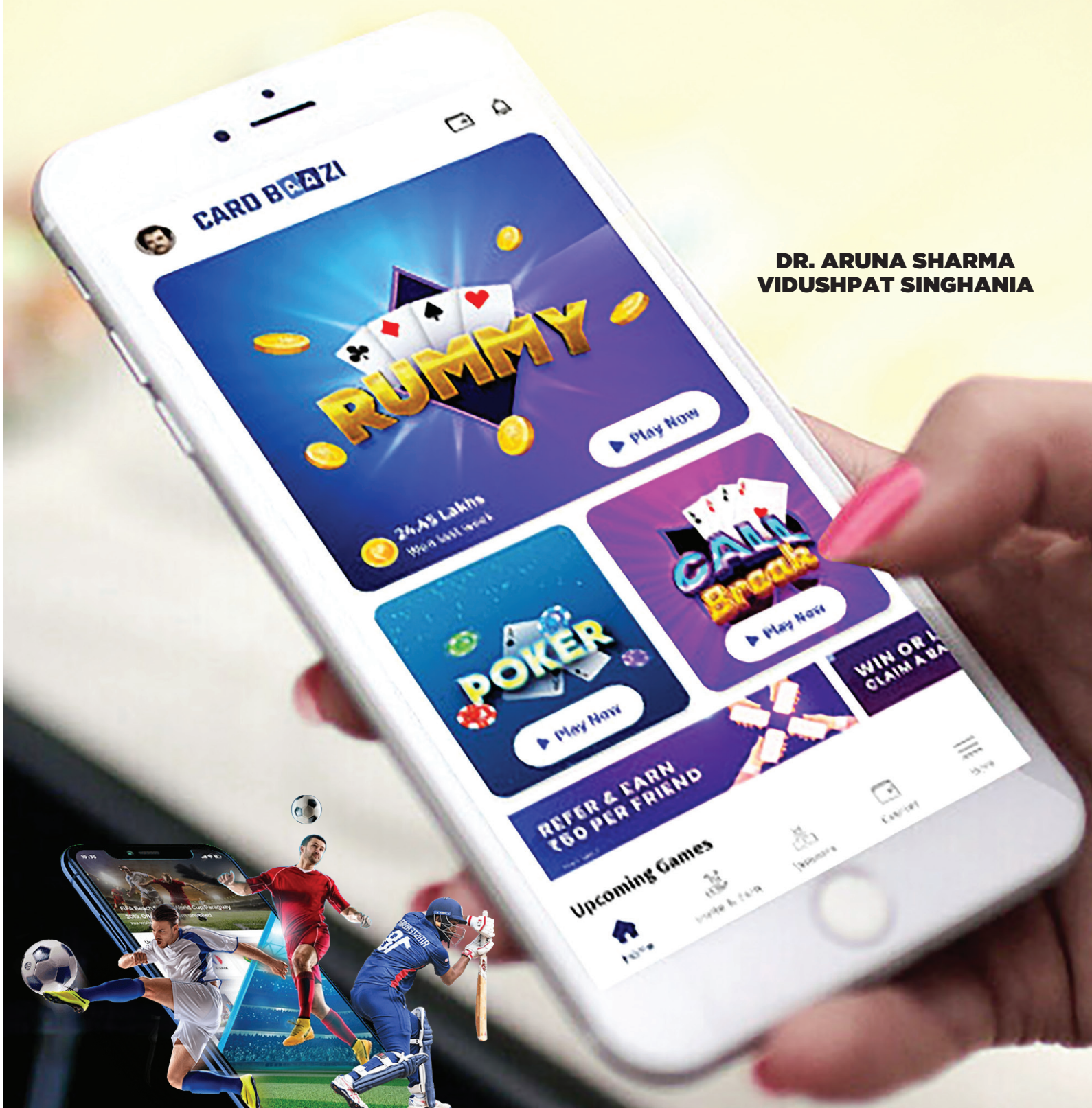


SKILLS OR CHANCE:
UNTRANGLING
INDIA'S GAMING
REGULATORY WEB

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Introduction





Gaming laws in India, despite the scale of the industry, are still very much in a nascent stage. Owing to how 'Betting and Gambling' have been classified as a subject under the State List, the primary responsibility surrounding regulations have been vested with the States in India. Naturally, with the widespread disparity arising from the sheer number of legislations introduced by States and Union Territories prompting a lack of uniformity in regulating the gaming sector and with other States merely adopting provisions of the archaic Public Gambling Act, 1867, the jurisprudence in the field is less than coherent to a common man.

Considering how the Public Gambling Act and adaptations of the same by States have been governing the field for over 150

years and the exception granted to 'Games of Skill' by the relevant legislations has been relied on to fuel the multi-million worth gaming industry with Rummy, Poker and operators of Daily Fantasy Sports benefitting from the same, there is a pertinent question with regards to the applicability of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ("IT Rules") to the gaming industry.

Such a concern is also only exacerbated by the fact that there are various communications which exist, to indicate at the Central Government, also recognising the autonomy of the States, when it comes to legislating on the subject of 'Gaming' in India. For instance, the Ministry of Electronics and Information Technology in 2022,

vide a communication by the Minister of State for Electronics and Information Technology, Shri Rajeev Chandrasekhar records the Ministry's view that "All forms of gambling and betting come under the purview of State Governments and they have enacted their laws to deal with the same within their jurisdiction under List-II of the Seventh Schedule of the Indian Constitution" in response to Shri Kanakamedala Ravindra Kumar and Dr. Kanimozhi NVN Somu's questions regarding the requirement of a legislation to ban online gambling games – while specifically referring to 'Online Rummy Games', which indicates at 'Online Rummy Games' being treated as a form of 'Betting and Gambling' and therein being subject to State legislations. The Ministry of Home Affairs of the Central Government had also issued a similar letter to the government of Sikkim to regulate online gaming within its state.

While there is an argument to be made that the 'Online Gaming' is to be treated as an activity that is inherently distinct in comparison to 'Betting and Gambling' as accounted for in the Public Gambling Act and its various iterations, the fact remains that to date, the dominant legislation in the country pertaining to the gaming industry remains the Public Gambling Act. It is also to be noted that 'Gaming', 'Betting', and 'Gambling' have been used interchangeably over the years in the Indian jurisprudential context and without there being distinctions laid down under the laws governing the activity, merely distinguishing them on face value for the purpose of governance only creates confusion.

