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# Legality of Online Gambling: The Judicial Approach to an Unanswered Question

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## ABSTRACT

*The paper discussed the approach of judiciary towards online gambling. Recently online gambling and gaming is becoming popular in India and internationally. At the rate with which it is growing, the laws and legislation's governing such games should be fundamentally clear. The judiciary has taken quite a few different approaches when it comes to the manner of distinguishing between online games and gambling. The distinction between the two is thread line and can create certain complications. The paper analyses these decisions. It discusses the necessity of a national framework governing gaming laws and problems in legalising gambling.*

## I. INTRODUCTION

Nowadays it has become a common occurrence for extremely popular Indian celebrities like Virat Kohli to Nawazuddin Siddiqui to endorse Online gambling platforms. There has even been a petition against Virat Kohli and Tamannaah in Madras High court requesting for them to be held under charges of promoting Gambling.<sup>2</sup> The case Pauly Vadakkan v. State of Kerala and others. in the Kerala high court has petitioned for a ban on unregulated online gambling and games like online rummy.

Online gambling has only begun in 1994 and yet the global online gambling market size was valued at USD 53.7 billion in 2019.<sup>3</sup> As of now gambling on online platforms like an online casino etc, is still in nascent stages in India and has not fully grown. Sikkim and Goa have attempted to legalise gambling online. Other states are making attempts to make gambling on websites illegal.

The public Gambling act, 1867 made Gambling illegal in the entire country, however Gambling remains a state subject under Entry 32 of the state list in seventh schedule.<sup>4</sup> A question which

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<sup>2</sup> Plea in Kerala High Court seeks ban on unregulated online gambling; Notice issued to celebrity endorsers Virat Kohli, Tamannaah, Aju Varghese, <https://www.barandbench.com/news/litigation/plea-in-kerala-high-court-seeks-ban-on-unregulated-online-gambling>

<sup>3</sup> Online Gambling Market Size, Share & Trends Analysis Report by Type, Apr 2020, <https://www.grandviewresearch.com/industry-analysis/online-gambling-market>

<sup>4</sup> Schedule 7, Constitution of India.

pops up in the minds of the public is whether Online gambling is legal or illegal, but the answer is more complex than a simple yes or no. Now since there has been till date no update in laws to include gambling on an online platform, the loophole is utilised to promote gambling online without creating any legal mess. This absence of the word online in legislations makes understanding this issue a tricky subject matter,

## **II. CLASSIFICATION OF GAMBLING AND GAMING**

The growing popularity of games like Dream11, Team 11 and payTM first games brings the question to light that on what basis are they considered gaming and not gambling considering the presence of financial transactions.

The framework of what constitutes gambling becomes especially important when understanding the legality of online gambling. Gambling in India is based on the classification and difference between a game of chance and game of skill. The primary difference which converts gambling to gaming is how much the sport depends on personal skills rather than luck. Game of skill is more dependent on the adeptness and training of player and shouldn't be based on mere coincidences.

The State of Bombay vs R.M.D. Chamarbaugwala observed that the category of gambling can't include games where success of player depends on a substantial amount of skill and held that even if it's a skill based game with dependency on chance it would be considered as a game of skill.<sup>5</sup>

K. R. Lakshmanan v. State of Tamil Nadu, SC had exempted horse racing and betting on horse races outside the perspective of gambling.<sup>6</sup> Following this judgement, as legislations don't use the word online gambling and there is a lacuna in terms of any static SC decision in terms of online gambling the legality of online games especially those involving real money whether games of skill or chance is absolutely unknown.

On analysis of the facts. it can be noticed that courts use undefined words like 'substantial amount' of skill. Skill can have no specific meaning and in such a case with advent of new games on online platforms everyday can lead to unnecessary litigation in already overburdened courts. It becomes harder to determine the legality when the platform changes from a brick-and-mortar gaming house to an online platform.

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<sup>5</sup> Vinay Vaish, Online gambling and Gambling laws in India, 30 October, 2014. <https://www.mondaq.com/india/gaming/350824/online-gaming-and-gambling-laws-in-india>

<sup>6</sup> Vidushpat Singhania, The gambling law review, May 2020. <https://thelawreviews.co.uk/edition/the-gambling-law-review-edition-5/1226799/india>,

### **III. APPROACH OF JUDICIARY TO GAMES LIKE DREAM 11, ONLINE POKER, RUMMY**

Differences between the approaches of various states is high. States like West Bengal exclude games like rummy, bridge and poker from definitions of gambling. Gambling being a state subject lead to numerous state laws and regulations which makes it almost like a puzzle to even answer the question about legality.

