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A TUSSELE BETWEEN GAME OF SKILL AND GAME OF CHANCE

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Abstract

The online gaming industry is growing at a tremendous pace and with the evolution of fantasy sports games, the online gaming industry has become more popular. With the growth of the industry there are growing concerns pertaining to the privacy issues, security concerns, ethical practices, addictions among youths, etc. The platforms that provide such fantasy sports generally allows the players to have multiple teams so as to eliminate their risk of losing and this increases their 'chance' of winning big money. The 'skill', so to speak—primarily lies with the app developers and platform owners, who capitalize on this by charging users various fees under the guise of platform or service charges. In many cases, they generate substantial revenue not necessarily from the core value of the service itself, but by acting as gatekeepers and intermediaries between the service providers and end users. The Supreme Court and various High Courts have permitted various online fantasy games as games of skill. However, there is an urgent need for a comprehensive framework to regulate the gaming industry. This paper analyses the difference between the game of skill and game of chance and also discusses the role of various voluntary organizations promoting the gaming industry.

Key Words: *Fantasy online games, game of skill, game of chance, gaming laws.*

I. Introduction

Online gaming has become a major source of entertainment and a growing industry worldwide. With millions of users participating in various forms of digital gaming and competitive esports tournaments, India has a thriving online gaming and esports industry. With the growing popularity of online gaming, the Indian government has been trying to enact laws and regulations to govern this industry, particularly in the areas of online gaming, esports, fantasy leagues and gambling. As per the present regulatory framework in India, game of skill are legal, whereas games of chances are illegal. Hence, the gaming industries are trying to bring some elements of skills their games so as to legalise them. However many online games comes under the purview of "chance". Hence there is

always a tussle between a game of skill and a game of chance. Accordingly there arises a need to regulate the sector by implementing appropriate laws to curb the issues .

The distinction between games of skill and games of chance is becoming increasingly unclear in today's gaming world. This classification significantly impacts the legality, taxation, and public perception of activities like poker, rummy, fantasy sports, and online betting. In India, it determines whether an activity is legal entertainment or illegal gambling. While supporters argue some games rely on strategy and skill, others highlight the role of chance and financial risk. This paper explores the legal, judicial, and societal dimensions of this ongoing debate.

II. Understanding The Concepts – Game Of Skill And Game Of Chance

In India, a game of skill is legally recognized as one where the outcome is predominantly determined by a player's mental or physical skill, rather than by chance or randomness. The distinction is crucial because games of skill are exempt from gambling laws, making them lawful, even when played for stakes.

The differentiation between a "Game of Skill" and a "Game of Chance" plays a pivotal role in shaping the legal and regulatory framework for online gaming in India, particularly when such games involve monetary stakes. This distinction directly influences whether a game is categorized under permissible entertainment or prohibited gambling. Games that rely predominantly on chance—where outcomes are driven more by randomness than player expertise—are typically classified as gambling and fall within the scope of stringent regulatory controls. Conversely, games that primarily involve a player's skill, judgment, and strategy are generally treated more leniently under Indian law and enjoy greater legal protection.

The foundational legislation in this context is the Public Gambling, 1867, which serves as the cornerstone of India's gambling laws. The Public Gambling Act, 1867⁷⁴ imposes a blanket ban on the operation and facilitation of gambling activities involving games of chance. However, it carves out a significant exception under Section 12, which states: "Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played." This exemption establishes that games where the element of skill outweighs that of chance are not subject to the prohibitions laid out in the Act. Therefore, the key test lies in determining whether skill is the dominant factor in the outcome of the game.

A major transformation in the regulatory environment occurred with the enactment of the Constitution of India in 1950. The Constitution placed "betting and gambling"

under the State List⁷⁵, thereby granting state governments the exclusive authority to formulate laws governing these activities within their territories. This decentralization of legislative power has led to a diverse and often inconsistent legal landscape across the country. While many states have adopted gambling laws modeled after the Public Gambling Act, 1867, their treatment of games of skill and chance varies considerably. Generally, games of chance continue to be outlawed or heavily regulated, whereas games of skill are either permitted or remain unregulated.

