



E-GAMING: KEEPING UP WITH THE TREND

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ABSTRACT

The increasing acceptance and popularity of online gaming in our culture can be seen in the unprecedented rise of ads for the industry in our country's mass media, such as with Dream 11 being the title sponsor of the next season of the Indian Premier League.¹ More and more of the atmosphere for online gaming is getting favourable with every passing day. Since the government's emphasis on Digital India has provided even the most rural locations with improved internet connections, this, in tandem with the rise in digital payment platforms after demonetization, has created a perfect atmosphere for the expansion of online gaming in India. Because of the new pandemic and the resulting lockdowns together with the recommendation to remain home, today has given the greatest possible advantage to the COVID-19 pandemic. According to media sources from April 6-10, the day the lockdown was in effect, gaming traffic in India surged by 109.4% when compared with the previous reporting period, from the 24th through the 28th of February. Because of this boom, there has been a considerable surge in online gaming. According to the KPMG research², which was released in the year 2019, the Indian online gaming sector would become an INR 250.3 billion sector by 2024. Still, when it comes to the regulation of online gaming companies, India's regulations have not kept pace with the technology.

Keywords: E- gaming, IPL, Gambling.

ALL ABOUT E-GAMING

In India, the division between talent-based contests and shots in the dark is carried out by laws. The chances of successfully solving a puzzle, including rolling dice, are always in favour of the

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¹ Madhav Chanchani, 'The rise & rise of Dream11, and fantasy sports gaming in India' *The Times of India* (India, Mar 24, 2019) < <https://timesofindia.indiatimes.com/companies/the-rise-rise-of-dream11-and-fantasy-sports-gaming-in-india/articleshow/68543816.cms>> accessed 5 June 2021.

² A study by KPMG in India and Google, *Online gaming in India: Reaching a new pinnacle* (May 2017) 10.

person doing the puzzles, regardless of the level of competence. It includes an application of both mind, method, and experience, along with the rule study, the implementation of a strategy, and the accumulation of experience. To the question of whether games of skill, when played with stakes, would have legal implications, although games of skill, with stakes, are generally lawful, the answer is, unfortunately, it is possible to be penalised even if you use a video game console or Internet access to compete.

The Apex Court has validated the legality of certain controversial games such as horse racing in *Dr K.R. Lakshman v. State of Tamil Nadu*,³ where the statement came that horse racing is “neither ‘gambling’ nor ‘gaming’ but a game of mere skill and the expression mere skill would mean substantial degree or a preponderance of skill”, and rummy in *State of Andhra Pradesh v. K. Satyanarayana*⁴, in which it said that "rummy requires a specific measure of ability since the fall of the cards must be remembered and the structure up of rummy requires impressive expertise in holding and disposing of cards. Court, however, made a distinction between talent-based contests and shots in the dark. One of these games, called rummy, is often played using a deck of 52 cards. In another court case, the court said, "If a member of the establishment of the residence is generating a profit or benefit from the game of rummy or any other game played for stakes, it is also possible to make an allegation for violation of Section 181A."

While considering the monetization of the game of rummy, the court in the same case made a significant statement as to when a venue may be referred to be a "common gaming house," which is needed to be established by the prosecution for a charge of gaming. It was ruled that it is acceptable for clubs to charge additional fees for playing cards or any other game since they may help the club maintain the quality of its services, but a minimum fee would not constitute a gaming house. Until a recreational house or club seeks to generate considerable profits by offering game-fixing opportunities, there will be no concern for enforcement penalties. Another game that has a lot of controversies is poker. Poker in Karnataka is now considered to be completely legitimate by the High Court since the “game of poker must be played as a game of skill, and hence, the licence is not applicable.” Furthermore, the Gujarat High Court has said that poker would be classified as a game of chance and as such would incur criminal penalties, noting that in a game of poker betting is an inseparable act, but rummy, which is allowed to be played without betting, does not fall under this classification. Thus, It can be extrapolated that games of skill performed with stakes would result in penalty only when the site where it is being played makes significant profits off of the fact that it is often seen as a gambling establishment, Although these legal ideas apply to online games of skill, they are challenging to implement in

³ *Dr K.R. Lakshman v. State of Tamil Nadu*, 1996 SCC (2) 226.

⁴ *State of Andhra Pradesh v. K. Satyanarayana*, 1968 AIR 825.

practice. It should be noted that the aforementioned British regime law (The Public Gambling Act, 1867)⁵ had subsequently come from several other States. This law underlines the physical characteristics of a “common gaming house” and so restricts the description of this facility to any “house, walled nook, chamber, or location where cards, dice, tables, or rather any other gaming equipment is housed conversely utilised. While it has previously been incorporated in other state laws, this concept in essence has now been implemented in state legislation. Therefore, it is very essential to make adjustments to all of the country's gaming regulations to cover all online websites that operate as virtual gaming portals and make a great deal of money. Currently, only online games that are run as a for-profit entity are permitted to earn income. A fantasy sports game revolves around the development of a virtual team comprised of real-life players by the user, whose selection is determined by his judgement and discretion, in which the value of each player is weighed against all the available options. The High Court of Punjab and Haryana, during *Varun Gumber v. Union Territory of Chandigarh*⁶, has tracked down that the visionary cricket game “Dream11” shows a play of skill and is thus immune out of criminal sections of the Public Gambling Act, 1867⁷. The High Court pointed out that participants must assess each prospective athlete's merit compared to all of the athletes who are eligible for choice. He is obligated to learn laws and guidelines of the strength of the competitor and the shortcomings of the competitor also. In sum, the honourable Supreme Court rejected all appeals based on the same, to affirm the High Court's decision. Just as the Bombay High Court and Rajasthan High Court have also determined that Dream11 is a talent-based contest, not chance, so too have Supreme Court and Federal Courts in the United States and Canada.⁸ It may be mentioned that the Honorable Supreme Court has halted the implementation of the Bombay High Court of Bombay’s ruling. However, judgements of Punjab and Haryana High Court, as well as the Rajasthan High Court, are still in effect.