There have been multiple petitions intending to ban the entire sport of poker on the basis of this skill and chance debate. Gujarat high court contends that Texas hold 'em poker is illegal as it is a game of sheer luck.<sup>7</sup> Judgements of Calcutta high court and Karnataka high court state that since it requires a license and is played as a game of skill it is legal.<sup>8</sup>

Both the judgements don't discuss the validity of it as a game of skill but allow the games. There has never been any conclusive judgement deciding the same. In such a circumstance when there is still no clarity if poker is considered as a game involving strategy cause in that case it becomes a game of skill but if it's interpreted on the fact that no matter what it all boils down to the cards that have been dealt it will be considered a game of chance.

A Delhi District Court in *M/s Gaussian Networks Pvt. Ltd. v. Monica Lakhanpal and State of NCT* held that games of skills if played in the virtual world, for money, even though involves skills it becomes illegal.<sup>9</sup> The public gambling act banned common gaming houses but can an online casino be considered a common gaming house according to the public gambling act is uncertain. It was considered that just because the casino functions online it doesn't render it protected from laws and it can be considered as common gaming houses. The penalty for gambling offline in a gaming house is a fine or imprisonment of one month while it goes unpunished for an online gaming house.

Now in such a scenario where the legalisation of games even in the real world is problematic, the virtual world is considered even more dubious.

A bench comprising of Chief Justice DN Patel & Justice Prateek Jalan asked the centre to respond to PIL requesting for shutdown of online gambling by the ministry of information technology under provisions of information technology act, 2000.<sup>10</sup> The PIL wants gambling websites banned and this could be a solution to dealing with foreign websites which the

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<sup>7</sup> Trisha Jalan, Gujarat HC wants state govt. to act on online gambling and rummy apps, October 14, 2020. <https://www.medianama.com/2020/10/223-gujarat-online-gambling-rummy/>

<sup>8</sup> Rahul Dhote, Lawyered, Feb 6, 2019. <https://www.lawyered.in/legal-disrupt/articles/legal-position-online-gaminggambling-india/>

<sup>9</sup> Gaussian Network Pvt. Ltd vs Ms. Monica Lakhanpal, <https://indiankanoon.org/doc/62084717/>

<sup>10</sup> High court notice to centre on plea to ban online gambling, 14<sup>th</sup> December <https://www.latestlaws.com/latest-news/high-court-notice-to-centre-on-plea-to-ban-online-gambling-websites/>

government is unable to tax or regulate in any manner.

#### **IV. PROBLEMS IN LEGALISING ONLINE GAMBLING**

The common reasons like blaming gambling for poverty, addiction and bankruptcy kept aside, the risks with online gambling are further more pronounced. Gambling at the comfort of home and that too 24/7 increases chances of addiction and is harder to detect. The risks associated with online gambling are visibly higher. Unlike gambling in the real world in the virtual world, it goes undetected in the comfort of homes.

In case, if the entire ambit of gambling is illegal, that scenario will entail that online casinos and gambling platforms will be unable to advertise their products and it wouldn't have such a wide reach.

The fact that most teenagers and children have access to internet, mobiles and internet payment services, furthers the danger that it may be accessible to young impressionable mind. For this reason, companies ask for Aadhar numbers to be synced so as to prevent under 18 players on these platforms.

Many companies operate their casino sites outside India but receive Indian customers. The legitimacy of such sites and financial decisions such sites make is questionable. Keeping moral qualms aside, gambling can be problematic if international online sites operate and they drain Indian financial resources.<sup>11</sup> Money laundering is a serious matter and post demonetisation and Covid, online payments are at an all-time high which has further increased the number of players online. Legalisation of gambling on online platforms can be much more effective in controlling money laundering on online platforms than a blanket ban. It can generate jobs as there is an increase in the number of sites accompanied with opening of offices and growth of the Indian market.<sup>12</sup>

Gambling websites reported in India are subjects to checks under prevention of money laundering act, PMLA and under section 2 (wa) read with sections 2 (sa) of PMLA<sup>13</sup> any entity carrying out the activities associated with a casino would be a reporting entity under the statutes. Foreign websites on the other hand don't have the same procedure. The government should take active steps to block such websites which may be responsible for money laundering