Notably, Indian legislation does not offer statutory definitions for the terms "Game of Skill" and "Game of Chance." This absence of clear legislative guidance has left it to the judiciary to interpret and apply these concepts through various rulings over time. Courts have assessed games on a case-by-case basis, considering factors such as the degree of control a player can exert, the impact of experience and training, and the predictability of outcomes. These judicial interpretations have significantly influenced the evolving legal status of various popular online games in India.

III. Judicial Interpretation

In India, games are legally classified based on whether they rely primarily on skill or chance. According to the Supreme Court, a game that depends more on skill than luck is considered a "game of skill" and is not treated as gambling. Indian courts have provided critical guidance on distinguishing between games of skill and chance, with the predominance test emerging as the primary method for determining whether a game qualifies as skill-based. The predominance test examines whether skill or chance plays the dominant role in determining the outcome of the game. This determination is highly fact-specific, as affirmed in *Manoranjithan Manamyil Mandram v. State of Tamil Nadu*⁷⁶, where the Madras High Court

⁷⁵ INDIA CONST, Entry 34 of List II in Seventh Schedule

⁷⁶ *Manoranjithan Manamyil Mandram v. State of Tamil Nadu*, AIR 2005 MAD 261

⁷⁴ The Public Gambling Act, 1867, §. 12, Act No. 3 Of 1867 (India)

ruled that determining whether a game is a game of skill or chance is a "question of fact" that must be decided based on the specific circumstances of each case. The Court further held that even if a game contains elements of chance, if skill is the predominant factor influencing the outcome, the game will not be classified as gambling.⁷⁷

This distinction has been clarified in landmark rulings such as *State of Andhra Pradesh v. K. Satyanarayana*⁷⁸ and *State of Bombay v. R.M.D. Chamarbaugwala*⁷⁹, where the Court ruled that games like rummy involve substantial skill—such as memory and strategy—even though they include elements of chance, like card shuffling. Consequently, rummy is not considered gambling and falls under the protection of Article 19(1)(g) of the Constitution, which safeguards the right to practice any profession or occupation.

Similarly, the Madras High Court in 2005 ruled in *Manakadu Elainger Nala Sports, Narpani Mandram v. State of Tamil Nadu*⁸⁰ that games like chess and carrom, even when played for a fee, are games of skill and therefore not subject to gambling laws.

The Supreme Court in *K.R. Lakshmanan v. State of Tamil Nadu* held that horse racing is a game of skill. The Court held that, "To put it simply, gambling involves paying a fee in order to have a chance at winning a prize. The game being played can either rely solely on luck or involve a combination of luck and skill. Games of chance rely entirely or partially on luck, such as rolling dice or spinning a wheel. In these games, the outcome is completely uncertain and unpredictable. Games of skill, on the other hand, still involve an element of chance but success depends mainly on the player's knowledge,

experience, and abilities. Examples of games of skill include golf, chess, and Rummy. The courts have determined that most games cannot be classified as purely chance or skill-based, but rather fall somewhere on a spectrum between the two. The dominant factor, whether it be chance or skill, determines the nature of the game"⁸¹

IV. Online And Fantasy Gaming

Fantasy sports games are games which involve users drafting fantasy teams based on certain conditions from a list of players scheduled to play live games on a given day. The users pay an entry fee to enter a contest and it is pooled in for distribution among the users ("Entry Pool") after deduction of a service/administrative fee by fantasy sports games providers. The users draft their teams based on their application of knowledge (gathered through systematic research), attention, experience and adroitness regarding the relevant sport. Based on the performance of the players selected by the user to draft his/her team, the user collects points. The users are ranked based on the points their selected players accumulate throughout the contest as per their on-field actions and scoring metrics for the contests.⁸²

The law on gambling and betting developed around the concept of preponderance of "skill" vs "chance" is pre-dated in as much as the judgments in the RMD Chamarbaugwala and Dr. RK Lakshmanan, as narrated above, were passed at a time when there was no internet gaming. The issue of 'online gaming' was not before the court in these judgments.⁸³ Online fantasy sports have been gaining popularity in India. Typically, this format involves participants playing the role of an owner/ manager having a limited budget and the power to buy, sell, transfer, substitute players before each game week/ match day, based on the opposition and player availability. The points are then allocated

⁷⁷ Sheena Khan, *Skill vs. Chance in Online Gaming: Legal Implications for Indian Operators*, Ahlawat & Associates, Blog (May 18, 2025, 10:11 PM), <https://www.ahlawatassociates.com/blog/skill-vs-chance-online-gaming-legal-implications-india#:~:text=The%20Supreme%20Court%20of%20India,legitimate%20trad e%20and%20business%20activities>

⁷⁸ *State of Andhra Pradesh v. K. Satyanarayana*, AIR 1968 SC 825

⁷⁹ *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 628

⁸⁰ *Manakadu Elainger Nala Sports, Narpani Mandram v. State of Tamil Nadu*, AIR 2005 MADRAS 214

⁸¹ *K.R. Lakshmanan v. State of T.N.*, (1996) 2 SCC 226.

