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GAME OF LAWS: SKILL OR CHANCE

A BRIEF ON THE CURRENT STRUCTURE OF GAMING LAWS IN INDIA



INTRODUCTION

- Gaming is an integral part of most people's lives. It may be outdoor or indoor games, online or offline games, solo or multiplayer games, learning or entertainment games. As humans we have developed several different types of games to keep us entertained, healthy, connected with others and have even created careers of the same as professional players. The advent of the internet in the early 1990s opened a new paradigm for the evolution of games. Increasing internet speeds in the following two decades paved a path for the continuous growth of online gaming. Additionally, the recent pandemic, the resulting lockdowns and social distancing has resulted in spike in the number of people turning towards gaming to keep themselves entertained.
- While gaming in its whole sense is a huge subject, laws related to gaming generally aim to regulate three aspects of gaming – (1) rules of a game to standardize the experience (2) conduct of a game in the event such a game is played in a professional manner at regional, national or international level (3) legality of the game based on the activities involved in the game.
- It is the third aspect, the legality of gaming in India, that we will examine further to showcase that the current regulations in India are not specific to e-sports and online card gaming. Additionally, we observe that the Regulating Authorities imposed a regulation to issue statutory warnings to dissuade the people from indulging in these services. This involves the analysis of the activities undertaken in a game to determine its legality. Primarily the activity which receives the most interest in gaming is gambling or betting, which involves people betting money on the output of a game or the players themselves betting money as per the game to win the bets made by all the players in the game or a portion thereof. In this primer, we aim to analyse the legal status of gambling or betting on or within games in India and the criteria used by law to determine what classifies as gambling and what does not. Finally, we shall also briefly analyse some recent actions of the Government of India with respect to banning of various games in India on some new grounds.



OVERVIEW OF LEGAL FRAMEWORK REGULATING THE GAMBLING INDUSTRY

- Online and Offline Gambling –
 - i. In India the States have been provided with the power to legislate on the laws relating to gambling. Accordingly, several states have their own version of the gambling regulations. Some of the legislations regulating gambling in India are - Assam Gaming and Betting Act, 1970; Bombay Prevention of Gambling Act, 1887; Goa, Daman and Diu Public Gambling Act, 1976; Karnataka Police Act, 1963; Madhya Pradesh (C.P.) Public Gambling Act, 1867; Madhya Bharat Gambling Act, 1949; Orissa Prevention of Gambling Act, 1955; Public Gambling Act, 1867 (applicable to Uttar Pradesh, Punjab, Delhi and Madhya Pradesh).
 - ii. Most of the regulations surrounding gambling were introduced in the pre-internet era and accordingly do not make relevant references to applicable rules for online gambling. The State of Sikkim and Nagaland are the only states that have enacted laws specific to online gambling.
- Game of Skill vs Game of Chance –
 - i. The next touchstone for determining the legality of whether a particular type of game constitutes gambling, which is prohibited under several State legislations mentioned above, is the test to establish whether said game is a game of skill or a game of chance. If in this game, success depends on superior knowledge, training, attention or experience of the player, then the said game is termed as a game of skill and is therefore legal. On the other hand, a game of chance involves a certain level of unpredictability or uncertainty in the forthcoming outcomes within the game, synonymous to gambling.
 - ii. Barring certain state legislations which have statutorily defined this distinction, the said test has been developed and reiterated by various judgements of a variety of High Courts and Hon'ble Supreme Court. The Supreme Court, in the case of *K. R. Lakshmanan v. State of Tamil Nadu*, laid down the distinction between a game of skill and a game of chance. They held that the character of a game will depend on the dominant element of the game, i.e., skill or chance.¹

¹ (1996) 2 SCC 226



iii. In the *Satyanarayana* case, the Supreme Court established that a game which predominantly relies on skill is not considered to be gambling even if there is an element of chance involved in it.² Gambling is the act of wagering or betting in games of chance; games where chance is the controlling factor.³

² AIR 1968 SC 825

³ AIR 1957 SC 699



E-SPORTS REGULATIONS IN INDIA

- E-sports, as the term suggests, refers to those sporting competitions facilitated or held online, which involve not only traditional sports such as football, basketball, cricket, etc. but even other genres such as racing, first person shooter/war simulation games or various role-playing games. The development of e-sports has been synonymous to technological development, with the increase of the latter enabling more creative games and simulations to be developed. Tangible results of such development include gaming consoles that facilitate such games which are manufactured by some of the world's leading technological giants including Sony, Microsoft, and Asus, amongst others and overall internet connectivity development.
- Role-playing games specifically have contributed to various forms of competitions and leagues to be created, which have witnessed global participation of multiple nationalities as the players or teams in such leagues. One of the most-watched such leagues was the League of Legends World Championship held in 2018, recording over 200 million viewers for its finals and having a prize pool of \$5.8 million dollars. Monetarily, some leagues have recorded more than \$100 million as its prize pool, including the Fortnite World Championship, 2020.



