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## **WAGERING AGREEMENTS AND ITS APPLICATION ON FANTASY GAMING - LEGITIMACY OF DREAM 11 IN INDIA**

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### **ABSTRACT**

The 1872 Indian Contract Act sets out the Indian Contract Law as the most important act for Indian Contract Law. The Act is based on the Common Law rules. It applies to all Indian states. It decides the conditions in which the contracting parties make legally binding commitments. Section 2(h) describes the contract as an arrangement that can be implemented by statute in the Indian Contract Act. Wagering Agreements or Wagers are agreements between parties in which money is owed by the first party to the second party on the occurrence of a potential unknown event, and the second party to the first party if the event does not occur. Section 30 of the Act 1872 of the Indian Contract stipulates that the wagering contracts are void. The Wagering Arrangements are such agreements dependent on the fact that a single occurrence occurs or does not occur, and the side has no intrinsic interest on its own. It could also have been a previous occurrence, but the parties entered into a deal should not be aware of this event. the event is not actually a potential event. Section 30 further provides for some cases where certain agreements are not considered null and void. They are primarily contracts for skills such as horse races. The same is true in online sports betting and the differences are claimed to apply.

**Keywords:** Contract, Agreement, Wager, Void, Skill.

### **1. Research Objectives**

- To study wagering agreements and its applicability.
- To analyze the Overview of the Legal Framework Regulating the Gambling Industry.
- To study the online betting laws in India in the modern context.
- To analyze the legal position of Dream11 and judge its legitimacy.

### **2. Research Questions**

- What are wagering agreements and how have they evolved over time?
- What is the current legal framework around the online gambling industry?
- How legitimate is Dream11 and other fantasy games taking into account the current laws in place?

### **3. Hypothesis**

Null Hypothesis (H0) – There is no need to amend the current laws so that online gambling apps are taken into consideration and their purview is widened.

Alternate Hypothesis (H1) – There is a growing need to amend the current laws so that online gambling apps are taken into consideration and their purview is widened.

## CHAPTER 1: - INTRODUCTION

The word "wager" denotes a Bet in the Layman language. The meaning of the Black's Law Dictionary indicates anything risky, such money in an uncertainty in which parties have no financial stake but reciprocal opportunities for "gain or loss." Therefore, if two parties agree to pay a preset amount of money to the second party for an uncertain future occurrence and the third party will compensate the first party if the event doesn't occur, the wagering agreement is termed. Pursuant to Section 30 of Indian Contract Act 1872, no court of law shall be enforceable with regard to wagering agreements, as they are specifically deemed null<sup>1</sup>. No action may be brought before the Court for recovery of any claimed win in any bet or failure by any party to comply with the wager's outcome.

A claim for loss arising from a wagering agreement is not legally enforceable and, if such a contract is between principle and principle, a person with another person who is a partner in a company cannot recover the claim by lodging an action with the other partner of the company. If the contract on which the lawsuit is based is null and void, then the court shall be competent to dismiss the complaint, despite the defendant's confession of an incident. Horse races under section 30 are clearly acknowledged as exceptions.<sup>2</sup> All horse racing transactions, save those which are covered by section 294A of the Indian Penal Code, should be legitimate.<sup>3</sup> Also, when talents play a major role and awards are offered based on the merits of the solution, it is not a lottery competition. If not, it is. There is thus no contract for literary competitions such as crosswords.

### *Fantasy Sports Functionality:*

A fantasy game involving the users of a list of real sports players planned to perform live on a particular day is a fantasy game based on a set of criteria. In order to participate in a contest, users usually pay an entrance fee. After the platform operator deducts a service/administrative charge, entrance fees will be collected depending on their performance for distribution between users of the platform ("Entry Pool"). Users develop teams on the basis of their understanding of the sport, attention, knowledge, and skills (gathered via systematic study). The user receives points based on the performance of genuine sports players that the user selects to draw up his squad. Users are granted points in the actual match according to their picked players' score

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<sup>1</sup> Section 30 of Indian Contract Act, 1872.

<sup>2</sup> Geeta rani v. Union of India & Ors. FAO-6229-2019.