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<sup>11</sup> Himanshu Parmar, Is it legal to play real money online games, January 9, 2020. [http://lawtimesjournal.in/is-it-legal-to-play-real-money-online-games/#google\\_vignette](http://lawtimesjournal.in/is-it-legal-to-play-real-money-online-games/#google_vignette)

<sup>12</sup> Why the legalisation of gambling in India could provide more jobs, November 12, 2020. <https://www.google.co.in/amp/s/www.theweek.in/news/sports/2020/11/12/Why-the-Legalisation-of-Gambling-in-India-could-Provide-More-Jobs.amp.html>

<sup>13</sup> Section 2, The Prevention of Money-Laundering Act, 2002.

under the Information technology act, 2000.

## **V. NECESSITY OF A GAMBLING FRAMEWORK INCLUDING ONLINE GAMES**

Slowly courts and states are recognising the need for a framework to control gaming online. Most recently Tamil Nadu enacted a bill replacing an ordinance by which bans online games, wagering or betting in cyberspace.<sup>14</sup> The law will be effective from 6th of February post which residents of TN will be unable to play or earn money from fantasy sports platforms like Dream 11.

Analysing steps like this, it can cause a loss of revenue for the state. The potential of online games needs to be understood. The Supreme Court hasn't considered dream 11 in the purview of gambling. By banning it creates differences and effects revenues earned in the entire country. On close examination of facts. it can be noticed that most of the judgements of high courts district courts and supreme court are in contravention of each other. While some courts approach the cases on the basis of identifying the games based on skills, others like the Delhi district court consider all games on online platform as illegal. Sikkim and Nagaland have started with frameworks on online gaming while states like Tamil Nadu are banning

In the case that online gambling is illegalised and a blanket ban is place on all forms of games there will be the loss of a financial opportunity for the country which can increase finances. International sites can be banned but banning all forms of online games or all sports with monetary exchanges might just push the entire platform underground and will still function but with proxy sites.

A regulatory framework can generate employment but also revenue from the grant of licences and taxes on winnings.<sup>15</sup> During COVID 19 there has been a sharp increase in the number of players of e games and games involving monetary benefits.<sup>16</sup> There is no denying that online gaming is taking in millions, 173 million dollars in investments in India alone. Online gambling traverses borders internationally and makes the need for a legal framework more pronounced.

## **VI. CONCLUSION**

The legal regime in India controlling the matter of betting is convoluted and lacks proper

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<sup>14</sup> Two years imprisonment, fine for online gambling in Tamil Nadu, Feb 5, 2021, <https://indianexpress.com/article/india/two-years-imprisonment-fine-for-online-gambling-in-tamil-nadu-7175444/>

<sup>15</sup> Uday Walia, August 19, 2020. Online gambling should be made legal in India, <https://www.ndtv.com/opinion/online-gambling-should-be-made-legal-in-india-2281768>,

<sup>16</sup> Vainavi Mahendra, How online gaming industry attracted money and eyeballs in 2020: raked in \$173 million in investments, December 14, 2020. <https://www.financialexpress.com/brandwagon/how-online-gaming-industry-attracted-money-and-eyeballs-in-2020-rakes-in-173-million-in-investments/2149199/>

statutory support. Gambling has been a part of Indian festivals like Diwali. Even Ramayana cites games of chance and it's believed to date back to 7300 BC.<sup>17</sup> It should be made clear to gambling companies if the game of skill v chance debate will apply or is the Tamil Nadu stand on online gambling which considers any kind of wager online illegal to be believed. Therefore, the approach to gambling should be uniform and a clear understanding of what constitutes gambling especially on online platforms as internet is omnipresent nowadays. The government can unravel better opportunities for the nation by legalisation of some forms of online gambling rather than a blanket ban.

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<sup>17</sup> Gambling in india [https://www.indiawest.com/blogs/info4u/gambling-in-india---a-brief-history-and-overview/article\\_6dc30440-b45d-11ea-bfca-7b05dd5eb8b4.html](https://www.indiawest.com/blogs/info4u/gambling-in-india---a-brief-history-and-overview/article_6dc30440-b45d-11ea-bfca-7b05dd5eb8b4.html)