⁸² Gowree Gokhale & Rishabh Sharma, *The 'Skill' Element in Fantasy Sports Games*, NISHITHDESAI.COM, (May 18, 2025, 10:19 PM)

https://www.nishithdesai.com/Content/document/pdf/Articles/180406_A_Legality_of_Fantasy_Sports_India.pdf

⁸³ Sunieta Ojha, "It's Not Sport, It's Gambling," *Forbes*, at 69 (2022).

to the participant based on the outcome of the real matches and more specifically, the performance of the selected players in their team.⁸⁴

Certain formats of fantasy sports games may be characterized as predominantly skill-based under Indian law. The question of whether online fantasy sports can be considered as gambling was decided in the matter of *Varun Gumber v. Union Territory of Chandigarh and Others*⁸⁵.

The plaintiff in this matter was registered as a player on the platform Dream11.com, which was operated by the respondent company, Dream11 Fantasy Private Limited (“Dream11”). He lost while playing fantasy sports games tournaments offered on Dream11.com. The plaintiff moved the Punjab and Haryana High Court alleging that fantasy sports was not based on skill and that Dream11 was carrying on business covered within the definition of ‘gambling’ under the gambling legislation applicable to the state of Punjab. The P&H High Court relied on the Supreme Court’s decision in the Lakshmanan case. The P&H High Court observed that playing fantasy sports games required the same level of skill, judgment and discretion as in case of horse racing. The P&H High Court relied on the following arguments put forth by Dream11 adjudicating the fantasy sports game offered by Dream11 to be a ‘game of skill.

A user, while drafting his fantasy team on Dream11, was required to:

1. Pick a team consisting of at least as many players as required to constitute a real world team to score points for the duration of at least one entire real world match;
2. Assess all the players available to make a team and evaluate the worth of a

player against the other players keeping aside bias for an individual or a team;

3. Based on knowledge and awareness of player’s performance, evaluate a player’s statistics;
4. Adhere to an upper limit of spend to draft a team while ensuring that the team did not entirely/ substantially consist of players from a single real world team. This pre-condition also ensures that a user does not create a situation resembling the act of betting on the performance of a single team;
5. Analyse the conditions of the other factors pertaining to the game, pitch, form of players, etc;
6. Constantly monitor the scores of players drafted by a user.⁸⁶

The court in this matter, held that the game Dream11 is a game of skill and thus, it does not fall within the activity of gambling. The court stated that:

“.....playing of fantasy game by any participant user involves a virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athlete/sportspersons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also. The several factors as indicated above submitted by the respondent company would definitely affect the result of the game.”⁸⁷

An appeal was filed against the decision of the Punjab and Haryana High Court in this matter, which was subsequently dismissed by a two-judge bench of the Supreme Court⁸⁸. As a result, the High Court’s ruling has attained finality with respect to the particular game format it examined. Given that the Supreme Court upheld the High Court’s decision, it may be construed

⁸⁴ Arjun Maheshwari, *Online Gaming, Casinos and Fantasy Sports – An Overview of Gambling Laws*, Manupatra Articles, (May 18, 2025, 10:25 PM), <https://articles.manupatra.com/article-details/ONLINE-GAMING-CASINOS-AND-FANTASY-SPORTS-AN-OVERVIEW-OF-GAMBLING-LAWS>

⁸⁵ *Shri Varun Gumber v. Union Territory of Chandigarh & Ors.*, CWP No. 7559 of 2017 (P&H High Ct.).

⁸⁶ Gowree Gokhale & Rishabh Sharma, *supra note 9*.

