruption Codes (“AC Code”).

From a meticulous reading of the abovementioned definitions and procedures detailed in both the AC Codes, it will be evident that neither the ICC nor the BCCI has the power to:-

- a) File an F.I.R. for initiating an investigation into the matter u/s 154 of Code of Criminal Procedure (“CODE CRIM. PROC.”);
- b) Investigate a cognizable case u/s 156 of CODE CRIM. PROC.;
- c) Interrogate a suspect/witness u/s 161 of CODE CRIM. PROC.;
- d) Search u/s 165 of CODE CRIM. PROC.; and
- e) Submit a final report upon completion of the investigation u/s 173 of CODE CRIM. PROC.

20/2/20); See also Exclusive: Top international cricketers involved in spot-fixing, Al-Jazeera, available at <https://www.aljazeera.com/news/2018/10/exclusive-top-international-cricketers-involved-spot-fixing-181020115410646.html> (Last visited on 20/2/2020)

¹² Article 4.7 of the ICC’s AC Code; *See also* Article 4.7 of the BCCI’s AC Code

¹³ Article 4.8 of the ICC’s AC Code; *See also* Article 4.3 of the BCCI’s AC Code

¹⁴ Article 5.1 of the ICC’s AC Code; *See also* Article 4 of the BCCI’s AC Code

¹⁵ Article 6.2 of the ICC’s AC Code; *See also* Article 5.2 of the BCCI’s AC Code

¹⁶ Article 1.4 of the ICC’s AC Code

¹⁷ Article 2 of the ICC’s AC Code

The Need for Criminalizing Match/Spot-Fixing And Recognizing Them As Cognizable Offences

It is a well-known fact that scripting the result/parts of a cricket match in advance is an act which kills the concept of “fair play”¹⁸ and paves way for Gamesmanship¹⁹. Match/spot-fixing, usually, happens due to the following reasons:-

a) For winning a bet

The principal reason to engage in match/spot-fixing is for the fixer to secure the bet. For this reason, the fixers have to control both the players and the betting market simultaneously.²⁰

b) Greed for Money

Most of the players earn amounts as salaries comparable to top CEOs or stars in the entertainment industry. The mere involvement of such a lucrative amount of money aids in generating a tendency for indulging in such illicit behaviour.²¹

c) Criminalization of Sports-betting due to religious and cultural reasons

Sports-betting is not legalized in India as the same has regarded as highly immoral by certain Holy Scriptures such as Manusmriti²² and Quran²³. This paves way for illegal betting. Numerous options available in betting and the unrecognized rules and regulations around betting create a fertile ground for match/spot-fixing.²⁴

¹⁸Fair play is a complex concept that comprises and embodies several fundamental values that are not only integral to the sport but relevant in everyday life. Fair competition, respect, friendship, team spirit, equality, sport without doping, respect for written and unwritten rules such as integrity, solidarity, tolerance, care, excellence and joy, are the building blocks of fair play that can be experienced and learnt both on and off the field; What is Fairplay, Fairplay, available at <http://www.fairplayinternational.org/what-is-fair-play-> (Last visited on 21/2/2020)

¹⁹ Gamesmanship is the use of dubious (although not technically illegal) methods to win or gain a serious advantage in a game or sport; Gamesmanship, Wikipedia, available at <https://en.wikipedia.org/wiki/Gamesmanship> (Last visited on 21/2/2020)

²⁰ M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 335 (Springer International Publishing, Switzerland, 2013)

²¹ Financial Action Task Force, *Money Laundering Through The Football Sector*, 27 (2009), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20through%20the%20Football%20Sector.pdf> (Last visited on 21/2/2020)

²² Manu 9:229, Chapter-IX, Manusmriti, available at <https://www.sacred-texts.com/hin/manu/manu09.htm/> (Last visited on 21/2/2020)

²³ Chapter 5, Verses 90-91 (Al-Ma'ida), Quran, available at <https://quran.com/5/90> (Last visited on 22/2/2020)

²⁴ M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 265 (Springer International Publishing, Switzerland, 2013)

d) Absence of a specific law which outlaws match/spot-fixing

Though these malpractices deceive the IFs/NFs, the club owners, sponsors, honest punters and the crazy fans in an indirect way, the deviants cannot be charged for cheating due to the technicalities involved.

e) Illegal Betting

Illegal betting is deemed as a real growth industry due to the wide range of betting options available both in the legal as well as the illegal betting markets. Due to the immense amount of profit that is generated through betting, professional criminals search for jurisdictions where betting is not legalized.²⁵

f) A Channel for Laundering Proceeds of Crime

Organized Crime Syndicates entrust the money that they generated from illegal activities with illegal betting syndicates intending to make a lucrative profit.²⁶ The latter diversify the investments made by the former by asking the match-fixers to fix a match or parts of the match to yield windfall gains. The profit generated from illegal betting is again used for dangerous activities such as terrorist activities.²⁷

g) Establishment of the preventive measures at a late-stage

As explained earlier, match-fixing was a rife in cricket even before the commencement of 1980s. A significant majority of the scandals went unnoticed due to the non-availability of live television coverage of the matches. Once cricket matches could be streamed live on television, the volume of betting shot upwards dramatically during the 1980s and 1990s. Fixing of matches also took place on a rampant scale relatively. But the ICC and the domestic Cricket Boards came to know about the presence of corruption in cricket in 2000. An Anti-Corruption & Security Unit and AC Code were, according to the acknowledgement of the corruption in cricket, designed to deal with such issues in future.²⁸ By then, the illegal betting

²⁵*Ibid*

²⁶Financial Action Task Force, Money Laundering Through The Football Sector, (2009), p. 5, available at <http://www.fatf-gafi.org/media/fatf/documents/reports/ML%20through%20the%20Football%20Sector.pdf> (Last visited on 21/2/2020)

²⁷Nilay Dutta, Member, Mukul Mudgal, J., Ipl Probe Committee, A Report On The Allegations Of Betting And Spot/Match Fixing In The Indian Premier League- Season 6, (2014); See also Rohit Chandravarkar, IPL spot-fixing: Proceeds from T20 betting used to fund terrorist outfits, says police, *The Economic Times*, May 24, 2013

²⁸Sir Paul Condon, Report On Corruption In Cricket, REDIFF, available at <http://www.rediff.com/cricket/2001/may/23paul.htm> (Last visited on 23/2/2020)

syndicates, through match-fixing, had done irreparable damage by taking control of the game. Today the said syndicates have become invincible opponents that they, to carry on their activities, are not even reluctant in silencing anyone.²⁹ Had the ICC taken the precautionary measures by realizing the imminent danger that can be caused due to the popularity of the game in advance, this malpractice could have been averted till an extent, if not completely.

