



CENTRE FOR INFORMATION,
COMMUNICATION & TECHNOLOGY LAW
MNLU Mumbai

THE CICTL NEWSLETTER

ONLINE FANTASY SPORTS AND GAMBLING IN INDIA: REVIEWING THE RECOIL

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ABOUT CICTL

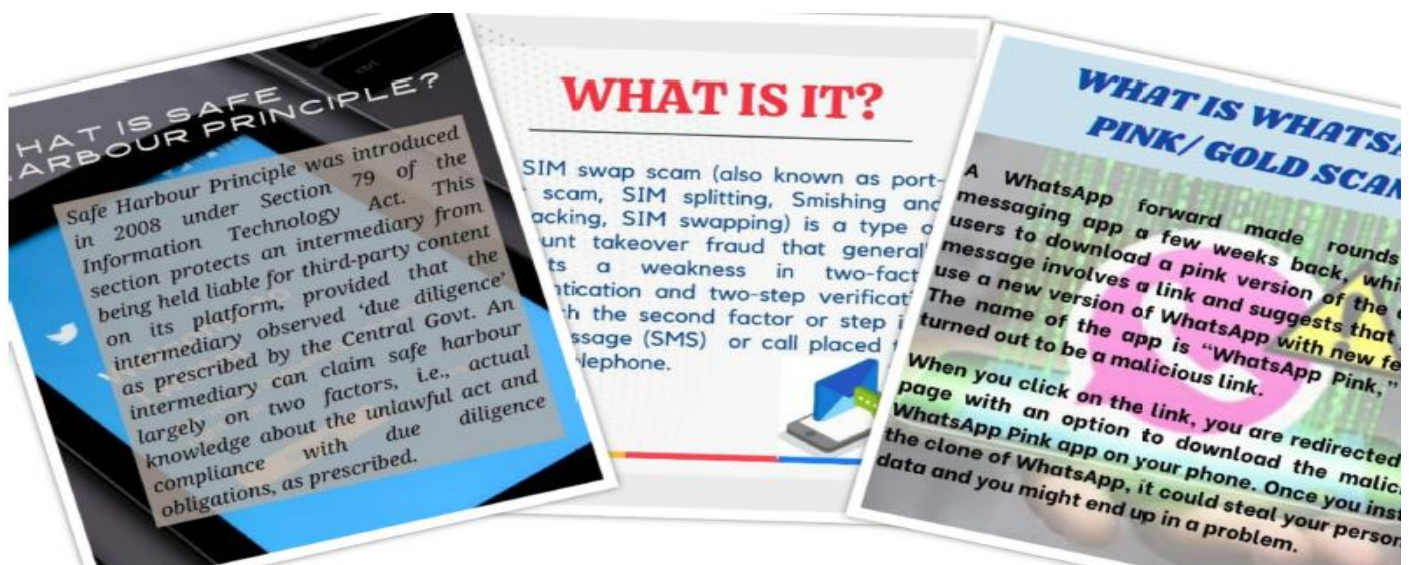
The Centre for Information, Communication and Technology Law (CICTL) of Maharashtra National Law University (MNLU) Mumbai, aims to be a centre for excellence in generating and disseminating the knowledge concerning the interrelationship between technology and law across the globe. It aims to fulfill the objectives: to explore the opportunities and challenges in the information society and provide legal and policy solutions; to serve as a platform to bring together experts, leaders and researchers from the technical and legal domain; to undertake, promote and disseminate core law and policy research in the techno-legal field.

ACTIVITIES & EVENTS

Since 2017, the Centre has been involved in promoting the interdisciplinary study of technology and law. It runs blog and publishes articles on a rolling basis. The Centre also publishes research articles in its International Journal of Cyber Laws. It also has an ongoing techno-legal awareness series where it provides easy to understand explanations to current pressing ICT issues. In addition, the Centre has also the following activities and events:

Techno-Legal Awareness Series

Since the inception of the Centre, the team is focused on spreading awareness and enabling people to be safe from potential threats of the internet. It has been publishing articles and uploading posts highlighting various challenges posed by the technology such as numerous malware scams, cyber offences, Dos and Dents, latest policy amendments or technology news and lastly, simplified texts of legal doctrines and numerous terminologies. The series can be viewed on social media handles of the Centre – [Instagram](#), [Linkedin](#) and [Facebook](#).