<sup>3</sup> Section 294 of Indian Penal Code.

sheet and performance. Based on these points, users are rated later and so distributions are received from the entry pool. In most areas of the country, betting and gambling are illegal. However, in India there are no precise rules which may render illegal and forbidden internet betting or gaming. Betting is defined as the betting of money or value for an unknown result. The same opportunity exists for both sides to win or lose the bet. The main goal of both parties, though, is to win. Section 29 of the Indian Contract Act of 1872 provides that in India all betting actions are illegal.<sup>4</sup>

Fantasy sports in India have ceased to be a foreign notion. With the development of online sites such as Dream11, which was recently India's first Unicorn game, fantasy games took a headquarters. However, there is no legal definition or included list of games that may be called 'fantasy sport' in spite of its rising popularity. The Indian online gaming market is expected to become a \$1 trillion market by 2021, with a huge rise in the whole fantasy gaming business, making it necessary for the legislation on fantastic sports in India to be understood. The purpose of the essay is to pull together all contradicting facts to provide an understandable and brief view on the validity of online gambling.

## **CHAPTER 2: - PREREQUISITES OF A WAGERING AGREEMENT & USE OF “SKILL”**

There are some pre-existing conditions that need to be fulfilled in order for an agreement to be called a wager. Firstly, there must be a mutual chance of gain or loss. The chances of winning or losing should be 50-50. A contract is not a gamble where one side is likely to win but not lose and vice versa. Second, there should be no other motivation for participants engaging into such an agreement except the betting money. The rationale for which insurance arrangements are not treated as wagering is this crucial. Third, the existence of two parties with equal likelihood of winning or losing should be the same as with any normal contract.

Very fewer such arrangements may be partitioned and stated to be based on a game of chance or a skill game. Courts attempted to establish some factors that would assist differentiate the two. A skill game is dependent on the player's knowledge, training, experience and skill, while a game of luck just relies on luck. We may therefore categorize horse racing as a game of not simply chance, including the skill of a jockey. On the other hand, if we conclude a contract in which we determine that the horses are running on their own and whose horses halt first and

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<sup>4</sup> Section 29 of Indian Contract Act, 1872.

are deemed a loss, this is a plain chance game. Whether a game is a matter of chance or skill is a matter of fact based on facts and circumstances of individual cases. Whilst considering the issue of "talent vs. opportunity," Indians court passed the "dominant factor" test or "predominance test" test, which was followed by U.S. courts. This test calls on a court to evaluate if chance or talent "is the dominant element in deciding the outcome of the game." In 2017, the Punjab & Haryana High Court ("High Court of P&H") was the first Indian court to rule a fantasy sports activity as a mostly skill-oriented activity. The P&H High Court noted that the level of expertise, judgement and discretion necessary in fantasy games was the same as in horse racing. The P&H high court relied on Dream11's submissions which ruled that Dream11's fantasy sports game was a 'skill game.'

### **CHAPTER 3: - ONLINE BETTING LAWS IN INDIA**

Gambling is illegal in our country. As per the Public Gambling Act, gambling or betting is illegal in India. Anyone found doing so, will be punished with imprisonment up to 3 months and a fine which may extend to INR 200. The same law extends to anyone who is found anywhere near a bookie house. However, the jurisdiction of this law doesn't extend far enough to Goa, Daman, and Sikkim. So, unless you don't reside in any of the three places, you can't bet offline. However, you can bet online. Well, the Information Technology Act, which defines and categorizes cybercrimes, doesn't say a word about online gambling or betting. Thus, it can be affirmatively said that online gambling or betting is not illegal in our country.

Government and the constitution of India doesn't recognize online modes of gambling to be an offence. All the strict laws are only formed against the offline modes of it. Due to this, people are free to use online betting sites in our country. You won't get in trouble until you are caught by the police while indulging in offline betting. Online betting is explicitly called out as illegal in some parts of India, but no central rule covering the entire nation exists. The Public Gambling Act of 1867 prohibits all sorts of betting in India.<sup>5</sup> But this law was formulated 150 years ago (read obsolete) and it doesn't specifically mention online betting. Although some lawyers argue that internet betting would be covered by Article 2 of the Public Gambling Act 1867, the major problem behind this act is that gambling is not covered by this statute.<sup>6</sup> It is inherently the grey area of law. Indian Contract Law, 1872 and the Wagering Agreement not specified. It merely states, however, that any agreements that are bet and wager-based are illicit and invalid by

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<sup>5</sup> Public Gambling Act, 1867.

<sup>6</sup> Article 2, Public Gambling Act, 1867.

themselves. So, unless and until a specific regulation is adopted it is difficult to ban internet betting. The Indian Law Commission issued several suggestions in its 276th report on the legitimization of controlled betting or splendid businesses, stating that a boycott of total betting would not be desirable because such businesses cannot be prevented entirely. These will be discussed later in the paper.