Needless to say that the sporting industry is autonomous in nature as it has been mentioned in the Olympic Charter(“OC”) that the ICC and BCCI shall operate independently from the government of a state and governs cricket at the international and national level³⁰ by respecting the laws of the state where they are headquartered³¹. Except for the OC and the documents that constitute ICC and BCCI, there is no single law to govern the sporting industry. Hence, the sporting industry is subject to laws relating to:-

- a) Tort;
- b) Tax;
- c) Intellectual property;
- d) Employment;
- e) Business;
- f) Criminal matters;
- g) Constitution; and
- h) Administration³².

The abovementioned circumstances provide a fertile ground for the fixers³³ to commit such malpractices without resorting to phones/e-mails as they leave behind a trail of digital footprints.³⁴ They, instead, make the targets³⁵ implement the fix by conspiring

²⁹Shantanu Guha Ray, *Fixed! Cash And Corruption In Cricket*, 48-50 (HarperCollins Publishers, India 2016)

³⁰See Clause 5 of Fundamental Principles of OC; *See also* Article 25 of OC

³¹M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 35 (Springer International Publishing, Switzerland, 2013)

³²*Ibid*

³³Fixers include organized crime groups (the mafia or syndicates) that fix matches to acquire money or power, club directors, and “runners.” *Ibid* at 334

³⁴Shantanu Guha Ray, *Fixed! Cash And Corruption In Cricket*, 25 (HarperCollins Publishers, India 2016)

with the runner's³⁶ and project managers³⁷ by resorting to various methods³⁸. At this juncture, it is relevant to discuss the modus operandi of committing such malpractices. Organized crime Syndicates get involved in these malpractices for winning a bet which is placed on a match. These are the most dangerous and pervasive actors who constantly keep on corrupting sport through these malpractices. These groups perceive sports as a mere business and are not interested in which team wins or lose. The sole interest of these actors is to launder their ill-gotten money and maximize their profits by rigging matches.³⁹

Before a fixer engages target(s) for rigging a match or a part of a match he subjects the targets to multiple rounds of tests to determine whether he can be engaged to rig a match. In cricket, the fixer would seek small requests for sensitive information such as weather information with huge rewards. The fixer would coerce the targets in an implied way that now the latter owe the former to fix a match by asking a batsman to

³⁵ Targets comprises of players, umpires, coaches, team owners etc.; See M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 334 (Springer International Publishing, Switzerland, 2013)

³⁶ Runners are usually retired, players. They can also be players' agents who represent players in corporate and business deals. They would be familiar faces to officials and players. They don't create the least level of suspicion in anyone. They would look like as if they are interested in knowing the fate of their former team. This type of runner would be perfect for a fixer. A former player with huge reputation can easily access to view any match or into a hotel where a team is lodged without any questions being asked. The players trust them. He can also speak to the fixers, as they won't be watched by the team security and act as a link between the illegal gambling world and a potentially corrupt player(s). However, these runners cannot fix a match/session of a match by themselves. He will try to engage player(s) of a team; See Declan Hill, *The Fix-Soccer And Organized Crime*, 21-22, 140 (McClelland and Stewart, Canada 2010)

³⁷ Project Manager must be an influential player. For instance, late Hansie Cronje played the role of project managers. Influential players have erected a reputation using which he can influence the team where only a few players would abstain. He can erect a corrupt network and culture on the team much more easily than any other player. If a project manager wants to fix a match, he should have a favourable network within the team. For that purpose, he needs a minimum of three to five players; See *Ibid* at 22-23

³⁸ The methods that are employed in committing the malpractices are categorized as positive and negative vehicles. Positive vehicles employed are money, expensive gifts, and women as bribes. Sometimes, if the positive vehicles do not work then the negative vehicles are criminal intimidations ranging from blackmail up to threats of death; See supra note 4 at p. 139; See M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 335 (Springer International Publishing, Switzerland, 2013); See also Nilay Dutta, Member, Mukul Mudgal, J., Ipl Probe Committee, A Report On The Allegations Of Betting And Spot/Match Fixing In The Indian Premier League- Season 6, (2014) 49-50

³⁹ Corruption in sport has many forms. Referees and players can take bribes to fix matches. Club owners can demand kickbacks for player transfers. Companies and governments can rig bids for construction contracts. Organised crime is behind many of the betting scandals that have dented sport's reputation. And money laundering is widespread; See Sport, Transparency International, *available at* <https://www.transparency.org/topic/detail/sport/> (Last visited on 20/2/2020)

bat slowly in a One-Day International (“ODI”) match or a bowler to concede a certain number of runs in an over only if they clear the test.⁴⁰

Much of the betting on a match is done two hours before the opening of the match. The later a fixer can place his bet, the easier it is to place bets on the market, and more the profit he can yield. For instance, a fixer has made contacts with players of Team A. He is convinced that the betting market is betting heavily in favour of Team A winning the game. Ideally, the fixer would be desirous of placing bets at attractive odds (If he enters the market very early and places a bet, it can cause the odds to change) and then signal his targets⁴¹ to “open up the game”, i.e. to lose the game.