Considering how a majority of India's States rely on the provisions adapted directly from the Public Gambling Act to legislate their territory when it

comes to gaming, and with there being no objection or observation by legislations or courts of law with respect to extending the applicability of the Public Gambling Act to deal with Games of Skill based on the exception granted, there is no reason to believe that States should not continue to be in charge of the industry within their territorial limits. In addition to the same, the introduction of the Ministry of Electronics and Information Technology ("MeitY") as the nodal ministry and the subsequent imposition of the IT Rules have contributed to all the more commotion in the Indian gaming market. The pertinent question amidst such confusion is whether wagering on games of skill, something that has been viewed to not be under the purview of 'gaming' by the Hon'ble Madras High Court and the Hon'ble Karnataka High Court, may be governed by a central nodal ministry appointed for the same as opposed to the legal treatment under the Public Gambling Act and adapted legislations which has been in application for decades. Considering how the MeitY themselves have contradicted the approach in governance, the extent of the problem at hand is only highlighted further.

Such a confusion has arisen despite various clarifications being made over time with respect to the governing authority that is constitutionally granted to States in matters concerning the gaming industry. Considering how even the Law Commission of India has taken a view that "The Constitution of India confers upon the States the power to make laws on "Betting and Gambling", for they are enumerated in Entry 34 of List II of the Seventh Schedule.



Note

Kindly note that under the legal jurisprudence in India, 'Gaming', 'Gambling' and 'Betting' have been used interchangeably. Any usage of 'Gaming' in this report is herein referring to the activity of gaming which is to be treated distinctly from 'Gambling' or 'Betting', unless the reference is to a judicial order or decree which refers to 'Gaming' expressly in an interchangeable manner to 'Gambling' or 'Betting'



Such being the constitutional arrangement, there cannot be a Central Legislation on the subject unless the Parliament legislates by exercising its power under Articles 249 or 250, as the case may be, or by exercising power conferred by Article 252 of the Constitution. In fact, the Act 1867, enacted by the erstwhile British rulers was applicable only to the North-West Provinces, the Presidencies of Fort William, the Punjab, Oudh, the Central Provinces and British Burma..... Betting and Gambling are listed as Entry 34 of List II of the Seventh Schedule, and therefore, only the State legislatures have competence to make laws pertaining to betting and gambling., there certainly is merit to the debate

surrounding whether the MeitY is Constitutionally equipped to oversee the subject of 'Online Gaming'.

Concerns have also been raised about the mode of determination of permissibility of a game as it stands, and the subjectivity associated with the same. It needs to be understood that there are punishments even prescribed in criminal procedure that may apply to individuals for the violation of gambling laws across states. Implementing such punishments on the basis of a subjective view taken with respect to the nature of the game offered is certainly problematic. Uniformity in application of law and the basic principle of equity under law is set aside in such

application of the laws pertaining to gaming.

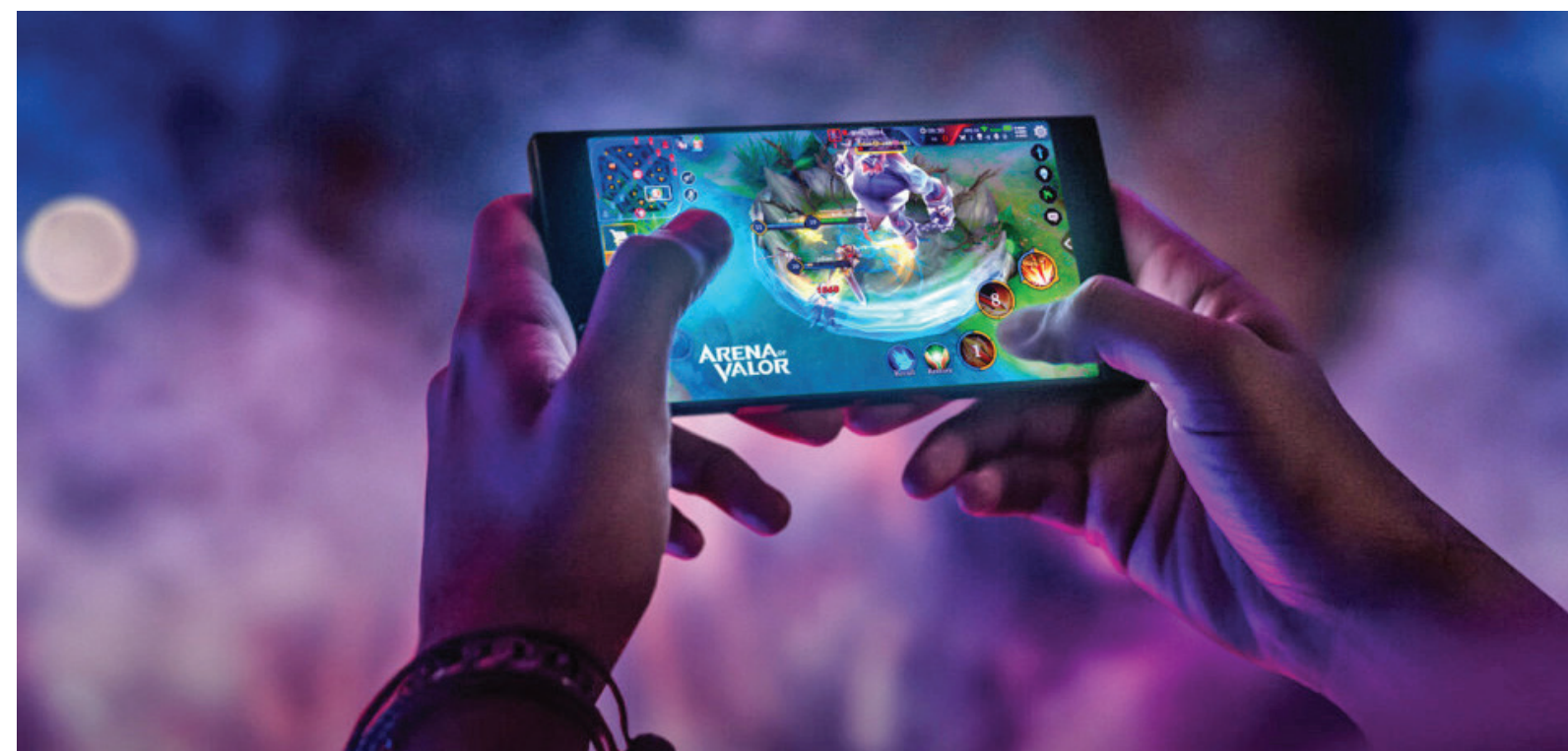
It is at such a state of development pertaining to gaming laws in India that the activity of 'Daily Fantasy Sports' developed into a popular avenue of entertainment and casual gaming in India. The popularity of Daily Fantasy Sports was heavily aided by the increasing penetration of smart phones and the affordability of internet services to the general public. The relatively quick rise of the medium certainly did not go unnoticed. Questions arose with regards to how 'Daily Fantasy Sports' can be permitted, considering how the basic premise involves investment in a future outcome – something not dissimilar from the activity of 'Wagering in Sports' which is widely scrutinised and considered a prohibited activity in most parts of India.

