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# REFORMING THE GAME: A CRITICAL ANALYSIS OF INDIA'S FRAGMENTED GAMING LAWS AND THE NEED FOR CENTRALIZATION

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## ABSTRACT

A legal system stuck in a bygone era: this can be an accurate description of the current gaming laws in India. With each state enacting its own, often contradictory, laws, navigating the regulatory landscape becomes a frustrating game of chance for both businesses and players. This research paper argues that centralized gaming laws are the key to unlocking the true potential of this rapidly growing sector. It looks at empirical data analysing laws of different countries to assess the success of this centralization and whether it could survive in a country like India. Considering the fact that laws must be made with a view to better the future, this paper also focuses on the online gaming sector especially fantasy gaming in India. It analyses the impact these fantasy sports can play to revamp the gaming industry of India. It analyses the shortcomings of this and how it can be made into its best version. The paper offers a holistic understanding of the need for centralisation by providing remedies in the forms of different policies and legislations for the future.

**Keywords:** Centralization, contradictory laws, online gaming.

## **INTRODUCTION**

Mahatma Gandhi once stated that "The lure of uncertainty is a powerful thing,". This allure is perhaps most evident in the realm of betting and gambling, activities that have captivated societies for millennia. In India, the concept of betting and gambling is first seen in Mahabharata which highlighted the consequences of betting through the game of dice. In response, India has enacted gaming regulations to promote fairness and structure. These laws, however, come with their own set of flaws.

A legal system stuck in a bygone era, an accurate description of the current gaming laws in India. With each state enacting its own, often contradictory, laws, navigating the regulatory landscape becomes a frustrating game of chance for both businesses and players. Especially with the advent of online gaming, the industry stands to suffer without any law governing it as a whole. This paper argues that centralized gaming laws are the key to unlocking the true potential of this rapidly growing sector.

## **GOVERNING PROVISIONS**

During the colonial rule by the British, the law governing betting and gambling was a central law, the Public Gaming Act, 1867. While the Public Gambling Act appears to permit betting on games of skill, the lack of a clear distinction between games of chance and skill creates significant legal ambiguity. This ambiguity hinders effective enforcement and contributes to the persistence of a robust betting culture, despite its technical illegality. The unclear line allows certain establishments to exploit loopholes within the Act's provisions.

The Public gaming act, in fact does not even mention online gaming which has become a huge chunk of the revenue in recent years. This creates an abundance of confusion within the online gaming sector.

Post independence, the constitution of India did mention this its seventh schedule under part II of the state list. This essentially gives the states autonomy to make their own laws regarding betting and gambling in the country without adhering to any central act on it. Every state in India, except Goa, Sikkim, and the Union Territory of Daman explicitly prohibits any sort of gambling, betting, or wagering on games of chance. Certain states such as Telangana and Andhra Pradesh have placed restrictions on games of skill as well, mainly online gaming.

## GAME OF SKILL V. GAME OF CHANCE

Before delving into the complexities of the Indian betting industry, it is imperative to understand the facets what makes up the gaming industry. Betting is a term based on which the outcome is due to not mere chance, but has elements of skill within it. Gambling on the other hand is based on mere chance<sup>1</sup>. This test of skill was first formulated by the courts in the case of *RMD Chamarbagudwala v. Union of India*<sup>2</sup>. The court held in this case that competitions which involve a preponderance of skill are not gambling but are commercial activities protected under Art. 19(1)(g)<sup>3</sup>. These games of 'mere skill' mean the preponderance of skill as opposed to chance not entirely diminishing chance. The court unfortunately has not laid down a definitive test and still does rely on the facts and circumstances of each case. Analysing the case of *Andhra Pradesh v. K. Satyanaryana*<sup>4</sup>, it was adjudicated that Rummy is preponderantly a game of skill and not of chance as one must memorise the fall of cards and there is a level of skill in determining which cards to hold and which to fold<sup>5</sup>. This can be seen in the case of Horse racing as well, which was the first sport in which betting was legalized. The case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*<sup>6</sup> deals with this issue, wherein it was held that Horse racing is a game of 'mere skill'. The rationale behind this distinction rests on the premise that racegoers can employ their knowledge, study, and observational skills to predict the race's outcome. These skills are utilized to evaluate various objective factors such as the inherent ability of the horse, the jockey's competence, the horse's recent performance and fitness level, the weight carried, and the race distance<sup>7</sup>. As these elements are susceptible to analysis and assessment, selection of the winner transcends mere chance and involves the application of acquired skills.