After going through all the instances ranging from Match-Fixing Scandal in 2000 till the Al-Jazeera revelations in 2018 it will be evident that, the fixers have shifted their interest from rigging the outcome of a match to rigging a particular part of a match. For instance, if a Bookmaker has made a quote that 65-66 runs will be scored during the first 10 overs in a 50 overs match. The quote can keep changing after every ball subject to the progression of the run-rate. Manipulation of runs in a minute way by a bowler who has been nobbled by a fixer is difficult to be proved by the law enforcement agencies and the anti-corruption unit.⁴² This is the reason why the best cricketers tend to underperform if nobbled by a fixer. In the matter of R v. Amir and Butt⁴³, the Court of Appeals, Criminal Division went to the heart of the current concern of Spot-Fixing and held that “...the corruption was carefully prepared. It was

⁴⁰ Ed Hawkins, *Cricket match-fixing: Anatomy of match-fixing*, Nzherald.Co.Nz, available at http://www.nzherald.co.nz/sport/news/article.cfm?c_id=4&objectid=11261093 (Last visited on 23/2/2020)

⁴¹ During the 6th edition of IPL, while the Delhi Police was intercepting the phone calls of Mr. S. Sreesanth, AjitChandila and Ankit Chavan between the bookies, it was revealed that the players would signal the bookies before they begin to underperform during pre-decided overusing accessories like wristwatches, wrist bands, neck chains, towels etc. The Police revealed that Sreesanth had agreed that he would signal the bookies by tucking his towel in his trousers and did some warm-up/stretching exercises to give them some time to place bets before the second over in the match between Kings XI Punjab and Rajasthan Royals which was held at Mohali on May 9th, 2013. Similarly, Ankit Chavan had agreed to signal the bookies by fiddling with his wristband when he was asked to give away 13 or more runs during the match between Mumbai Indians and Rajasthan Royals which was held on May 15th, 2013; See *Three IPL players arrested for fraud, cheating - Delhi Police*, ESPNCRICINFO, available at <http://www.espnricinfo.com/indian-premier-league-2013/content/story/636201.html> (Last visited on 23/2/2020); See also Declan Hill, *The Fix-Soccer And Organized Crime*, 33 (McClelland and Stewart, Canada 2010)

⁴²Shantanu Guha Ray, *Fixed! Cash And Corruption In Cricket*, 48-50 (HarperCollins Publishers, India 2016)

⁴³ [2011] EWCA Civ. 2914

not set up on the spur of the moment. Nor was it the result of a sudden temptation to which either appellant succumbed in effect on the spur of the moment”.

The final stage of the manipulation is the payment of the bribes to the targets with which the entire episode comes to an end. The payment must be either hidden or deniable since the targets are mostly public figures and their salary figures are available in the public domain. Above that, their lifestyles are closely scrutinized.

Generally, the fixers make part-payments to the targets. The first payment is a payment made in advance which is also known as “coffee and shopping money”. This payment is done to show that the deal is fixed and the targets will rig the match. The balance amount is paid once the target(s) has successfully rigged the match. However, most of the payments to targets are cash payments.⁴⁴

It is a general principle of the penal law that no person can be penalized in the absence of a definite law.⁴⁵ Each offence possesses their patterns and the offenders improvise their strategy according to the exigencies of the circumstances.⁴⁶ So considering the seriousness of these deceptive practices committed in cricket, the legislature must not forget the fact that the primary intent of criminal law is to act against the criminal by employing criminal sanctions to deter him from committing such an act in question. The threat of criminal sanctions is also meant to deter like-minded persons.⁴⁷

Analysis Of The Legal Framework Criminalizing And Penalizing Manipulation Of Sports Competitions

As the focus of the study has been narrowed down to cricket, the laws specifically criminalizing and penalizing the manipulation of sporting competitions in cricket playing nations will be analyzed.

Australia

Australia is a parliamentary democracy. The Australian Constitution of 1901 established a federal system of government in Australia. Under this system, powers

⁴⁴ Ed Hawkins, Why match-fixing in cricket is such a lucrative business, *Al-Jazeera*, May 27, 2018, available at <https://www.aljazeera.com/indepth/opinion/match-fixing-cricket-lucrative-business-180526120321010.html> (Last visited on 20/2/2020)

⁴⁵ *State of Maharashtra v. Mohammed Yakub*, AIR 1980 SC 1111

⁴⁶ *State of Rajasthan v. Sukhpal Singh*, AIR 1984 SC 207

⁴⁷ P.M. Bakshi, Limiting the Criminal Law, 36 *JILI* 147 (1994)

are distributed between the federal government (“Commonwealth”) and the six States. The Constitution defines the boundaries of law-making powers between the Commonwealth and the States/Territories. Apart from the six states, there are three self-governing territories. But the legal framework of only two provinces will be analyzed.

Australian Capital Territory

Section 363C of the Criminal Code 2002 (“Code of 2002”) defines the act “Corrupts a betting outcome” as if the conduct affects or is likely to affect the outcome of any type of betting on the event contrary to the standards of integrity reasonably expected of a person in a position to affect the outcome of any type of betting on the event. Section 363F of the Code of 2002 defines and penalizes the act “Conduct that corrupts betting outcome” as:-

A person (the first person) commits an offence if—

- a) the first person engages in conduct; and
- b) the conduct corrupts a betting outcome on an event; and
- c) the first person is reckless about whether the conduct corrupts a betting outcome for the event; and
- d) the first person intends—
 - i. obtaining a financial advantage for the first person or another person from a bet on the event; or
 - ii. causing a financial disadvantage to another person who bets on the event.

Maximum penalty: Imprisonment for 10 years.

Section 363G of Code of 2002 criminalizes and penalizes the act “Bet with information about corrupt betting outcome” as:-

1. A person (the first person) commits an offence if—

- a) the first person engages in conduct that results in—
 - i. abet by the first person on an event; or
 - ii. another person is encouraged to bet on an event; or
 - iii. information being communicated to another person whom the first person knows would, or would be likely to, bet on an event; and

- b) at the time of the conduct the first person—
 - i. possesses corrupt conduct information⁴⁸ for the event; and
 - ii. is reckless about whether the information is corrupt conduct information.

Maximum penalty: imprisonment for 10 years.