The status of legitimacy granted to 'Fantasy Sports', a relatively new form of casual gaming, despite arguable

similarities to 'Wagering in Sports' and games that offer players an option to make predictions in sporting events has therefore become a vein of contention in debates regarding whether 'Fantasy Sports' should be considered a 'Game of Skill'. At this point, while there is certain amount of understanding regarding the same in an Indian context, we believe that there is scope for development and also a possible amalgamation of the activities of 'Daily Fantasy Sports' and activities offering prediction in sports in a manner that ensures that regulation of the two do not come in the way of one another. Such a statement bases itself on the premise that the principal characteristic of the activity of 'Fantasy Sports' is indeed dependent on a future outcome and poses a lack of clarity with regards to its definition as a 'Game of Skill' when compared to other games which also share a dependence on future outcomes. Considering the common factor pertaining to dependence on future outcomes looming large

with respect to 'Daily Fantasy Games' and 'Prediction in Sports', it is interesting to note how there is an apparent prohibition in the operation of one activity while the other is treated as a legitimate business activity that may be Constitutionally protected.

With 'Sports Betting' being prohibited across a majority of the territorial expanse of India, recent years have seen a major spike in the number of operators offering the activity from 'grey markets'. Operators based out of foreign jurisdictions utilise servers not centred in India and strive to establish a lack of physical presence to avoid legal hurdles and offer various Games of Chance in the pretext of being legal operators who do not seek to offer their services in the Indian market. Transactions are often made vide individual accounts and not accounts associated with any related entities or their own business enterprise and this makes such transactions tougher to track and monitor too. Not only is such a trend alarming, considering how





utilisation of offshore servers has forged a path for circumvention of the law, but it also marks a wasted opportunity with respect to generation of valuable foreign exchange and regulatory taxes. Various instances have been reported with regards to operations by off-shore betting companies and the laws broken by them. Such entities operating in the grey market has been an extremely problematic affair in recent times. In April 2023, 38 betting and gambling websites were in receipt of notices from the Directorate General of GST Intelligence in relation to allegations of money laundering and tax siphoning . The Government's hand has also been played by the offshore betting operators with respect to their actions towards promoting and marketing their illegal offerings to the Indian populus . Around 17 individuals were recently arrested in relation with taking bets on Indian Premier League Games vide an illegal betting app. All such reports go to prove how much of a societal menace, the unregulated betting market has bred.

While the above-mentioned remains, it is also to be understood that operators also operate from the grey market as a last resort to penetrate the massive Indian population, owing to the lack of a regulation that specifically addresses online gaming and wagering in sports. Even operators with legitimate permissions and avenues of operation are left incapable of entering the Indian market through a regulated channel. Regulation can therefore attract legitimate and responsible operators and help bring them under a set legal framework while also bringing in the revenue that comes with the offering of the activity. Therefore, as it stands, the regulators are also indirectly contributing to how the grey market has taken shape and for the problems that have arisen from the same.

Seeing how there exists a scope of comparison with regards to the operations associated with 'Daily Fantasy Sports' and wagering on predictions in sports and the legal protection granted to 'Daily Fantasy Sports', a comparative analysis of how the two may be regulated hand-in-hand is undertaken herein with reliance on how other jurisdictions have treated the two activities over the years. This has been done with an aim of providing a road map based on more established legislations, to chart a path ahead in this particular realm for the gaming industry in India.

Legal Treatment of 'Daily Fantasy Sports' and 'Wagering in Sports'

a DAILY FANTASY SPORTS



The regulation of 'Betting and Gambling', being an entry in the State List of Schedule VII of the Constitution of India , is under the ambit of the individual states of India. Prior to independence, the subject was governed by the Public Gambling Act, 1867 ("PGA"). For the time it was drafted in, the legislation was deemed appropriate as most concerns were encompassed in the legislation. This led to a majority of States and Union Territories merely adapting the legislation as their own rather than coming up with an independent legislation of their own.

However, over time, the

environment surrounding the world of gaming has almost become unrecognisable from how it was at the time of promulgation of the PGA. The development of technology, rate of internet penetration, and the advent of services on the internet means that there is an entirely different array of games that require regulation beyond the physical and premises-based concepts of gaming that were in existence at the time the PGA came into existence. The level of accessibility of the internet using smartphones and other portable devices also factor in this paradigm shift in the gaming world.

For instance, the smartphone market in India crossed the 100-million-unit mark in sales for the first time in the second half of 2020 and the total number of smartphone users in India is estimated to reach 175 million units in 2023. On top of the same, by 2023, the growth rate of devices that can be connected to the internet is also estimated to be around seven times that of the population growth rate and India is estimated to be home to around 2.1 billion devices that can be connected to the internet.

The total number of smartphone users in India is estimated to reach

175 million

units in 2023.

Recent statistics also suggest that India is also home to one of the most cost efficient and cheapest rates of internet and mobile data, with the average cost per gigabyte of mobile data calculated at \$0.26 compared to the global average of \$8.53. Therefore, not only is the existence of the internet left unaccounted for, the rate at which the internet became accessible and factored into daily life is laid amiss too in the legislation.

'Daily Fantasy Sports' is merely one such avenue, the legislation of which has not been dealt with specifically in the PGA or the legislations that adopted the PGA. However, the primary discourse surrounding 'Daily Fantasy Sports' and its inclusion

within the limits of the PGA has been regarding the level of skill required to succeed in the activity and its qualification as a 'Game of Skill'. If accepted as a 'Game of Skill', 'Fantasy Sports' qualifies to be exempt from the ambit of the PGA and would therefore be a permitted activity in the States and Union Territories that directly adopted the provisions of the PGA as their mode of legislation of the 'Betting and Gambling' industry. All of this, however, also flows from the logic that such legislations extend the concept of gaming to 'online' forms as well, considering how they have not been specifically dealt with owing to them not being in existence at the time of promulgation of the relevant legislation.