⁸⁷ Id

⁸⁸ Id

as having binding effect across all Indian states in relation to the specific format of the game assessed by the Punjab and Haryana High Court. There are certain Indian states that do not provide specific exemptions for games of skill in their Gaming Legislations. However, it can be argued that those legislations in any case cannot apply to games of skill.

Based on the foregoing discussion and relevant legal precedents in India and internationally, it can be persuasively argued that fantasy sports games generally involve a substantial degree of skill. However, not all formats qualify as skill-based; the classification depends on specific gameplay mechanics. Factors such as team composition rules, scoring systems, and game-specific constraints—like player limits or team caps—significantly influence the skill element. Therefore, each fantasy sports format must be evaluated individually to determine whether it meets the legal threshold for a game of skill.

The online gaming and fantasy platforms, however, are by the use of internet and technological upgradation luring people to come on their gaming platform luring people to come on to their platforms with big prize money, collect money from players and distributing prize money through payment gateways. The companies involved in such gaming business are facilitating internet based gambling and this is becoming the biggest threat for the sporting industry in the present time and in future as well.

V. Role Of Voluntary Organizations

A. Federation of Indian Fantasy Sports (FIFS)

The Federation of Indian Fantasy Sports (FIFS), established in 2017, is India's sole self-regulatory organization dedicated exclusively to the Online Fantasy Sports (OFS) sector. FIFS is committed to fostering standardized best practices across the industry, with the aim of building a robust, fair, and sustainable ecosystem. By setting operational standards and developing a regulatory framework, FIFS seeks to safeguard player interests while supporting the growth

and integrity of OFS platforms in India. As a non-profit industry body, the Federation of Indian Fantasy Sports (FIFS) plays a pivotal role in shaping the future of fantasy sports and the broader sports gaming ecosystem in India. Through a robust regulatory framework and proactive policy advocacy, FIFS promotes responsible gaming, fair play, and ethical advertising, ensuring the protection of user interests and fostering trust in the Online Fantasy Sports (OFS) industry. Recognizing fantasy sports as games of skill, FIFS emphasizes self-regulation and sets high operational standards to differentiate skill-based sports games from games of chance. Its initiatives aim to enhance sports engagement, support the business of sports, and contribute meaningfully to the development of the sports industry. By aligning with evolving sports laws and championing best practices, FIFS continues to strengthen the foundation of fantasy sports gaming as a legitimate and sustainable segment within the Indian sports business landscape.

B. All India Gaming Federation (AIGF)

Founded in 2016, the All India Gaming Federation (AIGF) has emerged as a key force behind India's online gaming revolution. Initially established as a policy-driven organization, AIGF has grown to become the country's largest gaming federation. It now represents over 100 member companies and game developers, collectively reaching more than 40 crore Digital Nagriks across the nation. AIGF stands as the oldest, largest, and most diverse industry association representing the online gaming sector in India. Since its inception, AIGF has played a central role in advocating for responsible growth, regulatory clarity, and industry best practices within the online gaming ecosystem.⁸⁹ AIGF have also established their own online games of skill charter with a purpose of self-regulating all games of skill played online in pay-to play formats, primarily online

⁸⁹ All India Gaming Federation, <https://aigf.in/our-story> (last visited May 23, 2025).

fantasy sports games, online rummy, casual games, and online poker games, within the territory of the Republic of India. It also reserves its right to amend/ modify the list of such games, as and when required. Presently online poker game, online fantasy sports games, online rummy, casual games and esports are included in the skill charter.

VI. Conclusion

Many of the fantasy games are considered as game of skill, however, the difference between the game of skill and game of chance should be evaluated properly. Even if the Supreme Court have regarded various online games as a game of chance, the recent online games involving money needs to assessed based on its overall impact. Even if the online gaming sector is growing day by day, there are also growing concerns and challenges like regulatory uncertainty, addiction and mental health concerns, data privacy and security concerns, etc The central government have recently introduced Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 in order to regulate the due diligence of the intermediary including specific regulation for online gaming platforms as well.⁹⁰ The newly adopted Digital Personal Data Protection Act, and its rules will also have an impact on the regulatory aspects of the online gaming industry. However, these laws are required to be enacted and enforced after considering their legality based on skill or chance. It is equally crucial for states to establish a comprehensive regulatory framework for the rapidly growing gaming industry, along with a robust grievance redressal mechanism, to proactively address issues and prevent potential crises.

⁹⁰ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 4 (India).