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Skill v Chance: Online Gambling and Gaming Laws in India

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Rapid escalation of online gaming platforms in India, especially those involving real-money mechanisms, such as fantasy sports, rummy, and poker, has rekindled long-standing debates between games of skill and games of chance. The article critically analyses the intricate and complex regulatory pathways for online gambling and gaming in India, emphasising the urgent need for clear doctrinal guidelines and legislative uniformity. Gambling regulation remains considerably fragmented, arising from Article 246 and Entry 34 of the State List, with gamesters being banned in one state and licensed in another. Such divergence has given rise to a jumble of laws, clashing time and again with mounting judicial interpretations. Discussed in the article are the theoretical and judicial outcomes, such as the Predominance Test and Format & Intent Test, to determine game types and landmark judgments delivered by the Supreme Court and High Courts in cases like Dr K.R. Lakshmanan, Varun Gumber, and D. Siluvai Venance. With the advent of digital platforms, regulatory oversight has been simplified, but the emerging challenges are in taxation, addiction, and accessing money laundering through offshore and even crypto-enabled routes by minors. With a vision of a more centralised regulatory framework led by the Ministry of Electronics and Information Technology (MeitY) through its online gaming intermediary guidelines, an interesting juncture is unfolding. Lastly, the article discusses how a common national law framework ought to separate skill-based gaming from chance-based gaming, thus trying to make the balancing act between economic innovation and public welfare. This legal framework should, first and foremost, provide clarity on the law, protect consumers, and manage technological change, which all together synchronise with India's digital economy ambition.

Keywords: MeitY, Article 246, Entry 34.

INTRODUCTION

Online gaming has become one of the fastest-growing segments of India's digital economy. According to a joint 2023 report by EY and FICCI, the Indian online gaming market was valued at ₹16,428 crore in 2022, projected to grow at a CAGR of 20% to reach ₹33,243 crore by 2026.¹ This increased demand is largely due to the newly popular fantasy sports made famous by Dream11, online rummy, poker, and other casual skill games. These developments, however, have raised pertinent legal and ethical questions about whether the distinction between "game of skill" and "game of chance" is truly valid.

Games of chance usually involve placing stakes on outcomes largely dependent on chance, whereas gambling is a more generic term that may encompass elements of skill. In the online context, these distinctions are more blurred, especially in real-money games. Indian courts have quite often applied the 'predominance of skill' test in analysing the legality of online games. If games mostly rely on skill, a few elements of chance may be allowed. Inconsistent judicial interpretation, compounded with diverging laws enacted by various states, has ended up creating a matrix of uncertainty.

Thus, legally, the main question boils down to classifying online games-whether fantasy sports or online rummy should be classed as gambling or skill-based competitions. This article attempts to understand how Indian law presently differentiates between skill and chance, as well as the constitutional and legislative regimes, and then stretches out to analyse the regulatory and ethical issues and socio-economic perspectives. Further, focusing on the need for a unified national policy in order to clarify and balance innovation with a nuanced oversight of the online gaming sector.

CONSTITUTIONAL AND LEGAL FRAMEWORK

In India, the legal treatment of gambling and online gaming is a result of the constitutional scheme and the colonial legacy. Article 246 of the Indian Constitution splits the legislative powers between the Union and the States. The Exclusive List under Entry 34 of the State List (List II, Seventh Schedule) vests states with exclusive legislative powers on 'betting and

¹ #Reinvent: India's media & entertainment sector is innovating for the future (FICCI-EY 2024)

gambling.² This leads to a highly decentralised and fragmented regulatory environment with a different set of laws being enacted by states. For example, Sikkim and Nagaland have licensing regimes for online games of skill, while states like Telangana, Andhra Pradesh, and Tamil Nadu have laws prohibiting the same.

Looking back at the history of colonial times, the Public Gambling Act, 1867,³ is one such Act that forms the backbone of gambling laws in most states. The Act obviously does not consider the digital world of online gaming since it was formulated for gambling in physical houses for money and games of chance. Hence, the very first indicative example of enacting laws has not passed the test of time, while faced with the newer technology of online gaming.