2019

Certificate program for young professionals on Cyber Law

This program was attended by students, researchers, advocates, and young cyber professionals. The speakers were:

- Adv. Prashant Mali (Founder & President, Cyber Law Consulting Advocates & Attorneys)
- Dr. Rakesh Goyal (MD SYSMAN Computers, Mumbai)
- Mr. Balsing Rajput (IPS, SP, Cyber Cell, Mumbai)
- Mr. Vaibhav Sakhare (Senior Digital Forensic Analyst, Pelorus Technologies Pvt. Ltd., Mumbai)
- Dr. Anand Raut (Assistant Professor & Deputy Director, CICTL, MNLU Mumbai)



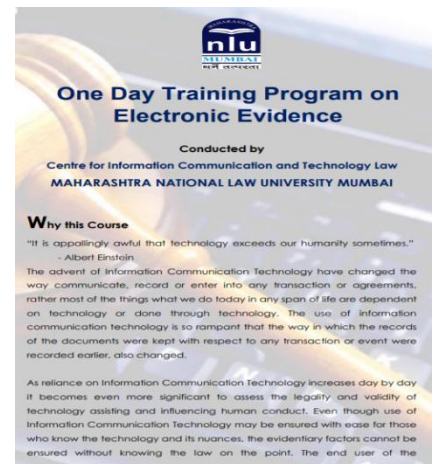
First Newsletter on Election Campaign, Technology and Law

The Centre had launched its [first issue](#) of newsletter on theme of Election Campaign, Technology and Law. It deliberated on various associated legislations, rules and handbooks; judicial decisions; international and national news; reports and journal articles on the thematic subject.

One Day Training Program on Electronic Evidence

The Centre had organized a one-day training program on electronic evidence to assess its legality and validity. The speakers were:

- Mr. S.V. Yarlagadda (Joint Director, Maharashtra Judicial Academy)
- Mr. Sanjay Tungar (Police Inspector, Centre for Police Research, Pune)
- Mr. Yagendra Yadav (Vice President, Lab Systems, Mumbai)
- Adv. (Dr.) Swapnil Bangali (Director, CICTL, MNLU Mumbai)
- Dr. Anand Raut (Assistant Professor & Deputy Director, CICTL)



2020

Webinar on Apposite method of Dispute Resolution Post Covid-19



The Centre had invited Kristi Harrington (Ret. Judge, South Carolina, Supreme Court) for a webinar session to scrutinize the apposite method of dispute resolution post pandemic crisis, from a judge's perspective.

International Symposium on Regulating Online Platforms

The Centre had conducted an international symposium in collaboration with one of the most prestigious French universities, Paris Nanterre University, and renowned German University, University of Potsdam. The conference was to assess the challenges posed by the online platforms in the forms of cyber offences, competition concerns, privacy issues, threats to national security, etc. The speakers were:

- Louis-Charles Viossat (Former Social Adviser to Prime Minister of France)
- Stephanie Rohlfig (Professor, Paris Nanterre University)
- Kerstin Peglow (Professor, Paris Nanterre University)
- RegisLanneau (Senior Lecturer, Paris Nanterre University)
- Katharina de Resseguier (German Lawyer)
- Arnaud See (Professor, University of Potsdam)
- Geraldine Demme (Lecturer, Paris Nanterre University)



2021

International e-Conference on Internet of Things and Law

The Centre had organized a two-day international e-conference on the theme of 'Internet of Things.' The conference was organized with robust educational content with the aim of engaging in sharing of knowledge and discussions on current issues and building relations between academicians and professionals engaged in the subject. The speakers were:

- Prof. (Dr.) Clemens Arzt (Professor, Berlin School of Economics and Law, Germany)
- Dr. Barsing Rajput (DCP, Mumbai Police and, Chevening Cyber Security Fellow)
- Dr. Pavan Duggal (Advocate, Supreme Court of India, and Head, Artificial Intelligence Law Hub)
- Prof. (Dr.) Holger Sutschet (Professor, Osnabrück University of Applied Sciences, Germany)
- Bhupesh Daheria (CEO, Aegis School of Business, Data Science, Cyber Security & Telecommunication)
- Dr. A. Nagarathna (Coordinator, Advanced Centre on Research, Development & Training in Cyber Law and Forensics)
- Stephanie Rohlfling (Professor, Paris Nanterre University)
- Dr. Debarati Halder (Advocate, Cyber Victim Counsellor)

MAHARASHTRA NATIONAL LAW UNIVERSITY MUMBAI
CENTRE FOR INFORMATION, COMMUNICATION & TECHNOLOGY LAW
"INTERNET OF THINGS AND LAW"
6th & 7th March, 2021