Based on these three cases, certain general rules can be determined for deciding whether the game is of skill or game of chance. It depends on the level of skill which can be used in deciding

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<sup>1</sup> Ranjana Adhikari et.al., *Gambling laws and regulations report 2024 India*, INTERNATIONAL COMPARATIVE LEGAL GUIDES INTERNATIONAL BUSINESS REPORTS. (November 28, 2023), <https://iclg.com/practice-areas/gambling-laws-and-regulations/india>

<sup>2</sup> *RMD Chamarbagudwala v. Union of India* (1957) SCR 930

<sup>3</sup> India Const. Art. 19 (1) (g)

<sup>4</sup> *Andhra Pradesh v. K. Satyanaryana* AIR (1968) SC 825

<sup>5</sup> Varun Agarwal & Kartik Sharma, *Legal Matrix for Regulating Online Rummy in India*, SCC ONLINE. (August 25, 2022) <https://www.scconline.com/blog/post/2022/08/25/legal-matrix-for-regulating-online-rummy-in-india/#fn5>

<sup>6</sup> *Dr. K.B. Lakshmanan v. State of Tamil Nadu* (1996) SCC (2) 226.

<sup>7</sup> Gowree Gokhale et. al. *The Curious Case of the Indian Gaming Laws, Legal Issues Demystified*, NISHITH DESAI ASSOCIATES REPORTS, (2019, October) [https://www.nishithdesai.com/fileadmin/user\\_upload/pdfs/Research%20Papers/The\\_Curious\\_Case\\_of\\_the\\_Indian\\_Gaming\\_Laws.pdf](https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf)

the outcome and whether there is dominance of skill over chance. This is also reiterated in the case of *M.J Sivani v. State of Karnataka*<sup>8</sup> acknowledged that even in games primarily based on skill, an element of luck can still exist. However, the legal distinction doesn't hinge on calculating the exact balance between chance and skill. It Depends on which factor plays a more major role in deciding the outcome.

## CONTRADICTIONS WITHIN THE INDUSTRY

As stated previously, different states pass different laws related to betting and gambling in the country. This poses a huge conundrum related to the legality of betting in different games in different states. The biggest contradiction comes from one of the most famous card games, Poker. The legality of poker is one that has been discussed for decades.

In recent judgements, The Calcutta High Court, in its decision on the writ petition filed in the case of *Indian Poker Association vs. State of West Bengal*<sup>9</sup>, offered a strong interpretation in favour of poker. The court examined the West Bengal Gambling and Prize Competitions Act, 1957, particularly the definition of "gaming or gambling." Critically, the court found that poker does not fall under this definition. Therefore, the court ruled that playing poker, by itself, is not a crime and shouldn't be subject to police intervention<sup>10</sup>. This decision effectively protects players from harassment by authorities solely for playing poker. The decision rules the game of poker outside the purview of game of chance.

While some states looked at poker as a game of skill due to the fact that one needs to know when to keep and fold their cards relying on the cards the others have played, other states possess a different view regarding Poker.

The Gujarat High Court, in *Dominance Games Private Limited v. State of Gujarat*<sup>11</sup>, classified Texas Hold'em Poker as a game of chance falling within the ambit of the state's gambling prohibitions. It analysed it on two prongs, one was the historical context and second the Gujarat High court felt that the initial distribution of cards classify the game more on a basis of chance than the player's skill in using his own cards to his benefit in the later stages of the game.