To make things further complicated with respect to regulation of 'Daily Fantasy Sports' in India, it is to be understood that among the States that have introduced their own legislations to deal with activities associated with 'Gaming', the exception afforded to the operation of 'Games of Skill' hasn't been universal. Assam, Odisha, Arunachal Pradesh, Telangana, and Andhra Pradesh are among States that opted to prohibit even 'Games of Skill' when played for stakes while the States of Sikkim and Nagaland have imposed a licensing regime which requires operators to be in possession of a gaming license issued by the respective State to offer their 'Games of Skill' within said State's territorial limits. This means that even if there is a uniform recognition granted to 'Fantasy Sports' as a 'Game of Skill' under Indian jurisprudence, operations for

the same will be restricted in the above-mentioned states. At this stage, it is also important to note that Sikkim and Nagaland have legislations which permit gaming options like binary options being offered with a license and that such legislations have not met with constitutional challenges. It is also of note that India has not separately dealt with 'Daily Fantasy Sports' and 'Season-long Fantasy Sports' for instance and has looked at legislating the wide variety of 'Fantasy Sports' under a single, uniform umbrella.

Fortunately for Daily Fantasy Sports operators, there currently is one less hurdle in their path, i.e., with respect to the classification and recognition of the activity as a 'Game of Skill'. The Supreme Court of India, the apex legislative body for the nation, has taken a view that the activity of 'Daily Fantasy Sports' qualifies as a 'Game of Skill' (although not explicitly referring to the same as Daily Fantasy Sport, the concept enshrined is taking into consideration the basic format of a Daily Fantasy game) and by virtue of the same, for consideration as a legitimate business activity. The Hon'ble Supreme Court of India in *R.M.D Chamarbaugwala v. Union of India*; has observed that 'games of skill' are business activities and shall be afforded the protection under Article 19(1)(g) of the Constitution of India. It was also held that competitions where the success depends upon a substantial degree of skill are not gambling. Also, even if a game is preponderantly a 'game of skill' which includes an element of chance, the same would nevertheless be classified as a game of 'mere skill'.



'Games of Skill' have been widely recognised in law as those games wherein the role of skill of the player is the predominant factor in determining the outcome. The result of the game is deemed to depend on the superior knowledge, training, experience and adroitness of the player and a luck factor, if any, is deemed negligible in the weight it holds with respect to the determination of the outcome of the game.

While assessing the legality of Fantasy Sports, in the matter involving Varun Gumber vs. Union Territory of Chandigarh and Ors., the Hon'ble Punjab and Haryana High Court held that 'Fantasy Sports' games are to be considered 'Games of Skill' owing to the predominance of skill over chance in determining one's success in such games. The matter was appealed vide a Special Leave Petition to the Hon'ble Supreme Court of India but was

dismissed in limine. Therefore, the Supreme Court opted to uphold the decision of the Hon'ble Punjab and Haryana High Court, and to not scrutinise the status of 'Game of Skill' therein granted to 'Fantasy Sports'. In its judgment, the Hon'ble Punjab and Haryana High Court had evaluated the format adopted by 'Dream11' and taken into account the skill elements involved in its gameplay.

The judges took a view that a 'Fantasy Sport' a la Dream11 requires material and considerable skills owing to the following factors involved in its gameplay: i) the participant has to assess the worth of a player in the game in comparison to all the alternatives available for selection for the same role, ii) the participants have to study the rules and regulations of the game and make informed choices about whom to select and not to select, iii) unlike the circumstances in betting, a participant cannot make selections limited to one team and this requirement to select a set number as a minimum from all participating teams requires the participant to be well versed with the players of both teams, iv) the participant needs to apply thought and calculation in order to draft a team using the limited budget in credit points and has to assess the relative ability and value of players to draft with the budget limitation in mind, v) to be successful, a participant needs to study and apply factors like age, statistical trends including past records against certain teams and at certain stadia, current form, injuries and other material factors that may contribute to a player's performance on a given event, vi) the participant is required to select a captain and a vice captain, whose points

get multiplied x2 and x1.5 respectively and is crucial to the chances of a participant to score high in the game. Such selection has to be made after evaluating the potential returns from all the selected players and the circumstances of selection, and vii) the participant has to interact with Dream 11 on a regular basis to monitor the scores of the drafted team and make changes if there is a window to do so in the particular event.

Most operators in India have adopted the format approved by the Hon'ble High Court of Punjab and Haryana with certain tweaks and this has generally been accepted as the mode to be followed while operating Fantasy Sports. While some noise persisted surrounding how 'Fantasy Sports' is difficult to distinguish from 'Sports Betting', especially after the view taken by the Hon'ble Supreme Court of India and the High Court of Punjab and Haryana in the matter, the views of the Hon'ble High Court of Judicature at Bombay helped clear the air further. In its decision in Gurdeep Singh Sachar vs. Union of India and Ors., the Division Bench of the Bombay High Court held that 'Dream 11', a prototypical cricket fantasy game, does not qualify for classification as 'betting', 'wagering', or 'gambling' and that success in the game involves application of substantial amount of skill by a player and that the success of an individual is not dependant on the winning or losing of a particular team in a real-world game, thereby stating that a singular event and the possible binary outcome of the same is irrelevant to one's success in a 'Fantasy Sport' a la Dream11.

The Hon'ble High Court of Rajasthan's decision in the cases

of Chandresh Sankhla vs. The State of Rajasthan and Ors. and Ravindra Singh Chaudhary vs. Union of India went on to add to the jurisprudence which supported the view classifying 'Fantasy Sports' as 'Games of Skill'. Supplemented further by the Hon'ble Supreme Court of India's view in Avinash Mehrotra vs. State of Rajasthan and Ors., it is quite clear that 'Fantasy Sports' are to be treated as 'Games of Skill' in the eyes of law. It is also important to note that such judgments were pertaining to 'online games' despite the 'online' avenue being silent in legislations including the Public Gambling Act. However, it is understood that there has been no challenge on such rulings despite such silence in legislations relevant to the same. This suggests a judicial approach which accounts for the principles of law to be carried over to the activities regardless of the medium of operation and is crucial while determining the prospective ambit of relevant legislations such as the Public Gambling Act and other State Legislations which derive meaning from the provisions of the Public Gambling Act.

The fact that 'Fantasy Sports' were classified as 'Games of Skill' in the Nagaland Prohibition of Gambling and Promotion of Online Games of Skill Act, 2015 and the now repealed Meghalaya Regulation of Gaming Act, 2021 only go on to cement the status 'Fantasy Sports' have been granted under law in India. Therefore, as things stand, 'Fantasy Sports' has been deemed a game/activity that involves a preponderance of skill over chance, qualifying it as a legitimate business activity distinct from 'betting and gambling'.

b WAGERING IN SPORTS



Unlike 'Daily Fantasy Sports', the activity of 'Wagering in Sports', however, finds itself under the bracket of prohibited activities barring in certain exceptional circumstances, across India. While proponents in favour of 'Wagering in Sports' may claim that similar to 'Daily Fantasy Sports', the rate of success in 'Wagering in Sports' also depends on the knowledge, expertise and adroitness of the punting individual, legislators seem to take a distinct view regarding the legality of the activity in India.