Join us for International e-conference with-

 Prof. Dr. Clemens Arzt Professorship for Constitutional and Administrative Law and Vehicle Automation Law / Director of the FOPS Berlin, Berlin School of Economics and Law	 Dr. A. Nagarathna Associate Professor, Coordinator, Advanced Centre on Research, Development & Training in Cyber Law and Forensics	 Dr. Barsing Rajput DCP Mumbai Police, PhD/TSS Mumbai Author, Chevening Cyber Security fellow/UK, M.Tech, IVLP Fellow USA	 Dr. Pavan Duggal Advocate, Supreme Court of India Founder & Owner, Pavan Duggal Associates Head- Artificial Intelligence Law Hub	 Hon. Prof. (Dr.) Dilip Ukey Vice-chancellor, MNLU Mumbai	 Prof. (Dr.) Anil Variath Registrar, MNLU Mumbai
 Prof. Dr. Holger Sutschet Hochschule Osnabrück, Germany	 Bhupesh Daheria CEO - Aegis School of Business, Data Science, Cyber Security & telecommunication	 Stephanie Rohlfling Professor, University Paris Nanterre Nanterre Cedex France. Director of the German-French integrated law curriculum of the German-French University for the Bachelor.	 Dr. Debarati Halder Advocate, legal scholar and cyber victim counsellor	 Adv. (Dr.) Swapnil Bangali Director, CICTL	 Dr. Anand Raut Deputy Director, CICTL

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Or visit us at <http://ijcl.co.in/>

ACKNOWLEDGEMENT

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Students of MNLU Mumbai

INTRODUCTION

The last decade has seen great leaps in mobile usage and internet penetration in India. A consequence of the ubiquity of mobile devices and the Internet has been the wide adoption of online games. The online gaming industry has seen a phenomenal growth and offers vast potential ahead, given India's young population and the expansive reach of mobile and internet. Fantasy gaming, a subset of the online gaming industry, is touted as a sunrise sector and is on a path of increasing growth and innovation. It has received much interest from Indian and foreign investors. Recently, Dream-11 has become India's first gaming and fantasy sports unicorn.

In terms of regulation, India does not have a comprehensive legal framework in place to promote this industry. Technology has far outpaced regulation. As a result, application of the current structure in India remains complex. The dichotomy between the centre and states coupled with divergent views of various courts in India also make it difficult for companies to have clarity on permitted activities in the sector.

India's current gaming laws are based on this morality stemming from principles prevalent in the 1800s, all of which may not be applicable in current times. With the advent of both offline and online, the 'gaming' industry can now be said to comprise of 2 verticals – gambling in both traditional and online forms, and skill based social or casual

gaming. However, currently the law majorly covers gaming as a state subject¹ under the ambit of gambling.

There exists regulatory ambiguity in India when it comes to regulating online gaming or in particular, fantasy sports platforms. The law classifies games into two broad categories *viz.* game of skill and game of chance. The rapid growth and spread of the internet were not foreseen and addressed in the Central Legislation and the state enacted statutes, hence, they mainly govern gambling in physical places and do not specifically consider online gambling. However, certain states have taken measures in an attempt to regulate and cover the vacuum. The spectrum in state regulation ranges from no restriction/limited restriction to an outright ban. This creates an uneven model for compliance and hence, this ambiguity hinders the flourishing of an exponentially developing industry.

This newsletter elaborates on the current legal framework and analyses the reports/views of different authorities on the debate of game of skill v. game of chance. It also features judicial pronouncements of various courts and incorporates recent developments. Lastly, on the basis of literature review, it summarizes the needful recommendations to bloom this upcoming industry.

¹ Constitution of India, 1950, State List, Entry 34, Betting and Gambling.

CURRENT LEGAL FRAMEWORK

Physical Gaming/Gambling

Under the Indian Constitution, as per the State List as Entry 34, the power to enact legislations on the subject of 'betting and gambling' has been entrusted to states. This ensures that only the state legislature has the authority to enact betting and gaming legislation. In addition, the Public Gambling Act of 1867, is central enactment on the subject, which has been adopted by certain states of India. It prohibits running or being in charge of a public gambling house. Moreover, state legislations were also enacted prior to the advent of virtual/online gambling and therefore primarily refer to gambling activities taking place in physical premises, defined as "gaming or common gaming houses".

Online Gaming/Gambling

The states' gambling legislations were introduced before the emergence of the internet. Therefore, the provisions of these laws do not expressly contemplate online gambling. The following states have tried or are trying to address and cover the vacuum -

(a) Sikkim

The Sikkim Online Gaming (Regulation) Act, 2008, mandates that license has to be obtained for conducting such online games, within the State's boundaries. It describes online gaming as "*all or any games of chance or a combination of skill and chance, including but not limited to Poker, Roulette, blackjack or any game, played with cards,*

dice or by means of any machine or instrument for money or money's worth, as may be prescribed from time to time."

(b) Nagaland

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 explicitly outlines what constitutes a game of skill "*all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through the deployment of physical or mental skill and acumen.*" Thus, the statute has clearly recognized the skill involved in online fantasy sports platforms. Under Section 7 of the Act, the statute has mandated a license to be obtained through the issuing authority for entities wishing to offer such games on online media and earning revenue for the same.