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<sup>8</sup> *M.J Sivani v. State of Karnataka* (1995) 6 SCC 289

<sup>9</sup> *Indian Poker Association vs. State of West Bengal*, W.P.A. No. 394 of 2019

<sup>10</sup> Rupin Chopra & Reetika Wadhwa, *India: Playing Poker Is Legal - Calcutta High Court*, MONDAQ, (November 5, 2019), <https://www.mondaq.com/india/gaming/860468/playing-poker-is-legal---calcutta-high-court>

<sup>11</sup> *Dominance Games Private Limited v. State of Gujarat* (2018)1GLR801

In absence of a cohesive law and different states adjudicating differently on the same game, the contradictions will continue to affect the gaming industry of the country. Poker is only one of examples where these contradictions have caused confusions. In fact, Poker sites as well all have clarifications regarding which states can or cannot play legally due to the complexity of the Indian laws on it.

One of the other most affected arenas due to this confusion is the online gaming industry which will be discussed in detail in this paper. The only way to avoid this is uniformity in laws which can be achieved through a central legislation which governs the laws on betting and gambling in its current state.

## ONLINE GAMING

One of the other biggest shortcomings of the public gaming act and the gaming laws in India are the outdated mode they function in. The Public gaming act only deals with common gaming houses which is essentially a physical mode. There have been very few states that has followed its footsteps. There is no federal law which regulates online gaming, The only law that online gaming relies on is Section 67 of the Information Technology Act, which prescribes a fine of up to ₹1 lakh and imprisonment for up to 5 years for publishing or transmitting electronic content of an offensive sexual nature or content that could deprave or corrupt people. While gambling and sports betting are illegal in India, this interpretation extends the definition of "deprave or corrupt" to encompass such activities offered on websites. With the exception of Sikkim, Nagaland and Telangana, no other state in India has a law to specifically deal with online gambling or betting<sup>12</sup>. This causes the online gaming industry to take advantage of these loopholes as none of the federal gambling laws in India prevent overseas sites from operating and accepting players from India. These foreign players create offshore websites which allow the Indian residents to gamble without being in dirty water with authorities. An Instance of such would be the popular UK website, 'Stake', which allows betting on both casino games and sports.

The Indian Supreme Court ruled in 2015 in the case of *State of Maharashtra v. Rummymcircle.com and Another* that some card games, like rummy, require significant skill and planning, making them different from pure luck-based games. This means these games which

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<sup>12</sup> Arjun Maheshwari, *Online Gaming, Casinos and Fantasy Sports- an overview of gambling laws*, MANUPATRA, (August 25, 2023) <https://articles.manupatra.com/article-details/ONLINE-GAMING-CASINOS-AND-FANTASY-SPORTS-AN-OVERVIEW-OF-GAMBLING-LAWS>

involve skill aren't restricted by gambling laws. This ruling however did not address casino games, including the games of chance leaving the legality of it up in the air due to which online casino games such as roulette, dice are legally allowed in India due to a technicality<sup>13</sup>.

The online gaming industry is essentially split into sports betting and casino games. While there have been regulations through state acts and court judgements, there has been nothing concrete and this has managed to create chaos and confusion throughout the country. Analysing the website of Dream 11 itself, the terms and conditions state that paid contests are not permitted in certain states including Telangana, Sikkim, Nagaland, Assam and Andhra Pradesh.

In order to make online gaming illegal, the Telangana cabinet enacted an ordinance in 2017 that amended the 1974 Telangana Gaming Act<sup>14</sup>. Similarly, the other states in this list have several ordinances and amendments as such which ban online gaming which would include fantasy sports such as Dream 11. This is done due to the fact that there is no federal law on what constitutes a game of chance or skill which is left to the subjective judgement of each state. However, on the other spectrum High courts of different states have allowed Dream 11 to function. The Rajasthan High court dismissed a PIL to ban dream 11 on the basis that there was an involvement of substantial skill. This was followed by Karnataka in 2021 which overturned their initial ban of online gaming allowing dream 11 to function seamlessly in the state<sup>15</sup>.