TEST FOR COMMERCIALISATION

Even though Dream11 has been recognised, the legal ambiguity of games of skill remains in the gaming business as to whether all games of skill, when played online with stakes, may be commercialised. To the author's understanding, a game of skill cannot be played unless it is also played online without upsetting the essential qualities and skills involved in the game. Since the

⁵ The Public Gambling Act, 1867 (Act No. 3 of 1867).

⁶ *Varun Gumber v. Union Territory of Chandigarh*, 2017 SCC OnLine.

⁷ PGA 1867.

⁸ Akshat Agarwal and Vivan Sharan, ‘Fantasy sports like Dream11 are a good candidate for self-regulation’ *The Print* (India, 2 November, 2020) <<https://theprint.in/opinion/fantasy-sports-like-dream11-is-a-good-candidate-for-self-regulation/534104/>> accessed 5 June 2021.

degree of skills in a physical game cannot be compared to that of an online game, he believes games of skill can only be played on the internet.

For instance, let's use poker and blackjack as an example. There is a process to be gone through during which you will have to keep your thoughts to yourself while also gauging the responses of your opponents and seeking tells. This activity is known as "Keeping a Poker Face" in which players use their talents to analyse their opponents and search for tells while maintaining a neutral facial expression. Additionally, to successfully win in poker, the player must remember the sequence of cards, exactly like rummy, and keep track of the chance of cards that are likely to fall. However, when played online, poker loses a lot of its traits and abilities, therefore shifting the balance in favour of skills over chance. As a result, online poker plays less like a talent-based contest, and more like shots in the dark.

This process, known as blackjack when played offline, puts a bettor on a level playing field with the casino dealer; however, the player has to not surpass the total of twenty-one while doing so. It is impossible to determine whether or not the dealer or another player had an emotional response to winning the game. The main skill in blackjack is whether or not the player can count the cards and how likely each card is. Although Blackjack may be played online or offline, it does not make any fundamental alterations to the player's fundamental capabilities and remains a game of skill. As a result, blackjack may be played online with stakes and be commercially viable. A point to bear in mind is that the views above have only been heard about online gaming in the current decade and beforehand when the industry was still in its early phases, did not use online gaming as a major part of their offerings. Nevertheless, after the Court of Appeal's rulings on Dream11, it may be inferred that the courts are now in favour of the notion of selling games of skill online, as long as they do not lose their core features and talents which predominately constitute the game of skill.

CURRENT LAWS TO REGULATE E-GAMING

As of now, Sikkim and Nagaland have taken the position that regulating online gambling is preferable to prohibiting it, while Telangana has taken the other approach and banned all types of online gambling. These two states are, of course, Assam and Orissa said that all kinds of gambling will be prohibited, with stakes involved. Under Section 2(1)(b) of the West Bengal Gambling and Prize Competitions Act, 1957⁹, the state of West Bengal has disallowed games such as poker, rummy, etc. West Bengal has excluded games such as poker, rummy, etc. which so allows poker, rummy, etc. to be played online and offline. As Section 14A, as described in

⁹ West Bengal Gambling and Prize Competitions Act, 1957 (Act 32 of 1957).

Kerala Gaming Act, 1960¹⁰ permits state legislature to exempt a game from all or any provision of the act if it is convinced that in any kind of sport the component of ability is more conspicuous than a component of possibility, the law authorises the state government to exempt the game from all or any sections of the act on the off chance that they are fulfilled that in any game the component of ability is more conspicuous than a component of possibility. The state government recently decided to restrict online rummy, which includes stakes, from being played for money and is thus exempt from that regulation. While we've made it clear that rummy would be excluded from the prohibition, it has also been specified that rummy played offline would be exempted.

Nagaland is at the forefront of laws and regulations for online gambling at the moment. The Naga Nadu Act that defines “gambling” in Section 2(1) and prohibits the distribution and promotion of games based on the possibility but does not cover “wagering” or “betting” on games based on ability, is called the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skills Act, 2015¹¹. One likely explanation for the same is that after a permit has been acquired according to the Act, "betting" or "wagering" on internet talent-based contests or making a benefit by giving a medium to messing around of ability ought not to add up to betting in as much as the games are made accessible to players and got to by players who are situated in locations where talent-based contests are excluded from the ambit of betting.¹²

FINAL REMARKS

The whole nation shutdown resulting from the COVID-19 outbreak was good for the online gaming sector, as it provided a possible increase in traffic. Nagaland should follow in the footsteps of the other states and immediately update their legislation to make use of the few chances the outbreak has afforded. The Madras High Court has made an apt comment when it said, “A complete administrative system required by an administrative office is needed to oversee online games as well as to prevent illicit activity. To curb excessive regulation in online sports, governments should invest in the industry. This would result in breakthroughs in technology as well as the development of money and jobs.

¹⁰ Kerala Gaming Act, 1960 (Act 20 of 1960).

¹¹ Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skills Act, 2015 (NAGALAND ACT No.3 OF 2016).

¹² 'Max Abbott Middle School / Homepage' (Ccs.k12.nc.us, 2021) <https://www.ccs.k12.nc.us/Domain/78> accessed 5 June 2021.