(c) Telangana

The Telangana Gaming (Amendment) Act, 2017, prohibits all forms of gaming for money, be it games of skill or games of chance. The erstwhile definition of "common gaming houses" in the Gaming Act included physical premises such as a house, tent, vehicle and vessel. While "common gaming houses" was widely interpreted to cover online gaming centres and cyber space, the amendment has specifically brought online

gaming under the purview of the Gaming Act.

(d) Andhra Pradesh

Andhra Pradesh has taken a stern stance on the issue – as the exception for ‘games of mere skill’ has been done away with. The Andhra Pradesh Gaming (Amendment) Act, 2020 has now plainly prohibited online gaming platforms involving money and issued notices to platforms such as Paytm to completely stop their practices. The definition of ‘gaming’ now includes ‘playing online games for winning money or any other stakes.’

(e) Karnataka

The Karnataka government notified the Karnataka Police (Amendment) Act, 2021, banning all forms of gambling in the state, including online gambling. The Karnataka Act includes the use of cyberspace including computer resources or any communication device as defined in the Information Technology Act 2000 in the process of gaming to curb the menace of gambling through the internet, mobile apps etc. The ambit of ‘wagering and betting’ has been increased to include “any act or risking money, or otherwise on the unknown result of an event including on a game of skill.”

Judicial Pronouncements

***R.M.D. Chamarbaugwalla v. Union of India*²**

The Apex court relied on the ‘skill test’ to decide whether an activity is gambling or not. The Court held that competitions which substantially involve skills are not gambling activities but are commercial activities, protected under Art. 19(1)(g). The Court also observed that trade and commerce which could be regarded as lawful trading activities are protected by Article 19(1)(g) and Article 301. Gambling is not trade but *res extra commercium*, and that it does not fall within the purview of these Articles.

***State of Andhra Pradesh v. K. Satyanarayana*³**

The issue before the Apex Court was whether rummy is a game of skill or a game of chance. The court clearly laid down two important points: *Firstly*, when the game is a game of skill and not a game of chance, it would not amount to gambling and; *Secondly*, a game of skill with a slight component of chance would still qualify as a game of skill. Therefore, the Court held that rummy cannot be said to be a game of pure chance because it requires a skillset to memorize the dropping, and discarding of the cards. Hence, the involvement of shuffling of cards in a game cannot be held as a game of pure chance as certain skill is required to memorize the distribution and the fall of cards.

² AIR 1957 SC 628.

³ (1968) 2 SCR 387.

M.J. Sivani v. State of Karnataka⁴

The Supreme Court had noted that the elements of gaming are the presence of prizes or consideration, and gaming involved playing of any game, whether of skill or chance, for money or money's worth. In the context of games like poker double up, blackjack and pacman, the Court observed that there was no scope for using one's skill to arrive at a desired result, as the electronic machines on which these games were played could be tampered with resulting in the chances of winning becoming completely unrelated to the skill of the player. Accordingly, games played electronically were placed under the scope of 'games of chance'. While the decision in this case was issued in the context of games played on a machine/video game, rather than internet poker, similar considerations could apply to real money online poker.

Dr. K.R. Lakshmanan v. State of Tamil Nadu⁵

The Court observed that gambling is a game of chance as 'chance' is the controlling or the dominant factor. Gambling in a nutshell is a payment of a price for a chance to win a prize. Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. On the other hand, a game of skill is one in which success depends principally upon the superior knowledge,

training, attention, experience and adroitness of the player, although the element of chance necessarily cannot be entirely eliminated.

Varun Gumber v. Union Territory of Chandigarh⁶

This was the first case against Dream-11, a fantasy sports platform, for allegedly conducting gambling. The Punjab and Haryana High Court observed that it would not be gambling if a game is preponderantly a game of 'mere skill' despite there being an element of chance. 'Mere skill' means substantial degree or preponderance of skill. If the success of the competition depends upon substantial degree of skill, then it is not gambling. The user of the platform exercises superior knowledge, judgment, attention and adroitness in understanding the past performances, physical state and form of athletes which are available for selection while playing the game. Playing on the platform required material and considerable skills in terms of 'drafting' and 'playing' which are the determinative factors in the outcome of the game. Therefore, the element of skill has a predominant influence on the result of the game. The platform also provides a detailed description about the game along with mandatory agreement and contractual terms and conditions of the game. Thus, it is not gambling and they have protection granted by Article 19 (1)(g) of the Constitution of India as it is a trade.

It is a landmark judgment as it is the first Indian case to hold a fantasy sports game to

⁴ (1995) 6 SCC 289.

⁵ AIR 1996 SC 1153.