The challenges related to the online gaming industry arise from the lack of regulations. Since there is no exact rubric to follow for determination of games of skill, the court relies on subjectivity and precedents. The court in *Varun Gumber v. Union Territory of Chandigarh & Ors*<sup>16</sup>, held that players must exercise “superior skill, knowledge, judgement and attention” while engaging with Fantasy sports for it be out of the purview of the Public Gaming act. This is extremely subjective and is one of the main evils in the gaming industry leading to massive contradictions in the online gaming industry.

Patchwork of state laws creates a confusing marketplace for online fantasy sports (OFSPs). Because the rules differ depending on location, consumers have different experiences and

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<sup>13</sup> LegalKart Editor, Are Online Casino Games Legal In India, LEGAL KART (July 18, 2024) <https://www.legalkart.com/legal-blog/are-online-casino-games-legal-in-india->

<sup>14</sup> Gokhale, Supra note 7

<sup>15</sup> Bhumika Indulia, Raj HC | Online fantasy game -“Dream 11” does not involve offences of betting and gambling; Court dismisses PIL, SCC ONLINE, (February 18, 2020) <https://www.scconline.com/blog/post/2020/02/18/raj-hc-online-fantasy-game-dream-11-does-not-involve-offences-of-betting-and-gambling-court-dismisses-pil/>

<sup>16</sup> *Varun Gumber v. Union Territory of Chandigarh* (2017) Cri LJ 3827

rights when using these platforms. This makes it unclear how to handle complaints, which hurts both consumers and OFSPs. The uncertainty also discourages innovation and expansion by OFSPs, limiting their potential for growth. This lack of consistency could hurt profits, making it harder to attract investments, create jobs, and generate tax revenue for the government. It's also tough for new companies to enter the market because of these complications. With the growth of the digital age in India, Fantasy sports is at the highest level of its development since its inception. The clarity in the regulations will empower entrepreneurs to innovate, create, and drive economic growth<sup>17</sup>.

## COMPARISON WITH THE UK

While support is prevalent for the betting and gambling to remain in the state list, it is wise to look at countries that have a centralized gaming industry. The United Kingdom is one such country, governed by the United Kingdom Gambling act, 2005 (herein referred to as the UK act). Gambling in the UK is regulated by the Gambling commission under the UK act. Gambling was legalized by the act in 2005 and an amendment in 2014 mandated all off-shore sites to apply for a license before starting its operations. It is noteworthy that taxation from gambling has also been marked under the finance act. The UK act has clearly demarcated what it can oversee which includes betting, casinos, bingo etc. making the situation in the UK much clearer than the Indian market. The central and clear regulation of the gaming industry has also brought in an influx of 1.6 billion pounds as a contribution by the national lottery to social causes<sup>18</sup>.

The benefit of a having a single, nationwide for the gaming industry has helped the UK be able to provide autonomy to the gambling commission essentially reducing the illegal gambling or betting by monitoring it at a higher level. The stringent rules make it difficult for these activities to take place.

Comparing gambling laws in India and the UK reveals a stark difference in approach. The centralization of laws in the UK help highlight all the shortcomings within the Indian laws. The UK has adapted its laws to changing times, treating gambling as a leisure activity for consenting adults, while India still views it as morally wrong. This moral stance in India creates problems, as highlighted in the 276th Law Commission Report, which references the

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<sup>17</sup> Gautham Kathuria, Eshani Vaidya, *The regulation of fantasy sports platforms in India*, THE DIALOGUE, (August 2021) [https://thedialogue.co/wp-content/uploads/2021/08/Report\\_Fantasy-Sports-Final.pdf](https://thedialogue.co/wp-content/uploads/2021/08/Report_Fantasy-Sports-Final.pdf)

<sup>18</sup> Deokinandan Sharma, A Comparative Analysis of the Gambling Laws in India & Great Britain, 1 GLOB. SPORTS POL'y REV. 119 (2021).