The Information Technology Act of 2000⁴ does not directly govern online gaming or gambling but finds application through the key provisions. Section 66D addresses online cheating and fraudulent operations, including bogus gaming platforms. Sections 67 and 67B take care of obscenity and child exploitation issues that may target certain gaming environments. Section 79 offers intermediaries a haven, shielding them from liability for content posted on their platforms if they adhere to due diligence requirements. These provisions certainly cover limited instances, calling for independent, enforceable legislation for online gaming.

But to fill this regulatory vacuum, in 2021 and again in April 2023, amendments were made to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules. The 2023 amendments created a framework whereby the Ministry of Electronics and Information Technology (MeitY) oversees self-regulatory bodies (SRBs) that certify permissible games online.⁵ Thus, the central government is attempting to balance an otherwise state-held domain.

THEORETICAL FRAMEWORK: GAME OF SKILL VS GAME OF CHANCE

The legal classification of games based on skill or chance has perhaps some of the more significant implications among jurisdictions that regulate online gaming and gambling. The

² Constitution of India 1950, art 246 and sch VII, list II, entry 34

³ Public Gambling Act 1867 (India)

⁴ Information Technology Act 2000 (India)

⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021

distinction is important from the perspective of licensing requirements and regulatory impositions and even criminal liabilities.

A 'Game of Skill' is one where a competitor predominantly wins by virtue of his/her skill alone, through strategy, knowledge, or experience, while a 'Game of Chance,' in contrast, is mostly decided by an event that occurs outside anybody's control, such as luck. Each jurisdiction, depending upon how it views its legal implications, applies a judicial test, be it the Predominance Test, Material Element Test, or Format & Intent Test.

Predominance Test: The most commonly used method. If a game is predominantly one based on skill to reach success, then it is considered a game of skill. The Indian courts have considered horse racing to be a game of skill in *Dr K.R. Lakshmanan v State of Tamil Nadu*,⁶ and stated that "the result is not wholly uncertain." The Supreme Court of India once again stressed skill's preponderance over chance in respect of rummy and fantasy sports.

Material Element Test: It assesses whether a game's inclusion as a material element could result in its classification as a gambling game under jurisdictional regulations. Various U.S. Courts have been inclined to apply the more stringent standard in certain states such as Arizona, with the effect of generating conflicting and contradictory interpretations across jurisdictions.

Format & Intent Test: This test evaluated the structure and the developer's intent. How it is marketed and whether it induces skilful decision-making or random intervention are the questions in concern. Less often applied, it may be used to lend a more subtle shade to the conclusions drawn by other tests.

GLOBAL PERSPECTIVES

United States: The critical approaches vary according to states. The Predominance Test is the one applied in New York. Other States try to apply stricter tests such as the Material Element Test in Arizona.

⁶ *Dr K R Lakshmanan v State of Tamil Nadu and Anr* AIR 1996 SC 1153

United Kingdom: According to the UK Gambling Act 2005, a game of skill may operate without any kind of regulatory oversight unless it involves betting, thereby offering a liberal framework for it.

LEGAL ANALYSIS

The distinction between games of skill and of chance is central to Indian jurisprudence on gambling laws. Courts have repeatedly struggled with the question of whether some games are lawful, especially with regard to the provisions of Article 19(1)(g) of the Constitution, that is, regarding the right to practice any profession. Over the years, several landmark judgments have woven a layered interpretation of this dichotomy.

The apex court found that horse racing is a game of skill in *Dr K.R. Lakshmanan v State of Tamil Nadu*.⁷ It would appear that the Court took the position that although chance does have a role to play in the result, the chances of winning depend mainly upon the skill of the jockey, the training of the horse, and the acumen of the person who places the bet. From this motive, the Court laid the foundation that games in which skill predominates are not really 'gambling' within the meaning of the Public Gambling Act, 1867.

In *State of Andhra Pradesh v K. Satyanarayana* (1968),⁸ the Court had once considered rummy to be a game of skill. It held that notwithstanding the fact that the initial hand depends upon chance, great skill is required in playing it, thereby shielding such games from the stigma of gambling.

The waters were again further muddled in *M.J. Sivani v State of Karnataka* (1995).⁹ In this case, the Court upheld the restriction on specified types of video games that simulated gambling behaviour, stating that such machines almost always acted as gambling devices and were not protected by the skill exception.