⁶ MANU/PH/1265/2017.

be a game predominantly based skill. The Court analyzed the format of the game and held that it certainly requires considerable skill, judgment and discretion while assessing the relative worth of each athlete. The greater experience and training provide the user with greater insight into strategies. Several factors affected the result of the game. Therefore, it was rightly considered as a game of skill. Towards the end, the court pointed that any sport game which constitutes as a game of 'mere skill' will not fall under the activity of gambling which will create a safe guard for other fantasy sports.

*Gurdeep Singh Sachar v. Union of India*⁷

This case was filed against Dream-11, wherein the Bombay High Court applied the test of whether a particular game is a game of chance or a game of skill. If the result of the game is determined by accident or chance, it would amount to Gambling/ betting. If the game involves substantial skill, it is a game of mere skill. This game requires exercise of skill of the user which is based on the user's discernment. The court also observed that trade is protected under Article 19(1)(g) of the Constitution of India. Gambling is not trade, hence, would not be granted protection under the said article. Games of skill are merely business activities and do not amount to gambling. Hence, such games would be granted protection under Article 19.

⁷ 2019 SCC OnLine Bom 13059.

*Chandresh Sankhla v. State of Rajasthan*⁸

The petition said that the online game 'Dream-11' was alleged to be betting of cricket team and amount to gambling. The petitioner also argued that if the result of the game is determined merely by chance or accident, any money put on stake with consciousness of risk and hope to gain, would be gambling or betting under section 65B(15) of the Finance Act, 1994.

The Rajasthan High Court observed that the success in Dream-11's fantasy sports depend upon the user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team on a particular day in the real world. Therefore, it is a game of skill and shall be exempted from applicability of the ordinance. The game also is a business activity with due registration and paying of the service and income taxes. Thus, it is a trade and has protection granted under Article 19(1)(g).

The Court drew the analogy that horse racing is a game of skill and judgment and not a mere game of chance as the game is based on superior knowledge and thoughtful will, and is mainly about the fitness of the horse and how well the jockey plays. Similarly, the Dream-11 is a game of skill as the game is based on the judgment on how well a player plays and his current form in the game. It is not merely by chance or accident notwithstanding any involvement of

⁸ MANU/RH/0182/2020.

substantial skill that it would be game of chance.

D. Siluvai v. State⁹

The Madras High Court discussed the issue of online gaming in detail. The court emphasized on how fantasy games are a game of skill and not a chance. The court had placed reliance on *Chamarbaugwala* and *K. Satyanarayan* cases and observed that in competitions, where success of the game depends upon the substantial degree of skill, would not amount to gambling or betting. Despite presence of an element of chance, if a game is preponderantly a game of skill, it would nevertheless be a game of “mere skill”. Thus, the court held that the games of skill would not amount to gambling.

On the point of regulation, the court noted that there is a need for such regulatory body to control online fantasy sports game in India. Such body would also be responsible to curb any type of illegal activities in the gaming industry. Regulating online fantasy sports games would not only control illegal activities but also generate revenue and employment as it would necessarily encourage technological advancements. The court also observed that online games allure youngsters in believing that they can earn money by playing such games. The court illustrated how online games create misery among the youths. If two people are playing and they bet on winning, the winner gets his share plus his money back, whereas loser loses all the money and also destroys his

reputation. Various states, like Nagaland, Telangana and Sikkim, have enacted legislations to regulate these online fantasy sports games. But the regulation of these games differs from state to state. Hence, the court emphasizes on passing a Central legislation which would regulate the range of online fantasy games.

Ravindra Singh Chaudhary v. Union of India¹⁰

The Rajasthan High Court held that the drafting of the teams on fantasy sports platform needs considerable skill, judgment and discretion to assess the relative worth of the player, therefore, the games played on the platform are mere games of skill and not games of chance. The Court also analyzed that the self-regulatory mechanism of the fantasy sports which distinguishes them from other types of online gaming. The game is self-regulated by the industry body known as ‘Federation of Indian Fantasy Sports’ that ensures that the games run by its members are ‘games of skill’ and are not in the form of any gambling/betting. The judgment recognizes self-regulation which is a significant step in the right direction in line with global practices.

Avinash Mehrotra v. State of Rajasthan¹¹

This was a special leave petition against the judgment of Rajasthan High Court in *Chandresh Sankhla case*. The Supreme Court

⁹ 2020 SCC OnLine Mad 1546.

¹⁰ MANU/RH/0499/2020.

¹¹ SLP (C) No. 18478/2020.

had upheld the decision of the Court to the effect that the online fantasy game ‘Dream-11’ involves skill and does not amount to gambling. The Apex Court held that the matter is no longer *res integra* i.e., a matter which has not been examined already. Thus, expressly establishing the precedent that fantasy sports are game of skills and not game of chance.