Section 363H of Code of 2002 criminalizes and penalizes the act “Bet with inside information” as:-

- 1. A person (the first person) commits an offence if—
 - a) the first person engages in conduct that results in—
 - (i) abet by the first person on an event; or
 - (ii) another person is encouraged to bet on an event; or
 - (iii) information being communicated to another person whom the first person knows would, or would be likely to, bet on an event; and
 - b) at the time of the conduct the first person—
 - (i) possesses inside information for the event; and
 - (ii) is reckless about whether the information is inside information⁴⁹.

Maximum penalty: imprisonment for 2 years.

New South Wales

⁴⁸Section 363G (2) of Code of 2002 says that:-

In this section:

“corrupt conduct information”, for an event, means information about—

- a) conduct that corrupts a betting outcome for the event; or
- b) proposed conduct that would corrupt a betting outcome for the event.

⁴⁹Section 363H (2) of Code of 2002 says that:-

In this section:

“generally available”—information is generally available if it—

- a) consists of matter that is readily observable by the public; or
- b) has been made known in a way that would, or would be likely to, bring it to the attention of the public; or
- c) consists of deductions, conclusions or inferences made or drawn from the information mentioned in paragraph (a) or (b).

“inside information”, about an event, means information that—

- a) is not generally available; and
- b) if it were generally available, would, or would be likely to, influence a person who would commonly bet on the event in deciding—
 - i) whether or not to bet on the event; or
 - ii) any other betting decision.

Section 193H of the Crimes Act 1900 (“Act of 1900”) defines the act “Corrupting betting outcome of the event” as:-

1. For this Part, conduct corrupts a betting outcome of an event if the conduct—
 - a) affects or, if engaged in, would be likely to affect the outcome of any type of betting on the event⁵⁰, and
 - b) is contrary to the standards of integrity that a reasonable person would expect of persons in a position to affect the outcome of any type of betting on the event.
2. For this Part, an agreement about conduct that corrupts a betting outcome of an event is an agreement⁵¹ between 2 or more persons under which one or more of those persons agree to engage in conduct⁵² that corrupts a betting outcome of an event.

Section 193N of Act of 1900 criminalizes and penalizes the act of engaging in conduct that corrupts a betting outcome of the event as:-

A person who engages in conduct that corrupts a betting outcome of an event—

- a) knowing or being reckless as to whether the conduct corrupts a betting outcome of the event; and
- b) intending to obtain a financial advantage, or causing a financial disadvantage⁵³, in connection with any betting on the event,

⁵⁰Section 193J (1) of Act of 1900 defines the term “event” as any event (whether it takes place in this State or elsewhere) on which it is lawful to bet under a law of this State, another State, a Territory or the Commonwealth.

⁵¹Section 193H of Act of 1900 defines the term “Agreement” as:-

In this Part—

the agreement includes an arrangement.

⁵²Section 193H of Act of 1900 defines the expression “engage in conduct” as:-

In this Part—

engage in conduct means—

- a) do an act, or
- b) omit to perform an act.

⁵³Section 193K of Act of 1900 defines the expression “Obtaining financial advantage or causing financial disadvantage” as:-

- 1) In this Part, obtain a financial advantage includes—
 - a) obtain a financial advantage for oneself or another person, and
 - b) induce a third person to do something that results in oneself or another person obtaining a financial advantage, and
 - c) keep a financial advantage that one has,whether the financial advantage is permanent or temporary.
- 2) In this Part, cause a financial disadvantage means—
 - a) cause a financial disadvantage to another person, or

is guilty of an offence.

Maximum penalty—Imprisonment for 10 years

Section 193O of Act of 1900 criminalizes and penalizes the act of facilitating conduct that corrupts a betting outcome of the event as:-

- 1) A person who facilitates⁵⁴conduct that corrupts a betting outcome of an event—
 - a) knowing or being reckless as to whether the conduct facilitated corrupts a betting outcome of the event; and
 - b) with the intention of obtaining a financial advantage, or causing a financial disadvantage, in connection with any betting on the event,is guilty of an offence.

Maximum penalty—Imprisonment for 10 years

Section 193Q of Act of 1900 criminalizes and penalizes the act of using corrupt conduct information or inside information for betting purposes as:-

- 1) A person who possesses information in connection with an event that is corrupt conduct information⁵⁵, and who knows or is reckless as to whether the information is corrupt conduct information, is guilty of an offence if the person—
 - a) bets on the event, or
 - b) encourages another person to bet on the event in a particular way, or
 - c) communicates the information to another person whom the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty—Imprisonment for 10 years.

-
- b) induce a third person to do something that results in another person suffering a financial disadvantage,

whether the financial disadvantage is permanent or temporary.

⁵⁴ Section 193O of Act of 1900 defines the term “facilitates” as:-

A person facilitates conduct that corrupts a betting outcome of an event if the person—

- a) offers to engage in conduct that corrupts a betting outcome of an event; or
- b) encourages another person to engage in conduct that corrupts a betting outcome of an event; or
- c) enters into an agreement about conduct that corrupts a betting outcome of an event.

⁵⁵ Section 193Q (3) of Act of 1900 defines corrupt conduct information as:-

Information in connection with an event is corrupt conduct information if the information is about conduct, or proposed conduct, that corrupts a betting outcome of the event.

- 2) A person who possesses information in connection with an event that is inside information⁵⁶, and who knows or is reckless as to whether the information is inside information, is guilty of an offence if the person—
- a) bets on the event, or
 - b) encourages another person to bet on the event in a particular way, or
 - c) communicates the information to another person whom the first person knows or ought reasonably to know would or would be likely to bet on the event.

Maximum penalty- Imprisonment for 2 years.

Canada

Section 209 of the Canada Criminal Code says that any person who, with an intent to defraud another person cheats while playing a game or in holding the stakes for a game or in betting shall be held liable for the offence of cheating while playing and shall be liable:-

- a) to imprisonment for a period not more than two years; or
- b) for an offence punishable on summary conviction.⁵⁷

New Zealand

Section 240A of the Crimes Act, 1961 says that any act or omission that is done or omitted with an intent to influence a betting outcome of the overall result of the activity or any event within the activity such as sporting competitions, games, matches, races, and rallies involving human participants (whether or not they also involve equipment, horses, vehicles, or vessels) and dog races shall amount to deception as mentioned in Section 240⁵⁸.