The PGA prohibits the activity of 'gaming' in a 'common gaming

house' whether playing for 'any money, wager, stake or otherwise'. With 'gaming' being defined under most state legislations adopting the PGA as "Gaming includes wagering or betting or any figures on any figures or numbers or dates to be subsequently ascertained or disclosed, or on the occurrence or non-occurrence of any natural event, or in any other manner whatsoever except wagering or betting upon a horse-race when such wagering or betting upon a horse-race takes place: (a) on the day on which such race is to be run; and (b) in any enclosure where such race to be run, and sanction



of the Provincial Government set apart from the purpose, but does not include a lottery”, it is to be construed that ‘sports betting’ would be included within the ambit of ‘gaming’ and therefore prohibited to be played for money, wager, stake or otherwise.

Beyond an extension of the provisions of the PGA, it is also to be noted that there are several state legislations that do in fact account for ‘Sports Betting’ specifically. Assam, Maharashtra, Gujarat, Telangana, Andhra Pradesh, Karnataka, Odisha, Andaman and Nicobar Islands, Delhi are States/Union Territories which expressly prohibit ‘Sports Betting’. Sikkim, Nagaland, form exceptions as States/Union Territories where the activity is regulated with the issuance of licenses for operation. Therefore, the general trend in observation is that as opposed to ‘Daily Fantasy Sports’ and the treatment granted to them under law, ‘Wagering in Sports’ is an activity that is sought to be prohibited or at least regulated by almost the entirety of the country.

However, despite the archaic nature of existing law, it isn’t to be made out that ‘Wagering in Sports’ is essentially considered a vice that requires to be

prohibited in its entirety. The stature and potential of the sector has been identified by many as an avenue for revenue generation with sufficient regulation being introduced. Such a view was even taken by the Law Commission of India who recommended that the topic be dealt with in greater detail by the Government of India as a newly enacted law to govern the sector is ideally required under the circumstances the gaming sector finds itself in. The Law Commission of India went as much as to state that amendments be made to the Indian Contract Act to exempt transactions in a regulated environment pertaining to ‘wagering agreements’. The Law Commission also recommended classification of ‘Gambling’ into two categories for the purposes of regulation – ‘proper gambling’ and ‘small gambling’. ‘Proper Gambling’ pertains to gambling characterised by higher stakes and should only be permitted for ‘indulgence’ by individuals belonging to the higher income group of society while ‘Small Gambling’ is classified as a mean wherein individuals may not stake higher amounts. The legislative intent of the Law Commission of India was clearly focussed towards identifying

the vices associated with the activity while identifying avenues through which it may be utilised by various sections of the society.

While steps towards regulation have not been pursued in the manner recommended by the Law Commission of India, it certainly can be seen as a positive step towards untangling the web the gaming industry in India finds itself in presently, with respect to the activity of ‘Wagering in Sports’.

Implementation of a regulatory regime for sports betting promises to be a challenging endeavour. India’s vast expanse, division into States and the demographics of the same, existing regulatory framework with respect to the supporting industries etc need to be considered as a whole while arriving at a legislative solution that is generally acceptable. A good first step towards the same would be reviewing how countries with similar or comparable circumstances have viewed the activities of ‘Wagering in Sports’ and ‘Daily Fantasy Sports’ and whether the methods adopted by them may be extended to the Indian gaming sphere. Games offering predictions in sport may be considered a first step towards conjoining the traits of skill required to succeed in Daily Fantasy Sports games with the activity of ‘Wagering in Sports’ and as the trailblazer for subsequent regulations in the field of Games of Chance. However, before such an analysis, it is important to take a look at what are the various products in the Indian market and how there are certain problematic developments that require attention while considering the need for regulation in the sphere of games involving wagering on future outcomes.