#### **CHAPTER 4: - LEGAL POSITION OF FANTASY GAMES: DREAM11**

The validity of online sports wagering platforms was increased with eyebrows. Dream11 is one of those sites that transformed the sports arena online. Many more sites came into existence following its popularity. In high courts, PIL's were filed. The Supreme Court rejected these petitions, however, and hence Dream11 was not recognized as a website. Whether a sport of imagination is a casual game or skills game is dependent on each game's modalities. In addition, courts have utilized the 'skill test' overwhelmingly in the determination that horse racing and card games like rum and poker are 'skill games.' The petitioner claimed it was a game of opportunity and was willing to take legal action against the corporation since he had lost his cash owing to the fantasy game in *Varun Gumber v. Union Territory of Chandigarh*<sup>7</sup> and hence a PIL was filed. The respondent showed how the whole game focuses on the player's ability. In accordance with the performance of players, the player had to pick a team. In addition, if he believes that the player does not perform well within the specified period he has an opportunity to replace a player. The game therefore incorporates the participant's whole technique and talents. Dream11 was not deemed responsible by the Court and the appeal was thus rejected.

The *Gurdeep Singh Sachar v. Union of India*<sup>8</sup> held the conclusion that the game had significant components of chance, and the Bombay High Court dismissed the petitioner's case. From the foregoing multiplicity of situations, it can be effectively taken into account that when we speak especially about Dream11 it is not a random game and therefore the agreements entered into here are not invalid. However, these courts solely reviewed the default Dream11 format and offered no opinions or analyses on formats and products of other sports fantasy operators or the newer formats of Dream11 itself. There are at present roughly 59 additional fantasy sports platforms in India and all have a separate structure and scoring system for assessing each player's success - all of which may not rate the player's ability to draw up an imaginative squad.

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<sup>7</sup> *Varun Gumber v. Union Territory of Chandigarh*, 2017 (4) RCR (Criminal) 1047.

<sup>8</sup> *Gurdeep Singh Sachar v. Union of India* 2004 (3) SLJ 69 CAT

In India, several games and gaming websites feature content that might be considered undesirable under Indian laws on pornography and obscenity. For example, several of the popular websites provide games with cartoons of people, especially women, represented in ways that might be seen as objectionable in accordance with India's moral norms. Penalty for publishing, distribution and transmission of obscene materials is penalized under the Indian penal code ('IPC') and Information Technology Act, 2008 ('IT Act').<sup>9</sup> The IPC, among other things, forbids the sale, lease, distribution, display and circulation and penalizes anybody engaging, publicizing, encouraging, offering or seeking obscene activities. Among other things, the IT Act penalizes the dissemination by electronic means, including child pornography, of any obscene or sexually explicit materials.

As mentioned earlier, there is no standardized national policy for online gambling. Thus, all states have enacted their personal laws which vary from state to state. Most of the states have legalized skill games but by defining it as a form of “pure skill”. This essentially means that the game includes minimal/zero amount of luck. In these states, both free and paid fantasy games have been made legal and no form of license is required. There are some exceptions, however. States such as Assam, Odisha and Telangana have legalized free fantasy gaming applications but still are left to make paid fantasy gaming applications legal. Hence, an app like Dream11 which functions on money will not function in these states.<sup>10</sup> Sikkim is the only state wherein paid fantasy gaming apps are allowed but a license will be required for companies to operate.<sup>11</sup> The license must be valid for one year after which it is essential to renew. A license stipulates a Rs. 50,00,00,000/- online gaming allowance, or 10% of the gross gaming benefit, whichever amount is higher. Other than the ones mentioned above, no other state has currently enacted a law enforcing a ban or restriction on free or paid fantasy gaming applications.

## **CHAPTER 5: - LEGITIMACY OF FANTASY GAMES LIKE DREAM11**

The sole reason Dream11 has been held legal by courts is because it has factors that distinguish itself from “betting”. Betting has been declared illegal in the country but Dream11 and its traditional model dodges the laws of betting as there are several elements different from it. Betting consists of placing money on a basis of / not an occurrence which rarely needs a talent, and receiving a reward. On the other hand, Dream11 (which is a fantasy game) is an expert

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<sup>9</sup> Information Technology Act, 2008.

<sup>10</sup> Telangana Gaming (Amendment) Act, 2017.