South Africa

Section 15 of the Prevention and Combatting of Corrupt Activities Act, 2004 (“PCCA Act”) makes a fixer who gives/agrees/offers to give any gratification to a runner/project manager/target for engaging in any act which constitutes a threat to or

⁵⁶ Section 193Q (4) of Act of 1900 defines the expression “inside information” as:-
Information in connection with an event is inside information if the information—

- a) is not generally available; and
- b) if it were generally available, would, or would be likely to, influence persons who commonly bet on the event in deciding whether or not to bet on the event or making any other betting decision.

⁵⁷See Canada Criminal Code, s. 209

⁵⁸See Crimes Act, 1961, s. 240

undermines the integrity of, including, in any way, influence the run of play or the outcome of a cricket match shall be deemed to have committed an offence of corrupt activities relating to a cricket match. Simultaneously, a runner/project manager/target can be held liable for accepting/agreeing/offers to accept the same. Section 15 shall also penalize a player/coach/umpire/physician/team-owner/team-manager/official for concealing a design to fix a cricket match to the managing director, chief executive officer or to any other person holding a similar post in the sporting body or regulatory authority concerned or at his or her nearest police station.⁵⁹

Section 26 of PCCA Act prescribes the penalty for bribing a player, umpire, coach or any other relevant person in order to rig a match. The person who has been found guilty shall be punished⁶⁰:-

- a) with imprisonment for a term not exceeding 5 years or fine by the Magistrate;
- b) with imprisonment for a term not exceeding 18 years or fine by the Regional Court; and
- c) with imprisonment up to life or fine by the High Court.

In order to prevent the culprits, be it a fixer/runner/target, from fleeing away from justice, the Court has been equipped with the tool of "extraterritorial jurisdiction" by Section 35 of PCCA Act.⁶¹

Sri Lanka

As a part of keeping cricket free from corruption, especially after the pitch fixing and betting scandal which occurred in 2018, the Sri Lankan government rolled out the Prevention of Offences to Sports Act, 2019 ("POS Act") by outlawing the acts of making match-fixing, corruption in sports, illegal manipulation in sports and illegal betting⁶² with a heavy term of imprisonment⁶³.

⁵⁹See Prevention and Combatting of Corrupt Activities Act, 2004 ("PCCA Act"), s. 15

⁶⁰See PCCA Act, s. 26

⁶¹See PCCA Act, s. 35

⁶²Section 7 of POS Act says that:-

Any person or any person connected to a sport who possesses information in connection with any sport or sporting event knowing such information to be inside information or information on illegal, corrupt conduct and—

- a) bets on that sport or sporting event;
- b) encourages another person to bet on that sport or sporting event in a particular way; or
- c) communicates such information to another person whom the first person knows, or ought reasonably to know, would or would be likely to bet on that sport or sporting event,

commits the offence of illegal betting in sports.

From a plain reading of the definition of match-fixing laid down in Section 4 of POS Act, it can be evident that the legislature intended to nip out, from cricket, match-fixing from the grass-root level onwards. The legislature has recognized the malpractice as an offence without creating rooms for doubts/assumptions by creating a criminal liability on every person connected to cricket if he/she makes a deviation from the role usually played.⁶⁴

The legislature also creates an obligation on every person in connection with cricket to disclose information about the commission or potential commission of rigging a match to the Secretary of Sri Lanka Cricket. Simultaneously, the legislature also creates an obligation on a betting operator to disclose information to the abovementioned Secretary/Director of Sports/Special Investigation Unit if he comes across any unusual betting pattern(s).⁶⁵

In order to conduct an effective and efficient investigation, the legislature provides for the establishment of a special investigation unit (“Unit”). Ample powers have been conferred on the Unit for conducting a fool-proof investigation.⁶⁶

Apart from the above, the legislature has created a statutory responsibility on Sri Lanka Cricket to design a Code of Ethics governing the conduct every person connected to Cricket in order to maintain discipline and prevent match-fixing and illegal betting. Any person who infracts the code of ethics shall be subjected to the sanctions provided in the said Code.⁶⁷

United Kingdom

⁶³ Section 9 of POS Act says that:-

Any person who commits an offence specified in ss. 4, 5, 6, 7 or 8 shall on conviction be liable to a fine not exceeding rupees one hundred million or to imprisonment for a period not exceeding ten years or to both such fine and imprisonment.

⁶⁴ See POS Act, s. 4

⁶⁵ See POS Act, s. 16

⁶⁶ See POS Act, ss. 24 & 26

⁶⁷ Section 33 of the POS Act says that:-

- 1) The Secretary of the Board of Management of every National Association of Sports recognized under this Act shall maintain a code of ethics, subject to the directions of the Secretary, governing the conduct of persons connected to such sport for the purpose of ensuring the maintenance of discipline and prevention of match-fixing, corruption, illegal manipulation and illegal betting in such sport.
- 2) Every person connected to a sport shall be bound by the provisions of the code of ethics of the respective sport.
- 3) Any person connected to a sport who acts in contravention of the provisions of the code of ethics of such sport shall also be liable to such sanctions as may be provided for in such code of ethics.

Being mindful about the fact that illegal betting is one of the main causative factors, the legislature legalized cricket-betting and criminalized match/spot-fixing as cheating at gambling as per Gambling Act 2005.⁶⁸ A fixer, as per Section 1 of Bribery Act 2010 (“Act of 2010”), can also be held criminally liable for bribing a player, coach, umpire or any other person connected to cricket for offending a part/result of a cricket match.⁶⁹ Simultaneously, a player, coach, umpire or any other person connected to cricket can be, as per Section 2 of Act of 2010, held criminally responsible for accepting illegal gratification.⁷⁰ Except for the penalty provided by Section 42 of Act of 2005, Section 11 of the Act of 2010 prescribes a term of ten years of imprisonment or fine or with both.⁷¹

The Legal Position In India Regarding Criminalizing And Penalizing Match-Fixing And Spot-Fixing

At the outset, let it be made clear that there is no legislation in India which specifically criminalizes the malpractices of match/spot-fixing. Employment of such malpractices is, undoubtedly, a grave threat to the integrity of every game as it attempts to kill the spirit of the game. Needless to say, these malpractices should not be seen as a mere offence of cheating. But it was understood while journeying through the laws of certain cricket playing nations that these malpractices are ranked as either cheating in different forms or corrupt activity.