c MARKET STUDY AND ANALYSIS OF THE FANTASY SPORTS ENVIRONMENT

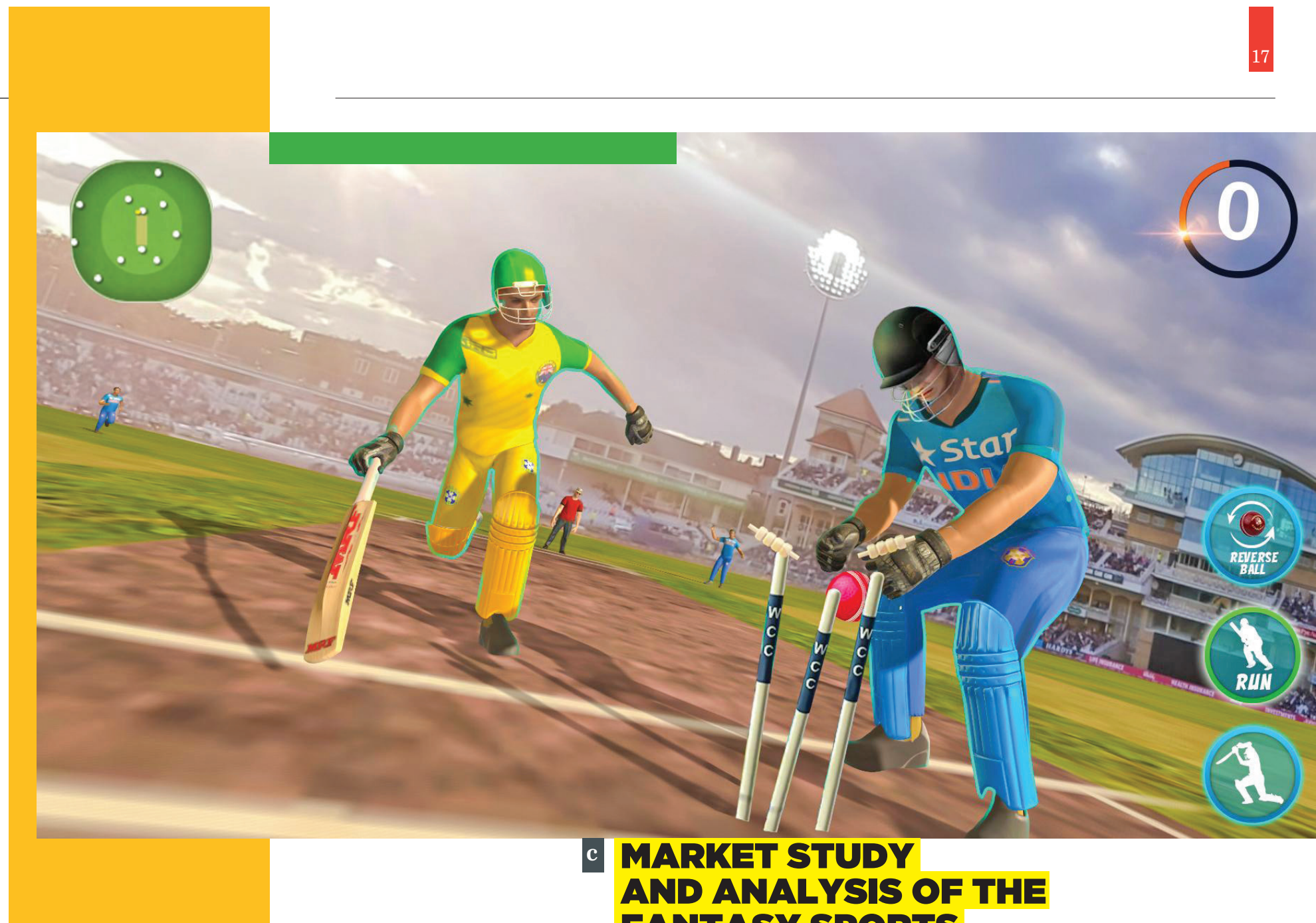


THIS TABLE ANALYSES VARIOUS...

NAME OF THE PLATFORM	SPORTS OFFERED	IS THERE A DAILY FANTASY OFFERING?	WHETHER WAGERING ON SINGLE GAME OR A PART OF SINGLE GAME OUTCOMES IS PERMITTED OR NOT
Dream11	Cricket, Football, Kabaddi, Baseball, Basketball, Hockey, Volleyball, Handball	Yes.	
	Not permitted.		
Mobile Premier League	Cricket, Football, Basketball	Yes.	Not Permitted.
Paytm First Games	Cricket, Kabaddi, Basketball, Football	Yes.	Not Permitted.
My11Circle	Cricket, Football	Yes.	Not Permitted.
11Wickets	Cricket, Football, Kabaddi, Basketball, Baseball	Yes.	Not Permitted.
TradeX	Cricket, Football	No.	Yes.
Probo	Cricket, Football	No.	Yes.
Sportiqo	Cricket	No.	Yes.
Exchange22	Cricket	Yes.	Yes.
Indiabet	Cricket, Football	Yes.	Yes.
HiScore	Cricket, Football, Basketball, Kabaddi.	Yes.	No.
TopRun	Cricket	Yes.	Yes.
Rario	Cricket	Yes.	No.
Striker	Cricket	Yes.	No.
MyTeam11	Cricket, Football, Basketball	Yes.	No.
Howzat	Cricket	Yes.	No.
Fantasy Akhada	Cricket, Football, Hockey, Kabaddi, Basketball	Yes.	Yes.
Cricket Exchange Fantasy	Cricket	Yes.	No.
FinalOver	Cricket	Yes.	No.
AIO Games Pro	Cricket	Yes.	No.
LeagueX: Fantasy Cricket Game	Cricket, Football	Yes.	No.
Veer11	Cricket	Yes.	No.
Real11	Cricket, Football, Kabaddi	Yes.	No.
CrickPe	Cricket	Yes.	No.
PlayCKC	Cricket, Football	Yes.	Yes.
BalleBaazi	Cricket, Football	Yes.	No.

Note

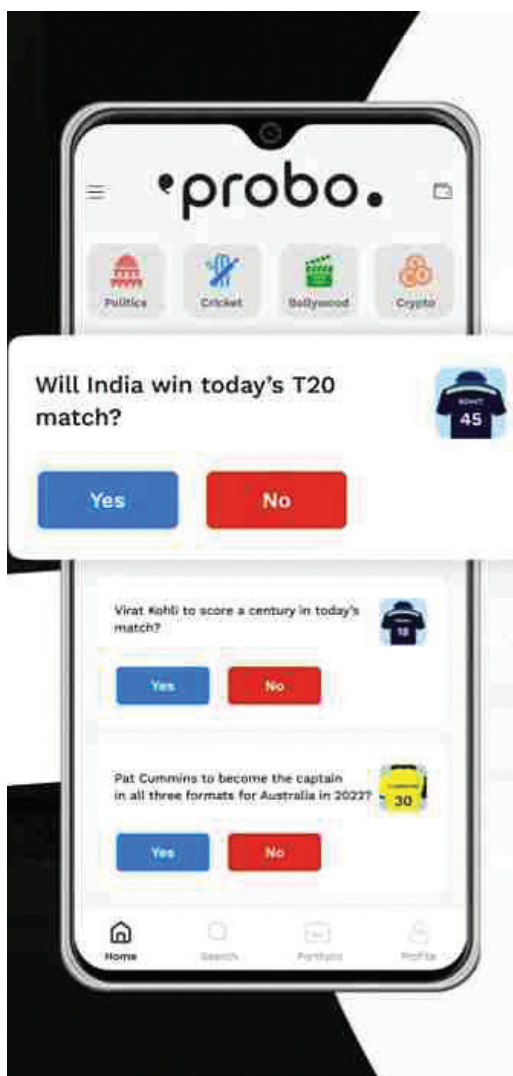
Please note that the information collected herein is a representation of our understanding based on a perusal of the above-listed platforms. The data collected is updated as of 17.06.2023.



c MARKET STUDY AND ANALYSIS OF THE FANTASY SPORTS ENVIRONMENT

While pure Daily Fantasy Games in the format deemed to require a dominance of skill continue to operate in the market, it is to be noted that there are a few platforms which have engaged in tweaks that directly or indirectly deviate from the guidelines laid down in legal precedents as laid down above. To reiterate in brief, the format for Fantasy Sports deemed acceptable as a Game of Skill by courts of law in India should have the following characteristics: i) the participant has to assess the worth of a player in the game in

comparison to all the alternatives available for selection for the same role, ii) the participants have to study the rules and regulations of the game while making selections and omissions from their teams, iii) unlike the circumstances in betting, a participant cannot make selections limited to one team, iv) the participant needs to apply thought and calculation in order to draft a team using the limited budget in credit points v) to be successful, a participant needs to study and apply factors like age, statistical trends including past



records against certain teams and at certain stadia, current form, injuries and other material factors that may contribute to a player's performance on a given event, vi) the participant is required to select a captain and a vice captain, whose points get multiplied x2 and x1.5 respectively and is crucial to the chances of a participant to score high in the game, and vii) the participant has to interact with the platform on a regular basis to monitor the scores of the drafted team and make changes if there is a window to do so in the particular event.