In *Varun Gumber v Union of India* (2017),¹⁰ the Punjab and Haryana High Court brought in a modern view, declaring fantasy sports as games of skill. While citing *Lakshmanan*, the

⁷ *Dr K R Lakshmanan v State of Tamil Nadu and Anr* (1996) 2 SCC 226

⁸ *State of Andhra Pradesh v K Satyanarayana and Ors* AIR 1968 SC 825

⁹ *MJ Sivani and Ors v State of Karnataka and Ors* AIR 1995 SC 1770

¹⁰ *Varun Gumber v Union of India* (2017) SCC OnLine P&H 5372

Court recognised that fantasy cricket involved considerable judgment in predicting and formulating a strategy and therefore deserved legal immunity.

In *D. Siluvai Venance v State* (2023),¹¹ the Madras High Court declared a Tamil Nadu Law as unconstitutional that imposed an outright prohibition on online games generally, including Rummy and Poker. The court held that no game that requires a predominant element of skill can be banned outright and, along the way, reaffirmed that there was a personal liberty of livelihood as identified in both *Lakshmanan* and *Satyanarayana*.

These decisions chart continued propulsion for individualism, legal entrepreneurship, and the doctrine of skill. The Indian courts tend to lean towards liberal constructions that maintain a balancing act between regulatory concerns and constitutional freedoms.

ETHICAL AND SOCIO-ECONOMIC CONCERNS

The rapid growth of online gambling and gaming in India has brought the benefits and ethical dilemmas associated with these industries, sparking debates about important policy and public health. Undeniably, the sector contributes to digital job creation and tax revenue; it also poses serious risks to mental health, financial stability, and social values.

One pressing concern is gambling addiction. The accessibility and anonymity of these Internet-based systems can lead to the onset of compulsive behaviours in a large number of susceptible individuals. In this line, the National Institute of Mental Health and Neurosciences (NIMHANS) has recorded an increase in cases of Internet Gaming Disorder (IGD), especially in teenagers, a process strongly correlated with dopamine feedback loops integrated into real money gaming apps.

Another pressing issue is minors' access to gambling platforms. Despite the existence of KYC norms, regulatory loopholes continue to exist. In one well-publicised instance, a 17-year-old from Punjab spent ₹17 lakhs on an online game (PUBG) only through the use of a guardian's credentials.¹² Mental health effects are equally concerning. It was found that there exists an association between online gambling and anxiety, depression, and suicidal ideation. The

¹¹ *D Siluvai Venance v State* rep by *The Inspector of Police* (2020) SCC OnLine Mad 1546

¹² 'Punjab teen spends whopping Rs 16 lakh on PUBG in-game transactions' *The Indian Express* (05 July 2020) <<https://indianexpress.com/article/technology/gaming/punjab-teenager-khagar-pubg-16-lakh-in-app-purchases-648957>> accessed 12 May 2025

financial implications of gambling losses, particularly for low-income families, worsen household stress and economic instability. Though these hazards were recognised by the Madras High Court in *D. Siluvai Venance v State*,¹³ a blanket ban was warned against, recommending a regulatory framework instead.

But the economic impact of the sector cannot be overlooked. According to the FICCI-EY report for 2023, the online gaming industry employs more than 50 thousand people directly, and ₹2,800 crore was collected in GST for FY 2022-23.¹⁴ Unicorns like Dream11 and MPL are the fore-runners of innovation in game development as well as in fintech. The sector is also spurring growth in related areas such as digital payments and content streaming.

This is the contradiction that poses a deep moral question: whether or not states should continue to generate revenue from industries that potentially harm public welfare. Conflict of public morality with state interests remains due to inconsistency in regulation among states and antiquated central laws. The balanced regulatory framework needs to allow for innovation while simultaneously putting in place harm-reduction safeguards that are critical for a digital future for India.