At this stage, it is primordial to have a thorough understanding about the offence of cheating by going through the Indian Penal Code (“IPC”) which is the foremost statute that deals with the general concepts and principles of substantive penal law in India. It is also important to delve into the definition of “criminal conspiracy” as a match cannot be rigged by a lone person.

A. Indian Penal Code

1. Cheating

The offence of cheating has been defined in various forms in Sections 415, 416, 418 and 420 of IPC. After going through the abovementioned provisions in detail, it is understood that there should be a specific person who should be victimized through

⁶⁸See Gambling Act, 2005, s. 42

⁶⁹See Bribery Act, 2010, s. 1

⁷⁰See Bribery Act, 2010, s.2

⁷¹See Bribery Act, 2010, s. 11

deception. Apart from that, in a case of cheating, the accused person should have received property from the victim through dishonest⁷² or fraudulent⁷³ means. When a player, umpire or coach engages in rigging a match, none of them can be said to have committed an offence of cheating as:-

- a) From the team owner's perspective, a player has played for the team;
- b) From BCCI's perspective, a player, coach or umpire has performed his/her role; and
- c) From a spectator's perspective, he/she has been able to witness the team which he/she supports performing against a rival team.

Losing a match or performing badly during a particular over/innings cannot be a sole criterion for bringing the act of fixing a match within the ambit of cheating. Any person associated with Cricket can be held liable u/s 417 of IPC if he/she compromises on the Code of Ethics by engaging in fixing a match.⁷⁴

2. Criminal Conspiracy

As explained earlier, the act of fixing a match can be committed only by two or more persons agreeing to do the same. In that case, there has to be, by definition, a conspiracy. It is necessary, at this stage, to examine whether the acts of the relevant actors who indulge in fixing a cricket match fits within the definition of Criminal Conspiracy⁷⁵. After examining every ingredient of criminal conspiracy as defined in Section 120A, it will be evident that:-

- a) Though two or more persons agree to fix a match, the act of manipulating the result/part of a match *per se* has not been recognized as an illegal act by law⁷⁶; and
- b) As explained earlier, while hatching a design to manipulate a match, the fixers resort to illegal means such as:-
 - i. Lure a person associated with cricket by paying bribes through hawala transactions⁷⁷ or solicit by prostitutes⁷⁸; and

⁷²See Indian Penal Code (Act 45 of 1860), s. 24

⁷³See Indian Penal Code (Act 45 of 1860), s. 25

⁷⁴Central Bureau of Investigation, *Report On Cricket Match-Fixing And Related Malpractices*, Rediff <http://www.rediff.com/cricket/2000/nov/01full.htm> (Last visited on 23/2/2020)

⁷⁵See Indian Penal Code (Act 45 of 1860), s. 120A

⁷⁶*Major E. G. Barsay v. State of Bombay*, AIR 1961 SC 1762

ii. Intimidation of being killed⁷⁹.

Hence, it is disappointing to say that the persons engaged in rigging a cricket match cannot be held liable for the offence of Criminal Conspiracy as the agreement to commit such an act has, so far, not been recognized as an illegal act by any statute.

B. Prevention of Corruption Act, 1988

No special explanation is required that the Prevention of Corruption Act, 1988 (“PC Act”) was enacted with the aim to prosecute and penalize public servants⁸⁰ who engage in corruption. Before determining whether any person connected to cricket can be booked for rigging a game under the provisions of PC Act, it is necessary to determine whether the functions of BCCI are of a public nature.⁸¹ In *BCCI v. Cricket Association of Bihar*⁸², the Supreme Court held that:-

Any organization or entity that has such pervasive control over the game and its affairs and such powers as can make dreams end up in smoke or come true cannot be said to be undertaking any private activity. The functions of the Board are clearly public functions, which, till such time the State intervenes to take over the same, remain in the nature of public functions, no matter discharged by a society registered under the Registration of Societies Act. Suffice it to say that if the Government not only allows an autonomous/private body to discharge functions which it could in law takeover or regulate but even lends its assistance to such a non-government body to undertake such functions which by their very nature are public functions, it cannot be said that the functions are not public functions...

The BCCI is not a government/statutory body though it performs functions of a public nature. Apart from that, every player, coach or umpire is inducted by the BCCI on the

⁷⁷Nilay Dutta, Member, Mukul Mudgal, J., Ipl Probe Committee, A Report On The Allegations Of Betting And Spot/Match Fixing In The Indian Premier League- Season 6, (2014), pp. 38, 50 and 52

⁷⁸See Immoral Traffic (Prevention) Act, 1956, (Act No. 104 of 1956), s. 8

⁷⁹See Indian Penal Code (Act 45 of 1860), s. 506

⁸⁰See Indian Penal Code (Act 45 of 1860), s. 21; See also Prevention of Corruption Act, 1988, (Act No. 49 of 1988), s. 2 (c)

⁸¹See Prevention of Corruption Act, 1988, (Act No. 49 of 1988), s. 2 (b)

⁸²(2015) 3 SCC 251

basis of a retainer agreement⁸³. Hence, any person connected to cricket cannot be held liable for manipulating a cricket match under the provisions of the PC Act.