Assessing the above-listed

platforms, it becomes clear that there is considerable deviation from the proposed format on various instances. While a majority of the operators listed in the table adhere to the standards laid down by courts of law with respect to the operability of Fantasy Sports, entities like TradeX, Probo, Sportiqo, and Exchange22 form leading operators who deviate substantially from the same while continuing to offer games under the wider umbrella of Games of Skill associated with Fantasy Sports.

TradeX and Probo for instance, offer participants the opportunity to invest in the outcomes in a manner similar to staking in prediction of a sport and provide them with the option of trading such outcomes in a manner comparable to that of a stock exchange. TradeX provides users with the opportunity to stake on an outcome, the price of which shall be determined by the activity of competing users and their choices at such stage where they chose to enter the contest. The event expires upon conclusion of the real-life event on which the users are "opining" on. Probo provides a more advanced version of what is offered by TradeX in that they provide users with an opportunity to invest in opinions based on various factors that may take place during the duration of a single game. For eg: For the ongoing ICC Test Championship game certain offers available for investment on Probo for a user are – "India to score 164 or more runs at the end of 44 overs vs. Australia? Yes, or No?", "India to win the Final vs Australia, Yes, or no?", "Who will score more

fours in the match? Australia or India?" etc. Probo therefore is an example of a platform where single game outcomes are also permitted to be staked on while also incorporating variations of games where predictions in sports is involved. These platforms do not restrict their offerings to merely sports either, therefore implying the possibility of participants staking on the outcomes of events which may be further difficult to predict, in comparison to sports, wherein there are certain definitive factors which a person with sufficient knowledge can bank on to arrive at a decision.

Sportiqo and Exchange22 function as platforms which offer participants the chance to invest in the value of players based on their performances in events. While the basic premise aligns with Fantasy Sports in the sense that the users are required to utilise their knowledge and awareness of the sport to invest in players, whose performance affects the winnings that may be generated to said users, the fact remains that players may engage in the activity for the duration of a single game in a single outcome. It is also to be noted that a similar platform, Football Index, had created much furor in the gaming world after its rapid rise to popularity before it was ruled to be equivalent to gambling by the Gambling Commission of the United Kingdom .

The format offered by Indiabet is also important to note for consideration going ahead. The platform offers virtual games and simulations on which free wagers may be placed. Offering paid contests might not be something in practice now but if the model



adopted gains further traction, it might not be farfetched to suggest that a version of the same involving stakes isn't far away.

Various other formats which are offered that may be considered as deviations from the idea of traditionally recognised Fantasy Sports exist in the market. A local operator for instance, offers a variety wherein 10 pre-picked teams are made available to participants at the time they join a particular contest, and the players are to decide amongst the 10 pre-picked teams as to which team they shall go ahead with as their fantasy team for the relevant contest. Such a variant considerably reduces the skill element that was identified to be involved in traditional daily fantasy sports offerings and is closer to wagering on predictions in sport owing to the nature of the activity.

Another interesting case to study with respect to analysing the overall skill level involved in an offering pertains to the games offered by Rario, Striker, TopRun etc. Such operators have linked Non-Fungible

Tokens to their games as items purchasable in-game which may be attached to corresponding real-life players to enhance the scoring associated with such player. Such games therefore offer participants an opportunity to expend money on increasing their chances of winning, something that inherently means that there is a possibility to increase their chances of winning merely by spending more money than a competitor. This is comparable to an individual hedging losses in wagers by accounting for lesser external factors.

Certain platforms also appear to permit an "auto-pick" option, which lets participants rely on a system algorithm to make their team selection upon entering a contest. Provision of such an option defeats the purpose of establishing a set criterion that relies on the skill of the user to determine whether every player has relied on their skill to engage in the contest.

Mathematically analysing the data in the table above, it is shocking to note that over 25% of the games

surveyed offer participants which the option to predict single-game outcomes or singular outcomes pertaining to events of the game. Of the criterion laid down by courts of law, factors iii), iv), and vi), i.e., pertaining to the investment in selections from a single team, selection of captains and vice captains as differentials, and making selections based on a limited budget are not adhered to by the above listed operators while presenting their games to the public under a similar umbrella. The fact that some of these operators even have the backing of organizations like

Startup India, the Federation of Indian Chambers of Commerce and Industry, the Confederation of Indian Industry etc, leads to a pertinent question. If such operators which even make offerings in single game outcomes may operate under the protection of the law with the assistance of self-regulatory or industry bodies, is there anything logically preventing the operation of games that involve offerings associated with predictions in sport? After all, success in such platforms and predictions in sports tend to be reliant on the same factors

– the knowledge, adroitness and awareness of a user to the circumstances in which such a sporting event is being played out. Taking the above-listed information into consideration, we have also prepared a chart comparing some common characteristics of wagering on predictions in sport to some of the means employed by the above-mentioned fantasy operators to demonstrate deviations further. Matching the games to such characteristics poses an interesting mean of comparing the activities.

Principles of the Game common to Daily Fantasy Sports and Predictions in Sport	Platforms operating under such consideration.
Requirement of Skill, Adroitness, Knowledge and Historical Awareness of Players to wager on future results of games for winnings.	All the above-listed (barring Indiabet).
Possibility of wagering on an outcome that is more likely to result in a win than not. (option of less-risk wagers or limiting the risk on wagers)	Rario, Striker, TradeX, Probo, TopRun, Fantasy Akhada.
Wagering on multiple facets of a game that require considerable knowledge of the sport and the characteristics of the particular individuals/teams involved in such sport.	TradeX, Probo, TopRun, Fantasy Akhada, portiqo, Exchange22.

There clearly are similarities between the various games offered in the market under the garb of 'Daily Fantasy Sports' and wagering on predictions in sport. Considering how there is a definitive reliance on knowledge, awareness and reasoning to ultimately be successful in any of the contests, there certainly is a need to re-evaluate the existing treatment under law pertaining to offerings of wagering on predictions in sport in line with how 'Daily Fantasy Sports' attained

It is also to be understood that some extent of blame can be passed on to legislators for identifying 'Daily Fantasy Sports' as an extremely wide bracket for consideration towards legality, allowing merchants to exploit the legislation as presently structured by openly promoting their activities with merely a central premise even remotely associated with Fantasy Sports as Fantasy Sports to the wider, and rather oblivious public.



primary considerations based on comparisons with other legislations

IS THE ACTIVITY OF PREDICTION IN SPORTS TO BE GOVERNED BY STATES OR IS A CENTRAL LEGISLATION THE WAY TO GO?