The Court also upheld the view expressed by the High Courts in the cases of *Varun Gumber* and *Gurdeep Singh*. It observed that the format of online fantasy game offered by Dream-11, is a game of mere skill and their business has protection under Article 19(1)(g) of the Constitution of India, as repeatedly held by various Courts and affirmed by the Supreme Court.

Jungle Games India Pvt. Ltd. v. State of Tamil Nadu¹²

The petitioners have challenged the Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 which prohibits all forms of games being conducted in cyberspace. The Tamil Nadu High Court held that games based on ‘preponderance of skill’ are protected under the Article 19 (1)(g). The games of skill are distinct as a class and have been judicially differentiated from the game of chance. The expanded provisions put blanket ban on all forms of gaming irrespective of the game being a game of skill therefore it violates the Article 19(1)(g). The objective of the Act was prohibiting online games but fails to protect the games based on skill. Therefore, it was rightly held arbitrary

as it fails the proportionality test and therefore is violative of Article 19(1)(g).

The High Court while concluding also held that the State Governments have power to make laws on online skill based-gaming platforms as the Entry 34 of List II of the seventh schedule which is about ‘betting and gambling’ does not include games of skill. The skill-based online games also come under Entries 1, 26 and 33 of the State list under ‘public order’, ‘trade and commerce within the state’, ‘sports, entertainments and amusements’ and therefore the State governments have power to make laws on them. However, such games are protected under Article 19(1)(g) and therefore any restrictions put on the games should satisfy the proportionality test and should not be arbitrary. Though this might create an issue in future for the service providers if the states enact their own laws regulating online gaming in different states but for now the High Court has held that the State Governments have power to make laws on skill-based online games.

Head Digital Works Pvt. Ltd. v. State of Kerala¹³

The Kerala High Court quashed the notification dated February 23, 2021 issued by the Kerala state government banning online rummy involving stakes. The court ruled that the notification is arbitrary, illegal and in violation of Articles 14 and 19(1)(g) of the Constitution of India, since the notification has been issued in relation to a game which already stands exempted from

¹² MANU/TN/5230/2021.

¹³ 2021 SCC OnLine Ker 3592.

the provisions of the Act under Section 14 of the Kerala Gaming Act, 1960, and since the game does not come within the meaning of ‘gambling’ or ‘gaming’, providing a platform for playing the game, which is in the nature

of business cannot be curtailed.” Further, the court noted that the notification is in effect a prohibition of Online Rummy played for stakes and not a reasonable restriction under Article 19(6) of the Constitution of India.

Overview of the Literature

*Law Commission Report*¹⁴

This report was focused on the ambit of Gambling and Sports Betting in India, especially around cricket. The Supreme Court formed a committee, the Mudgal Committee to enquire into allegations of match fixing during the IPL matches in 2013. The Mudgal committee findings were important in highlighting that people were associated in hedging bets and match fixing, which was in direct contravention of the IPL rules. They found that investigating bodies lacked the proper tools and know-how to nab the bookies successfully. The Mudgal Committee recommended that certain measures be taken in light of these findings, namely that:

- a) The IPL governing body should independent than the BCCI
- b) Agents of the players should be duly registered, but not allowed to travel with the players.
- c) Strict laws, investigating and governing bodies should be set up to reduce match fixing

- d) Post-match parties should be banned to avoid any sort of undesirable activities from taking place.

Post the Mudgal committee, another committee was instituted by the Supreme Court under the chairmanship of Justice R.M. Lodha, to make suitable recommendations and suggestions for amendments to the BCCI Rules and Regulations. These committees were important in shedding light on practices such as gambling, wagering and betting.

Although Lottery finds a place in the Constitution, the practice of gambling is which is still excluded from the ambit. Black’s Law Dictionary defines gambling as “*an agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute.*” The report encapsulated that although betting and gambling came within the purview of wagering, there was a slight difference, that gaming is mainly based upon skill, while betting and wagering were strictly games of chance, depending on luck and happening of an uncertain event.

¹⁴ 276 Report of Law Commission of India, Legal Framework: Gambling and Sports Betting including Cricket in India, Government of India, (July, 2018).

The main question about gambling in India is that of morality. Culturally, many have opposed gambling although it has been around since time immemorial. Those who argue for legalizing gambling cite individual will and liberty as a major argument. Moreover, the main argument against gambling is that it is a way to earn money quickly and immorally. Taking into account testimonies made by officials and citizens, the committee recommended that with the advent of technology, there needed to be laws which would pay due attention to online gaming and gambling. These laws would ensure a relook of sorts, and ensure that there was no loss of revenue, in addition to increased employment opportunities.