NEED FOR CENTRAL LEGISLATION IN ONLINE GAMING REGULATION

The current state of legislation about online gambling and gaming lacks adequate regulatory coherence in India. Since 'betting and gambling' stand at Entry 34 in the State List (List II, Schedule VII) of the Constitution, Australia has experimented with different approaches as well: Nagaland and Sikkim have licensing regimes for skill-based games, while other states like Tamil Nadu and Telangana have issued blanket prohibitions-even on games earlier held to involve skill. This has been a matter of inconsistency, greatly contributing to jurisdictional confusion, litigation, and an unpredictable scenario for investors and users alike.¹⁵

Among the most compelling arguments for central legislation is the necessity of a uniform definition of 'games of skill.' Courts have interpreted the term using the predominance test

¹³ *D Siluvai Venance v State rep by The Inspector of Police* (2020) SCC OnLine Mad 1546

¹⁴ '28% GST on online gaming could boost revenue collection tenfold' *Economic Times* (17 July 2023) <<https://economictimes.indiatimes.com/wealth/personal-finance-news/28-gst-on-online-gaming-could-boost-revenue-collection-tenfold/articleshow/101775077.cms>> accessed 12 May 2025

¹⁵ *GUIDING PRINCIPLES FOR THE UNIFORM NATIONAL-LEVEL REGULATION OF ONLINE FANTASY SPORTS PLATFORMS IN INDIA* (NITI Aayog 2020)

but on different occasions. The codification in statute might shield good skill-based platforms from arbitrary bans and thus remove the area of ambiguity.¹⁶

Furthermore, establishing a national-level licensing framework and regulatory body, perhaps under MeitY, would ease the compliance burden for establishments, thereby ensuring responsible gaming and preventing misuse, including underage access or financial fraud. The present IT Rules (2023) have envisaged some kind of central oversight mechanism through the institution of SRBs, but such bodies are neither statutorily backed nor can they extend their coverage.

Internationally, the UK Gambling Commission and Malta Gaming Authority exemplify how even a single central regulator can strike a careful balance between competing imperatives, causing innovation, consumer protection, and taxation.¹⁷ India may want to draw on and create a model central law under which games of skill and games of chance are segregated, platforms licensed, and data security, age verification, and grievance redressal systems mandated. A central regulatory framework, a governing limb for the entire nation, is a solution not only desirable for a digital economy but necessary.

CONCLUSION

The online gaming and gambling laws in India are said to have evolved in a manner where numerous constitutional limitations, judicial interpretations, technological disruptions, and economic considerations formed part of the evolving legal matrix. The distinction between games of skill and games of chance has by now become the legal pivot around which the regulatory outcomes, platform/backend operations, and arguably consumer rights are arranged. The state-wise fragmented legal regime based on colonial legislation, the Public Gambling Act, 1867, is more or less irrelevant to cases concerning a digitally borderless and rapidly expanding industry. From the aforementioned judgments, namely, Dr K.R. Lakshmanan, Varun Gumber, and D. Siluvai Venance, Indian courts, while expressing their views, generally supported games of skill under Article 19(1)(g). However, the state

¹⁶ Ganesh Makam, 'Regulatory Landscape of Online Gaming in India: Challenges and Prospects' (SSRN) 2023 <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4484558> accessed 12 May 2025

¹⁷ 'What we do' (Gambling Commission) <<https://www.gamblingcommission.gov.uk/about-us>> accessed 12 May 2025

legislatures have made repeated attempts to circumvent this judicial pronouncement, which has led to constitutional battles and, in turn, regulatory uncertainty.

Going ahead, India must forge a balanced yet coordinated approach in tune with the following:

- The legal clarity through the abridged statutory definition of ‘game of skill’ vis-à-vis ‘game of chance’.
- Consumers' end safeguard, requiring KYC, age gating, grievance redressal, and responsible gaming.
- Innovation encouragement, via sandbox regulation and easy licensing.
- Institutional coordination through judicial oversight and perhaps MeitY's burgeoning regulatory role under the 2023 IT Rules and Self-Regulatory Bodies.¹⁸

Going by global examples such as the UK Gambling Commission, centralised regulatory measures, if properly devised, can promote economic growth while safeguarding the public interest. For India, the constructive integration of the digital economy with constitutional rights and social welfare would call for legislative-administrative reforms on the anvil of both jurisprudence and good practice.

¹⁸ ‘Government Notifies Amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics code) rules, 2021 for an Open, Safe & Trusted and Accountable Internet’ (*Press Information Bureau*, 06 April 2023) <<https://www.pib.gov.in/PressReleasePage.aspx?PRID=1914358®=48&lang=2>> > accessed 12 May 2025