Suggestions

The following are the suggestions:-

a) Specific legislation which:-

- i. Criminalizes all sorts of manipulations in sporting competitions. Considering the modus operandi, the involvement of organized crime syndicates and their ill-gotten wealth, the said behaviours must also be recognized as cognizable offences and the penalties to be prescribed should not be below seven years of imprisonment accompanied with fine;
- ii. Provides for the establishment of a special investigation department. This department shall have wide powers to investigate including the power to intercept telephone calls accompanied with proper measures for scrutiny as provided in Section 14 of MCOCA⁸⁴. This department, like the Serious Fraud Investigation Office, shall come under the Ministry of Youth Affairs and Sports ("Ministry"). Above all, it shall also be primarily supervised by officers from I.A.S., I.P.S., I.R.S. and other Central Services;
- iii. Creates a statutory obligation on the government to create a reward fund. The money deposited in this fund shall be used for rewarding persons who share information with the concerned authorities and such information results in detecting/prosecuting the persons accused of manipulating cricket matches;
- iv. Create a statutory obligation on the BCCI to take disciplinary measures against any person who commits an offence manipulating cricket match(es);

⁸³ is a work-for-hire contract. It falls between a one-off contract and permanent employment, which may be full-time or part-time. Its distinguishing feature is that the client or customer pays in advance for professional work to be specified later. The purpose of a retainer fee is to ensure payment for future services or work to be rendered; *See Retainer Agreement*, Wikipedia, available at https://en.wikipedia.org/wiki/Retainer_agreement(Last visited on 23/2/2020)

⁸⁴*See Maharashtra Control of Organized Crime Act, 1999 (Maharashtra Act 30 of 1999), s. 14*

- v. Criminalize the act of concealing information regarding the commission of any act which manipulates a cricket match and the penalty shall not be less than two years; and
 - vi. Shall have extra-territorial operation considering the involvement of transnational organized crime syndicates.
- b) The Parliament, while drafting the abovementioned legislation, should consider South Africa's PCCA Act, 2004 and Sri Lanka's POS Act, 2019;
 - c) The Ministry should set up a Sports Intelligence Unit which shall gather information regarding any suspicious activities (including financial transaction(s) of every person associated with Cricket) happening in the cricket world. This wing shall be primarily supervised by officers from I.A.S., I.P.S., I.R.S. and other Central Services;
 - d) The ICC and BCCI should maintain a database of all the suspected illegal bookies and match-fixers. The information of the said bookies should be shared, other national cricket boards and law enforcement agencies (including Interpol);
 - e) An Integrity Division must be formed by the BCCI and ICC which comprises of senior iconic players for imparting proper training to the young players especially the new entrants about the potential danger of getting involved in malpractices such as Match/Spot-Fixing;
 - f) The ICC should work hand in hand with UNODC for issuing a hand-book for persons who are associated with cricket to create awareness about the manipulation of cricket matches from a criminal justice perspective;
 - g) The BCCI should:-
 - i. Impart training on ethics to every person associated with cricket and certify that he/she has undergone the said training. Later, while inking an agreement with the said person, the BCCI should either incorporate a morality clause in the retainer agreement or make him/her sign a separate morality agreement. This practice can help the ICC/BCCI initiate, in the event of a violation of the said clause/agreement, a criminal proceeding for an offence of cheating even in the absence of specific legislation sanctioning such behaviours;

- ii. should, by making every player's performance into account, frame targets to be accomplished to pay bonus;
 - iii. take a proactive approach in banning the entry of bookies and match-fixers from entering stadiums that come under its jurisdiction;
 - iv. design proper rules and regulations governing players' agents;
 - v. take preventive measures by designing an Anti-Corruption Minimum Standards for Players and Match Officials Areas which shall conform with the ICC's version⁸⁵;
 - vi. take necessary arrangements to avoid post-match parties to avoid bookies/fixers from coming into contact with persons associated with cricket; and
 - vii. Insert a condition precedent in the retainer agreement compelling every player to make public disclosure of his assets and bank balance.
- h) The ICC, in association with the cricket board within whose jurisdiction a match being is hosted, should monitor the movements of persons associated with cricket; and The Ministry, in association with the Ministry of Home Affairs, should take a proactive approach in Police Officers of other jurisdictions who have been successful in solving cases of match-fixing such as Chris Eaton and Marc Goodman for imparting an expert-training to the members of the Special Investigation Department and Sports Intelligence Unit.

Conclusion

At this juncture, let it be made clear once again that match/spot-fixing are malpractices that are contrary to the concept of fair play, sportsmanship and the spirit of a game. These malpractices are committed to winning a bet and a game. It is also understood that these malpractices will subsist as long as sports betting is not legalized. So far, in India, sports betting have not been legalized due to various religious and moral reasons.

⁸⁵See ICC Minimum Standards for Players' & Match Officials' Areas (PMOA) at International Matches, ICC, *available at* <https://icc-static-files.s3.amazonaws.com/ICC/document/2018/12/16/f3b76dad-9668-4a64-aeb8-0e8684d8e28b/-FV-Effective-from-1-December-2018-PMOA-Minimum-Standards-CEC-approved-.pdf> (Last visited on 23/2/2020)

The Public Gambling Act, 1867 (“Act of 1867”) was drafted to serve as a central piece of legislation throughout the territory of India that prohibits the running of or being in charge of a public gambling house. During the subsistence of Government of India Act, 1935 (“Act of 1935”), the subject “betting and gambling” were included in the Provincial List. The classification provided for in the Act of 1935 was adopted by the framers while drafting the Constitution of India, 1950. So, from 1935 onwards, the Act of 1867 stands repealed. But, in the matter of *Dr. K.R. Lakshmanan v. the State of T.N.*⁸⁶, the Supreme Court held that “horse race is a game where the winning depends substantially and preponderantly on the skill”. The Court further maintained that betting on horseracing by owners for a prize was a game of skill and cannot be included under the ambit of gambling. The Court added that such a sport of horse-racing and the betting carried on by owners would be granted the fundamental right of freedom of trade guaranteed under Article 19(1) (g) of the Constitution of India, 1950. In that case, even cricket deserves to be classified as a game of skill and punters should be allowed to place bets on cricket matches.