Regulation would make sure that the authorized agencies had the power to regulate and thereby ensure that there was inconvenience to the public. The report noted that while the National Sports Development Code, 2011, did not encourage betting and gambling, owing to the current landscape of socio-economic problems, it was in the Country's best interests that betting and gambling not be legalized. However, this could be a double-edged sword, in the sense that it may result in an increase in illegal gambling and other such activities, which may thus, cause a spike in black-money generation; the report therefore recommended that State Legislatures might regulate gambling, to ensure that money laundering and fraud does not go by undetected.

The Report sheds light on the various intricacies of gambling, since the ancient times to date, highlighting the possible fallacies of completely allowing gambling. Especially now, with online gaming and gambling, the Government has to make sure that it covers all bases, mainly regarding the ambit of game of skill versus game of chance.

NITI Aayog Report¹⁵

The report analyses the statistics of online gaming in India and scrutinizes the steady rise of the industry. It notes that India has surpassed the total number of online fantasy gamers in the US, where the daily fantasy sports contests generated approx. USD 2.91 billion in revenue as of 2017. Consequently, the lack of guidelines has a “chilling effect on innovation and product development within the fantasy sports industry.”

While Online Fantasy Sports Platforms (OFSPs) are a pan-India affair, they are regulated by State rules and regulations, which means they have to go through State operators. The report encapsulates how this may be detrimental to the fantasy gaming industry, since there is bound to be discrepancies in regulation, which would mean inconsistencies in the consumer experience regarding the same. The report calls for more uniformity, especially since it has been receiving quite a push from the Prime Minister, in congruence with the *Atmanirbhar Bharat* initiative and the impetus it is getting.

¹⁵ NITI Aayog, Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India, (December, 2020).

The report ends with certain suggestions, such as setting up of proper dispute resolution forums, and making sure that rules and laws for OFSPs do not change frequently, so as to save them the repeated hassles of litigation. In addition to this, they unanimously agreed on certain recommendations, such as:

- a) Government recognition;
- b) A uniform national safe-harbour to define and determine OFSPs as games of skill;
- c) Universally agreed upon guidelines by relevant national and state level organisations;
- d) A single self-regulatory body for fantasy sports industry;
- e) Implementation of guidelines and rules to be governed by an independent oversight board

The NITI Aayog has discussed some important points, namely the absence of proper regulatory guidelines for fantasy online gaming. This lack of uniformity in different states has proven harmful, especially when we see cases such as the suspension of the app Dream-11 in Karnataka, owing to an amendment of the Karnataka Police Act. This was done as a deterrence to online gambling and as an opposition to games of chance, which unfortunately translated into a blanket ban.

ASCI Advertising Guidelines on Online Gaming¹⁶

Recent years have seen a substantial number of advertisements being broadcasted on the

television on fantasy sports, online gaming (such as poker, rummy, etc.), etc. It has been a matter of concern for some as some advertisements are purported to be conveying the wrong idea about the financial risks posed by the games. This is because such ads may lead to the uneducated public signing up for something they did not want in the first place and ultimately, losing money on it. Therefore, the ASCI issued the following guidelines:

Discouraging individuals below 18 years of age from engaging in online gaming for real money winnings – It is mandated that advertisements do not depict that an individual below 18 years is capable of playing such games. This is introduced so that viewers are able to derive that a distinction exists between the games that minors usually play and the ones involving real money, enabling them to be aware of the facts that it is not safe for minors to play such games.

Discouraging such games to be presented as an income opportunity or an alternative employment option or a way of becoming more successful than others – The guidelines prevent depiction of such games as a source of income or an alternative employment opportunity. It is also mandated that advertisements do not suggest that such games can make individuals more successful than others. The simple reason behind this is that people are not deceived into believing that such games have the potential of being a substitute of actual sources of income and people, especially those looking for easy

¹⁶ Advertising Standards Council of India, Guidelines on Online Gaming, (December, 2020).

money, do not end imperiling their main source of income.

Making viewers aware of the nature of such games – The guidelines require all advertisements to carry a disclaimer verbatim in both print/static and audio/video form informing the views about the elements of

financial risk and addiction. Further, it provides for certain other requirements related to this disclaimer to ensure that the connotation of the disclaimer is delivered to viewers effectively. Mandating the inclusion of disclaimer in advertisements is another step towards letting viewers and potential consumers make an informed choice.

International Perspective

United Kingdom

The gambling and betting industry in the UK is governed by the United Kingdom Gambling Act, 2005. Section 9 of the Act defines betting as accepting a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring or whether anything is or not true. The act allows for imposing limits on stakes, fees, winnings or prizes. As per Section 20 of the Act, a Gambling Commission is to be set up to regulate gambling, betting and related activities, through proper licensed personnel. The Commission will see financial plans, business plans, management order, in addition to paying application fees, to ensure that they are fit to conduct gambling and gaming.