<sup>11</sup> Sikkim Online Gaming (Regulation) Act, 2008.

game with an option of different team members. A player's selection into a team will involve study and judgement of his previous performance, pitch, weather and ability to compete against an opponent's team etc. All competitions are for at least one complete game (unlike betting, where even for a ball/over/player etc.) After match start and time limit for updating / participating to a contest which is often ahead of match start, no team changes are allowed for players. Competition amongst contest participants may be tracked in real time, and every player may view and download details of all teams at a contest that ensures maximum transparency. Unlike traditional betting, Dream11 is the FIFS (Indian Fantasy Sports Federation) founding member. TDS shall be deferred under 194B of the Income Tax Act, 1961 for winnings over Rs 10,000, at a rate of 30 percent. Dream11 pays GST for the supplies it makes at a rate of 18% (considering them as other online services).

While the original model of Dream11 can be considered a grey area and can be given the benefit of doubt, several similar applications have followed and Dream11 itself has also launched new and updated models which can be classified as borderline betting. There have been many such applications such as MyTeam11, My11Circle, FanMojo, Hala Play and Roto Bash and not all of them solely follow the model Dream11 does. They violate the differentiating factors between fantasy games and traditional betting. Some of these applications remove all the skill factors and even allow players to make mid-way changes and conduct half-game competitions. This essentially means a player can alter teams after every over. The transparency factor is also reduced in these applications because there are certain contests where the reward or earning is hidden. By doing this, these games classify themselves as betting games. These models are new and lucrative for both players and the company itself and this more players get attracted to such games. Dream11 also plans to revamp their model structure to align itself with its competitors and make an entire ecosystem. This can be dangerous as the new model that all fantasy games plan to launch/have already launched do not fall in line with the "mere skill" factor and are almost similar to betting. The current model of Dream11 is fine and suitable for the future but the court is yet to take cognizance of these recent developments in this field, but with the unprecedented rise of this sector, it is about time before it does.

#### **SUGGESTIONS: -**

It has been established that fantasy gaming in itself is a big industry and India is set to surpass the US to become the biggest industry in the world. There have been several calls regarding the legitimacy of the app and the courts have had to interfere on some occasions. It is no lie that

these apps give players the chance to make loads of money which can possibly make their lives. However, these apps are also extremely lucrative and make players addicted. So much so that these players will be ready to bet tens of thousands of rupees on a single game. It has often resulted in players losing a lot of money which has extreme negative effects on their lives. Such apps require smart betting but not everyone has that knowledge or experience. Hence, there is a definite need of regulating this industry. There have been calls for a blanket ban of all apps involved in this industry and while their concerns may be justified to an extent, a complete ban may be harsh. One has to remember that it is anticipated that each year the online gaming market would expand by 41%, which is predicted to reach an industry of 2.8 billion dollars in 2022. It clearly indicates how much of an impact it has on the overall economic environment and the massive repercussions if the entire industry is wiped out. Economic losses will be caused if a ban is imposed both to the companies and its stakeholders such as employees, investors and others. In 2016, the State of Nagaland passed “The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act”, that allows online gaming licenses to be issued for skill games, including fantasy sports.<sup>12</sup> The Act also allows a licensee to offer ‘games of skill’ in other Indian States, where these games are not classified as gambling and abide by the Act and local laws. The act surrounds regulating the industry whilst also allowing users to bet money. The act keeps the Dream11 model in check and prevents apps from introducing betting-like models. The companies also need to purchase and renew licenses after a fixed interval. Such a law is the middle ground and keeps the games in check whilst also allowing users to play and bet money and it truly is the most viable option for the future of the Indian Online Gaming Industry.

## **CONCLUSION: -**

In India, sports betting is in itself void. It is believed that all such agreements are entered into by wagering and are hence invalid. The internet games we have now are not classified as betting deals. The court takes the view that these games are skill games in which a person must utilize his brain. Overall, it is totally a 'skill' and 'chance' component to be able to wager on a specific game. On the basis of the aforementioned, one can say decisively that the strategic degree of talent and advanced knowledge are determined by imagination sports games like Dream11. Not all fantasy sports games are skill games requiring superior expertise. Based on several courts of judgement, the participants have an important role to play in channeling the skills aspect of

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<sup>12</sup> Nagaland Prohibition of Gambling and Promotion and Regulation of online games of skill Act, 2016.

the fantasy game to build their team, in other words, limiting the number of players to make a lone team, limiting them and so on. In India, you may wager online though legally unlawful. There are certain murky spots in sports betting in India, and the administration should rethink the legislation in accordance with the existing situation and correct these grey spots. These can be resolved by implementation of proper strict laws and even the one suggested in this paper.

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