Mahabharata to argue gambling goes against India's moral fabric. Unlike the UK's controlled and regulated gambling environment, India faces risks to vulnerable groups due to unregulated gambling. Therefore, a regulatory system in India would not only stop illegal activities but also benefit society by cracking down on illegal gambling operations.<sup>19</sup>

Subsequently the UK's centralized system allows them to regulate and tax gambling, with those funds even supporting social causes. In contrast, India's state-by-state approach means they miss out on this potential revenue. Without a unified system, India can't regulate or tax illegal gambling, and the problem just grows. This showcases the clear upper hand UK have had due to centralization of laws and uniformity within them.

To top this off, India's FDI policy bans foreign investment in lotteries, gambling, and betting. The terms aren't clearly defined, so interpretations rely on other laws, court rulings, and dictionaries. This creates uncertainty for fantasy sports businesses, which may involve some skill but could still be restricted under the policy. The policy also restricts foreign technology partnerships for these activities resulting in arduous preparation for collaboration which discourages foreign investment due to the uncertainties.<sup>20</sup>

The biggest issue with the Indian gaming industry is its failure to adapt itself to the need of the hour. While still relying on the public gaming act, India has failed to capitalize on the age of digitization. Even with states enacting their own laws regarding the same, they have not been able to understand the gravity of online betting, Traditional jurisdictional boundaries are rendered meaningless in the online world. This has created a situation where offshore gambling organizers can exploit this by taking advantage of the gaps between different regulations. This allows them to operate freely, placing bets, converting currencies and even facilitating the conversion of digital money to physical cash - all happening instantly and seamlessly thanks to the internet. The UK does not suffer from this problem due to the extra regulations brought forth for the culpability of the offshore industries<sup>21</sup>.

While the legislature is to blame in this scenario, it is not the sole culprit as there has been little to no judicial activism within this topic. Without any clear demarcation related to games of skill v. games of chance or what exactly can be allowed within the online realm, It is very likely

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<sup>19</sup> Id.

<sup>20</sup> Kathuria, Supra note 17

<sup>21</sup> Sharma, Supra 18

that these loopholes will be exploited, turning the citizens of India prey to questionable websites which may potentially be involved in multiple scams.

## WAY FORWARD

It is unfair to state that the India has not identified the obsolescence of the Public Gaming Act. Various committees have tried but failed to legalize and regulate betting and gambling in India. This includes recommendations by the Lodha committee and the law commission its 276<sup>th</sup> report. On a positive note, India's continued efforts to address gambling regulations, like those undertaken by NITI Aayog, show a commitment to finding solutions.<sup>22</sup>

The long-term goal should remain as centralisation of laws along with the support of the ministry of electronics and technology due to the advent of online gaming. Since the industry is still in its nascent stage, a uniform set of regulations could be beneficial involving a two-level licensing system, similar to the US. The first level would restrict purely chance-based games, like event-based betting. The second level would introduce licensing for skill based games, like companies that advertise online games. The licensing would prevent the Indian citizens from engaging in the services of dubious websites and would also help gain revenue for the country in terms of licensing fee. It should also come with a pre-condition of providing licenses only on assurances that the website can be accessed by only those 18 years or above<sup>23</sup>.

NITI Aayog's proposal for a self-regulatory organization (SRO), an industry-led organization that creates and enforces its own standards and regulations, in online gaming brings industry expertise and independence to regulation<sup>24</sup>. By fostering collaboration, the SRO can improve transparency and streamline the process with the government. This would reduce bureaucratic hurdles, establish clear dispute resolution mechanisms, and ultimately build consumer trust. The report also advises the Online gaming platforms to provide statistical data to the SRO. This will also help create a level playing field for all these platforms<sup>25</sup>.