Image 1: League of Legends World Championship Finals, 2019

- From a regulatory standpoint, there is no specific statute or designated regulator for e-sports in India, while its physical counterparts' function under regulators like the BCCI. This, however, has not barred the application of pre-existing statutes such as the



Income Tax Act, the Indian Contract Act or the Indian Penal Code and other criminal statutes on such activities taking place in India.

- An example of such application of pre-existing statutes, which created a certain level of controversy as well, was the ban of the mobile application **“Players Unknown Battleground”, better known as PUB-G Mobile**. The ban was placed through a government notification issued under the Information Technology Act, 2000 ('IT Act') specifically under Section 69 A of the IT Act, which allows the government to block the access of the public to any computer resource, which includes such mobile applications. The reasons cited were that of national security and, based on statements issued by ministry officials to be the security risk of surveillance undertaken by the company running this application, Tencent, which was based out of China.
- Although the political context in which the said ban was issued has defined squarely the reasons for banning these gaming applications, it has revealed the statutory powers of the Government to regulate such gaming applications as well. However, the effects of the said ban on PUB-G Mobile are said to be nullified as the developers have recently announced that an Indian version of the application will be launched soon, which will be operated by an Indian subsidiary in collaboration with Microsoft India.
- Additionally, the Advertising Standard Council of India has directed TV channels to display statutory warnings while airing advertisements/promotions of online gaming or fantasy sports websites (e-sports portals).⁴ The following steps have been taken to ensure that the people are aware of the financial risks involved in online gaming and potential addiction to the same.

⁴ <https://www.ascionline.org/images/pdf/asci-guidelines-for-online-gaming-for-real-money-winnings-new.pdf>



REGULATING ONLINE CARD GAMES IN INDIA

- Apart from the exquisite role-playing games discussed above, there are certain other types of online gaming, which expose the ambiguity in the current regulatory system in India. These are online card games, which involve some form of betting or gambling based on odds created through the uncertainty of what the other players may possess. Common examples of these type of games are poker, rummy or teen patti, amongst others. These games have led to a rather broad-based definition of the game of skill vs game of chance test discussed above.
- Poker, rummy and teen patti are three such games in which there is certain betting or gambling undertaken based on the luck and skill of a person in either creating or possessing an upper hand when compared to other players. This element of skill is precisely what several High Court judgements have identified and used as the basis of ruling on the legitimacy of such online games in those states which have the statutory basis of banning gambling activities.



Image 2: An Example of the User Interface of Online Card Gaming Platforms

- There are two key takeaways from the multitude of judgements issued by the Courts in their understanding of such card games like poker and rummy, even in their online version, as games of skill. First is the overall jurisdiction of the Court and its ability to



adjudicate the legitimacy of such games, establishing the fact that such online games can be challenged regardless of what the final decision may be rendered. In the absence of an explicit statutory basis mentioning a designated court, such wide-based jurisdiction becomes important in the absence of an overall regulatory framework. Second, is the lack of statutory intent to regulate such online renditions of card games, with there being only one notable instance of recognition being given by the State Government of Nagaland. Advantages of regulating these activities are primarily financial in nature, with the government having new opportunities to gain revenue from licensing, registration fees, and even imposition of tax. Secondary advantages can be streamlined as dispute resolution and better moderation of such online platforms that can reduce instances of fraud or phishing scandals, which in turn can develop the business atmosphere, encouraging investment, growth and employment opportunities.



CONCLUSION

The absence of a comprehensive regulatory framework for this growing trend of online gaming has not affected consumer demand and the growth of this sector in India. The support extended by the judiciary through its reiteration and clarification of the test of game of skill versus game of chance has further helped the growth of such gaming service providers. The best example of this is the Dream 11 mobile application, which although was challenged before the Hon'ble Supreme Court due to its inherent monetary and betting driven objectives, has been upheld as a game of skill. As a result, it was also allowed to bid and obtain the title sponsorship for the Indian Premier League, the biggest sporting event of India.

On the other hand, this growth can further be accelerated if there are statutory provisions, streamlining the operation of such services, and perhaps even encouraging them to avail the advantages mentioned above. From an investment standpoint, the applicability of standard legislations does act as an assuring factor for some basis of calculating liability and risks. Moreover, the recent PUB-G ban has also helped highlight the additional risk factors through other statutory provisions such as the Information Technology Act, 2000 that can be considered as well. The consistent growth of the consumer base in India does strengthen the viability of online gaming as an attractive investment sector.

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