Betting in the sport of cricket is regulated in the United Kingdom by the England and Wales Cricket Board Rules along with the 2005 Act. Moreover, the Act encompasses all the types of technology and is hence, applicable to all the types of fantasy gaming, including Lottos, Fantasy football leagues, and so on.

United States of America

In United States, gaming laws are comparatively liberal. Gambling activities are governed by three sets of regulations, one at each level- Local, State, and Federal. The United States has a long-standing tradition of fantasy gaming, particularly fantasy football and fantasy baseball. Fantasy Sports has both state and federal laws. The Interstate Wire Act of 1961 was one of the legislations that prohibited people from making bets and wagers on the telephone, which extended to internet communication as well.

There are some regulations for fantasy gaming, under the Uniform Internet Gambling Enforcement Act, which made it illegal to gamble over the internet. There is, however, an exception to fantasy sports, provided they satisfy certain criteria:

- a) The value of prizes is independent of the number of players;
- b) The outcome is determined solely on the fantasy-player's skill and knowledge;
- c) The outcome cannot be determined by the score of the game or an individual's performance.

The regulation largely depends on the states as well. For instance, Maryland enacted laws to exempt fantasy sports from the state's gaming laws. Montana legalized fantasy sports but prohibited conduction of "internet or telephone wagering on fantasy sports leagues." On the flip side, states like Indiana, Massachusetts and Pennsylvania have allowed even casinos to offer fantasy games, provided they obtain a license before doing so.

South Africa

In South Africa, it was recognized that the licensing and regulating of gambling in the country could:

- a) Generate significant economic benefit to the country.
- b) Create meaningful employment opportunities.
- c) Contribute towards the advancement of persons previously disadvantaged by discrimination on the basis of race.

Therefore, the National Gambling Act of 2004 was enacted to include provisions with greater precision and to co-ordinate activities relating to the concurrent exercise of legislative competence and to provide for the licensing and regulating of interactive gambling. Online gambling is referred to in the 2004 Act as 'interactive gaming.' It is defined as *"a gambling game played or available to be played through the*

mechanism of an electronic agent accessed over the internet other than a game that can be accessed for play only in licensed premises, and only if the licensee of such premises is authorized to make such a game available for play." As per section 11 of the National Gambling Act, a person must not engage in or make available an interactive game except as authorised in terms of this Act or any other national law.

Australia

The Interactive Gambling Act of 2001 protected the residents from the harmful effects of online gambling. Under the Act it was illegal to provide some interactive gambling activities, such as 'online casinos', to someone physically present in Australia. Examples include roulette, poker, craps, online 'pokies' and blackjack. Some activities were however excluded from the list and are subject to licenses, an absence of license under the Act would amount to an offence. In addition, fantasy sports betting is typically permitted under a corporate bookmaker license.

The Act was amended to prohibit interactive gambling services ('illegal services') and regulate interactive gambling services. It also prohibits 'click to call' in-play betting services by tightening the definition of a 'telephone betting service' to require dealings with customers to be wholly by way of spoken conversations between individuals.

Apposite Way

The first and foremost issue is to decide the real parent on the subject-matter. It can be Ministry of Electronics and Information Technology (*the involvement of technology and e-platforms*), or Ministry of Finance (*the generation of gross gaming revenue and other wallet transactions*), or Ministry of Youth Affairs and Sports (*the involvement of real sports and participation of players*). An uneven system leads to difficulty in compliance. It also leads to differential rights and duties of consumers in different states and leads to ambiguity with respect to grievance redressal mechanisms. Investors' decisions are also hampered because of uncertainty in regulations.

The online gaming industry has vast economic potential. This is based on the fact that there are a large number of stakeholders in this industry including gamers, developers, designers, businesses and their investors, marketing, advertising and sports merchandising industries, etc. This means that the industry has a huge potential of creating jobs and be a source of income for many. Given this fact, it is the need of the hour to enact a central legislation as this would enable smooth operation of online and fantasy gaming in India and benefits all stakeholders.

It is also important to establish a regulatory authority that will overview the industry and protect the interests of the stakeholders. This authority could also enact a test to identify the game of skills, a list of objective factors like model of game, hand-eye coordination, strategic skills, and other physical and mental

skills etc., can be used for the identification test. The objective factors for the platform can also include elements of competitiveness, and dissemination of information to the players about the game that helps in upskilling them. This will not only help in mitigating regulatory ambiguity but it will also reduce information asymmetry and develop an efficient grievance redressal mechanism.

Lastly, it is important to educate and make the stakeholders, audience and the public aware about the diversity of online and fantasy gaming. Lack of knowledge about technology and gaming, have treated fantasy sports like gambling and betting. This mode will pave way to community engagement, which will not only increase user engagement, but will also boost innovation and business growth within the industry.



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