Related to the licensing regime, it would be dependent on the judiciary by providing a sound differentiation between 'games of chance' and 'games of skill'. The courts must come out with

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<sup>22</sup> NITI Ayog, Guiding principles for the uniform national-level regulation of online fantasy sports platforms in India, Draft for discussion, (December 2020)

[https://www.niti.gov.in/sites/default/files/2020-12/FantasySports\\_DraftForComments.pdf](https://www.niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf)

<sup>23</sup> Subhrajit Chanda, *Postulating gambling and betting laws for the new era: unearthing a subterranean prelim*, JOURNAL OF TONGJI UNIVERSITY, Volume 26 (issue 1) (2023)

<sup>24</sup> Niti Ayog, *Supra* note 22

<sup>25</sup> Kathuria, *Supra* note 17

a brightline test for the same and eliminate any confusion<sup>26</sup>. This could include where the players decision has the potential to affect the game. One where skilled players perform better than novice players within a certain set of games. There should also be potential for development in the player's ability to be called as a game of skill.

New gambling regulations should be accompanied by updates to existing laws. This includes revising the Foreign Exchange Management Act (FDI) to allow foreign investment in licensed betting and gaming businesses boosting the economy of India in the process. Additionally, rules like the National Sports Code, which currently ban all gambling, would need adjustments.<sup>27</sup>

Blockchain could revolutionize gambling with features like transparency, security, and efficiency. Smart contracts and decentralized apps could make games tamper-proof and more player controlled. These are systems that possess certain requirements for the execution to happen. Crypto payments would add convenience and anonymity. While this is an up and coming method in online gaming, regulations for blockchain gambling and crypto taxes are still murky in many places.<sup>28</sup>

## CONCLUSION

Experts predict a boom in India's online gaming industry, with a market size reaching an estimated USD 3.49 billion by the end of 2024 and a projected growth to USD 7.24 billion by 2029. This significant increase, at a CAGR of 15.68%, is fueled by India's massive young population, a prime demographic for gamers<sup>29</sup>. However, this will not be possible with the current state of laws. With the many loopholes leaving Indian citizens easy to exploit the industry will be at the risk of blowing itself up if it is not backed by a centrally legislated framework of laws regarding betting and gambling especially in the online sector.

This paper argues for the urgent implementation of a comprehensive legal framework governing gambling and betting activities in India. The current system, characterized by outdated legislation and a lack of regulation, fosters an environment conducive to delayed justice, the proliferation of black-market crimes, and the loss of potential revenue for the nation.

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<sup>26</sup> Kathuria, Supra note 17

<sup>27</sup> Chanda, Supra note 23

<sup>28</sup> Chanda, Supra note 23

<sup>29</sup> Mordor Intelligence. Gaming Industry in India Size & Share Analysis - Growth Trends & Forecasts (2024 - 2029) <https://www.mordorintelligence.com/industry-reports/india-gaming-market>

While this might not be in the immediate future, works for this must be kickstarted in order to gain the maximum potential of the online gaming industry.

The emergence of blockchain technology and the increasing acceptance of cryptocurrencies as a method of payment necessitates a modern regulatory protocol for licensed gambling and betting. India should consider emulating established legal frameworks in jurisdictions like the US and the UK, adopting a singular statute that supersedes all conflicting pre-existing regulations.

The proposed legislation should prioritize skill-based games and fair practices. Additionally, it should mandate registration for interested participants with licensed operators whose credentials are verified and maintained by a designated government authority. The NITI Ayog is one such organization making steps towards bettering the gaming industry of India and helping it reach its true potential, provided legislators use the suggestions rather than following the current pattern of rendering all advice on the gaming industry ineffective.