The above said being, till date, the legal atmosphere in India, the organized crime syndicates found illegal betting an attractive sector to make lucrative profits by engaging in rigging matches/parts of matches. As a result, the seeds of corruption were sown in cricket by the mafia before the 1980s. But the volume of bets, with the advent of live television coverage, shot upwards dramatically. But the knowledge about the presence of corruption in cricket reached the ears of the ICC and other domestic cricket boards through the match-fixing scandal in 2000. Immediately, the ICC and its member bodies established an ACSU and AC Code at the international and national level for dealing with and preventing such issues efficiently in future. But, it is disappointing to say that the illegal betting syndicates had, by then, irreparably damaged the game. Though ACSUs have been established at the International and National level, they do not have the policing and judicial powers as that of law enforcement agencies.

The organized crime syndicates mainly engaged in the rigging of matches for:-

- a) Winning a bet;

⁸⁶ (1996) 2 SCC 226

- b) Criminalizing of betting;
- c) Absence of specific laws criminalizing match-fixing;
- d) A channel for laundering the ill-gotten profits; and
- e) Above all, the project managers', runners' and targets' greed for money

With these wicked aims in mind, the organized crime syndicates would bribe the project managers, runners and targets by ascertaining their human weakness. Once the fix is successfully executed, the project managers, runners and targets become the fixers' slaves. Then the fixers can make the targets execute the next fix through intimidation. The targets use unnoticeable gestures/methods to signal the fixers while executing the fix. After going through the controversial instances of match-rigging, it was understood that the interest of the fixers has shifted from match-fixing to spot-fixing.

It was evident, after going through the legislation enacted to curb match/spot-fixing in cricket playing countries that, except India, Pakistan and Zimbabwe, all other countries had laws to curb match/spot-fixing. In countries such as Canada and New Zealand, the behaviours are perceived as Cheating at Gambling. On the other hand, Australia and South Africa perceive these behaviours as corrupt activities. Sri Lanka is the only jurisdiction which has recognized match/spot-fixing as sport-related offences with a very heavy term of imprisonment. Amongst all the cricket playing countries, the U.K. is the only jurisdiction in which these criminalities are recognized both as a deceptive practice at gambling as well as a corrupt practice.

Now speaking about the situation in India, neither the fixers nor any person associated with cricket cannot be booked for the offence of:-

- a) Cheating as there is no specific person as a victim. Similarly, the accused does not receive property from the said victim through dishonest and fraudulent means. Instead, the deception lies hidden where the person associated with cricket performs his role by deliberately flouting the rules of the game which cannot, sometimes, be noticed easily;
- b) Criminal conspiracy as the act which the fixers, project managers, runners and targets agree to commit has not been prohibited by law;

- c) Give/receive bribes under the provisions of the PC Act as the BCCI is neither a government/statutory body. Above that, every player, coach or umpire is inducted by the BCCI based on a retainer agreement.

After going through the Rules and Regulations and the Amendments⁸⁷ it was understood that there were no proper rules and regulations regarding the retaining of a player, umpire, coach or any other official associated with cricket.

The question which remains now is whether this new phenomenon of crime has to be dealt with the existing penal law & procedures or with a separate law. Nowadays match/spot-fixing are malpractices that are committed by mafia syndicates at a transnational level. It is, undoubtedly, going to pose a great challenge for the law enforcement agencies of other countries with different laws with varying provisions dealing while applying the existing substantive and procedural laws to address this phenomenon. By considering the modus operandi of the fixers and the working nature of the sporting industry especially cricket, these deceptive practices must be specifically recognized as cognizable offences and accompanied by criminal sanctions through separate legislation. In *R v. Amir and Butt*⁸⁸ while holding Mohammed Amir and Salman Butt guilty held that:-

This prodigious talent has been lost to cricket for some years. The reality is that if he cannot play cricket at any level for some years, his talent may be irreparably damaged. That is his loss and cricket will be the poorer for the loss. But in the long term, the game would be utterly impoverished if the court failed to make it clear that conduct like this is not simply a matter of breaking the rules of the game and therefore subject to internal regulation and discipline by the ICC, but that it is also criminal conduct of a very serious kind which must be marked with a criminal sanction.

⁸⁷Amendments to the BCCI by-laws, BCCI, available at <https://www.bcci.tv/about/rules-and-regulations> (Last visited on 23/2/2020)

⁸⁸ [2011] EWCA Civ. 2914, para 35

In short, the malpractices of Match-Fixing and Spot-Fixing must be specifically criminalized due to the following reasons⁸⁹:-

- a) The very nature of a cricket match aims at determining the best team and individual in terms of ability, skills and mastery of the discipline. Therefore, fairness is inseparably implied in its concept. Cheating as opposed to this concept threatens the credibility of this sport and thus damages its integrity in general;
- b) Being a problem *per se*, the loss of credibility additionally kills the crazy Indians' interest in cricket. A sport like a cricket lives on the interest of the public, both in terms of immaterial support and economically;
- c) A shrinking interest in a sport like cricket results in less successful commercialization and less economic investment by the private market. This affects each business sector related to cricket, especially sponsoring, broadcasting, and merchandising;
- d) Due to the image damage, a professional sport like cricket might no longer be considered a "merit good" for which funding at a provincial level should not be considered. Public funding is, however, one of the major financial sources of many sports. Even professional sports like football are highly dependent on public monies especially concerning their facilities, which in most cases are at least co-financed by local governments;
- e) The loss of credibility is detrimental for the sports betting sector itself because no punter agrees to invest money in a system which he cannot trust. One reason for the shift of Asian betting syndicates towards European sports at the end of the 1990s was the widespread corruption in Asian football leagues. Today, betting operators still refuse to accept bets on matches of certain particularly corrupt leagues like minor divisions of Eastern European countries⁹⁰; and

⁸⁹M.R. Haberfeld And Dale Sheehan (eds.), *Match-Fixing In International Sports-Existing Processes, Law Enforcement And Prevention Strategies*, 160-161 (Springer International Publishing, Switzerland, 2013)

⁹⁰Declan Hill, *The Fix-Soccer And Organized Crime*, 75-85 (McClelland and Stewart, Canada 2010)

- f) Moreover, this happens due to the involvement of crime syndicates that are desirous of laundering their ill-gotten money and generating profits through illegal betting and match/spot-fixing.