India, as we are aware, is the most populous country in the world and has its 1.4 billion occupants spread across 28 States and 8 Union Territories with each region being substantially different culturally and linguistically. Division of subjects between the central and state lists and how the same is to be determined is therefore a democratic hurdle faced by the legislators. The same question extends to the governance of the gaming industry. Considering how 'Gaming' specifically has not been assigned to either the State List, the Central List or the Concurrent List, matters associated with the



same have been dealt with under the wider frame of 'Betting and Gambling', an activity designated to the individual States by the Constitution of India.

A combined reading of the judgment of the Hon'ble High Court of Karnataka in *All India Gaming Federation v. State of Karnataka* and the judgment of the Hon'ble Madras High Court in *Junglee Games India Private Limited v. State of Tamil Nadu* go on to suggest that the State's extent of governance with respect to "Betting and Gambling" should be limited to exempt games of skill. The judgment of the Hon'ble High Court of Karnataka, keeping in light, the judgment of the Madras High Court in *Junglee Games India Private Limited v. State of Tamil Nadu* and other judicial precedents, reasoned that: "The amended definition of 'gaming' excludes in so many words, 'a lottery or wagering or betting on horserace run on any race course' in a given circumstance. The Apex Court in *K.R.LAKSHMANAN supra* held that, horseracing is a 'game of mere skill' and therefore, it is 'neither gaming nor gambling'. If the legislative policy is to protect the games of skill from being treated as proscribed, the Amendment Act being unjustifiably selective in that suffers from a grave constitutional infirmity" and also observed, while adjudicating against the constitutional validity of the Karnataka Police (Amendment) Act, 2021, that "the amended definition of 'gaming' under Section 2(7) to the extent it does not admit the difference between skill games and chance games, is in direct contradiction to the amended Section 176 which intends to maintain such a difference. The very definition of 'gaming' as amended, suffers from the vice of overinclusiveness/over-broadness of the idea of gaming as enacted in the charging provisions

of the Act that are animated by CHAMARBAUGWALA Jurisprudence. The content of 'gaming' as capsuled under Section 2(7) thus bruises the legislative intent enacted in Section 176 ab inceptio and continued post-amendment, for protecting a class of citizens who plays the games of skill and therefore, fits into the text & context of this provision".

The relevant portions of the judgment of the Supreme Court of India in the *K R Lakshmanan* case that have also been relied on by the Hon'ble Madras High Court and the Hon'ble High Court of Karnataka pertaining to the legal status granted to 'wagering on Games of Skill' has been reproduced herein to read: "33. The expression 'gaming' in the two Acts has to be interpreted in the light of the law laid down by this Court in the two *Chamarbaugwala* cases, wherein it has been authoritatively held that a competition which substantially depends on skill is not gambling. Gaming is the act or practice of gambling on a game of chance. It is staking on chance where chance is the controlling factor. 'Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance. It would not include games of skill like horseracing. In any case, Section 49 of the Police Act and Section 11 of the Gaming Act specifically save the games of mere skill from the penal provisions of the two Acts. We, therefore, hold that wagering or betting on horseracing — a game of skill — does not come within the definition of 'gaming' under the two Acts.

34. Mr Parasaran has relied on the judgment of the House of Lords in *Attorney General v. Luncheon and Sports Club Ltd.* [1929 AC 400 : 1929 All ER Rep Ext 780], and the judgment of the Court of Appeal in *Tote Investors Ltd. v. Smoker* [(1967) 3 All ER 242 : (1967) 3 WLR 1239 : (1968) 1 QB 509], in support of the contention that dehors





Section 49 of the Police Act and Section 11 of the Gaming Act, there is no 'wagering' or 'betting' by a punter with the Club. According to him, a punter bets or wagers with the totalizator or the bookmaker and not with the Club. It is not necessary for us to go into this question. Even if there is wagering or betting with the Club it is on a game of mere skill and as such it would not be 'gaming' under the two Acts."

The Karnataka High Court, in its decision, also observed that "In a progressive society like ours, imposing an absolute embargo, by any yardstick appears to be too excessive a restriction. In such cases, a heavy burden rests on the State to justify such an extreme measure, as rightly contended by the petitioners. There is no material placed on record to demonstrate that State whilst enacting such an extreme measure, has considered

the feasibility of regulating wagering on games of skill. If the objective is to curb the menace of gambling, the State should prohibit activities which amount to gambling as such and not the games of skill which are distinct, in terms of content and produce. The State action suffers from the vice of paternalism since there is excessive restriction on the citizens freedom of contract. However, the ground of legislative populism does not avail against the plenary power of legislation."

From a perusal of the above, it is to be understood that various Courts of law have conformed to the idea that 'wagering or betting on games of mere skill' would not fall under the definition of 'Gaming' under the laws of India. This sparked further debate on the classification of games and the governance of the gaming industry in India.

However, with the lacunae

in how the industry is governed being laid bare for everyone to see, the pertinent question ponders large – Should gaming be regulated centrally, or should the states be granted the power to do the same?

A good first step towards approaching an opinion on the same would be to evaluate how countries with comparable size and diversity have governed the activity and whether the same has had any negative effects with respect to the operations of the activities in general across the country.

Merely to this extend, comparisons exist between India and the United States of America. However, the USA has opted for a model of governance wherein both Federal and State systems find a role with respect to Fantasy Sports and Sports Betting, which is not ideal in an Indian scenario going forward.



Regulation of Fantasy Sports and Sports Betting in the US



The United States of America may be considered as the epicentre of the booming fantasy sports culture which spread worldwide in the mid-2000s. And recognising the need to regulate the phenomenon which had taken over their country, a legislation was introduced in 2006, which was titled the 'Unlawful Internet Gambling Enforcement Act' or the UIGEA.

As per the provisions of the UIGEA, Fantasy sports games were to be treated distinctly under law from gambling or betting. The

relevant definition for a “Bet or Wager” is expanded in 31 U.S.C. § 5362(1) of the UIGEA to read as follows:

“(1) BET OR WAGER- The term “bet or wager”-

(E) **does not include** -

(ix) **participation in any fantasy or simulation sports game or educational game or contest in which (if the game or contest involves a team or teams) no fantasy or simulation sports team is based on the current membership of an actual team**

that is a member of an amateur or professional sports organization (as those terms are defined in section 3701 of title 28) and that meets the following conditions:

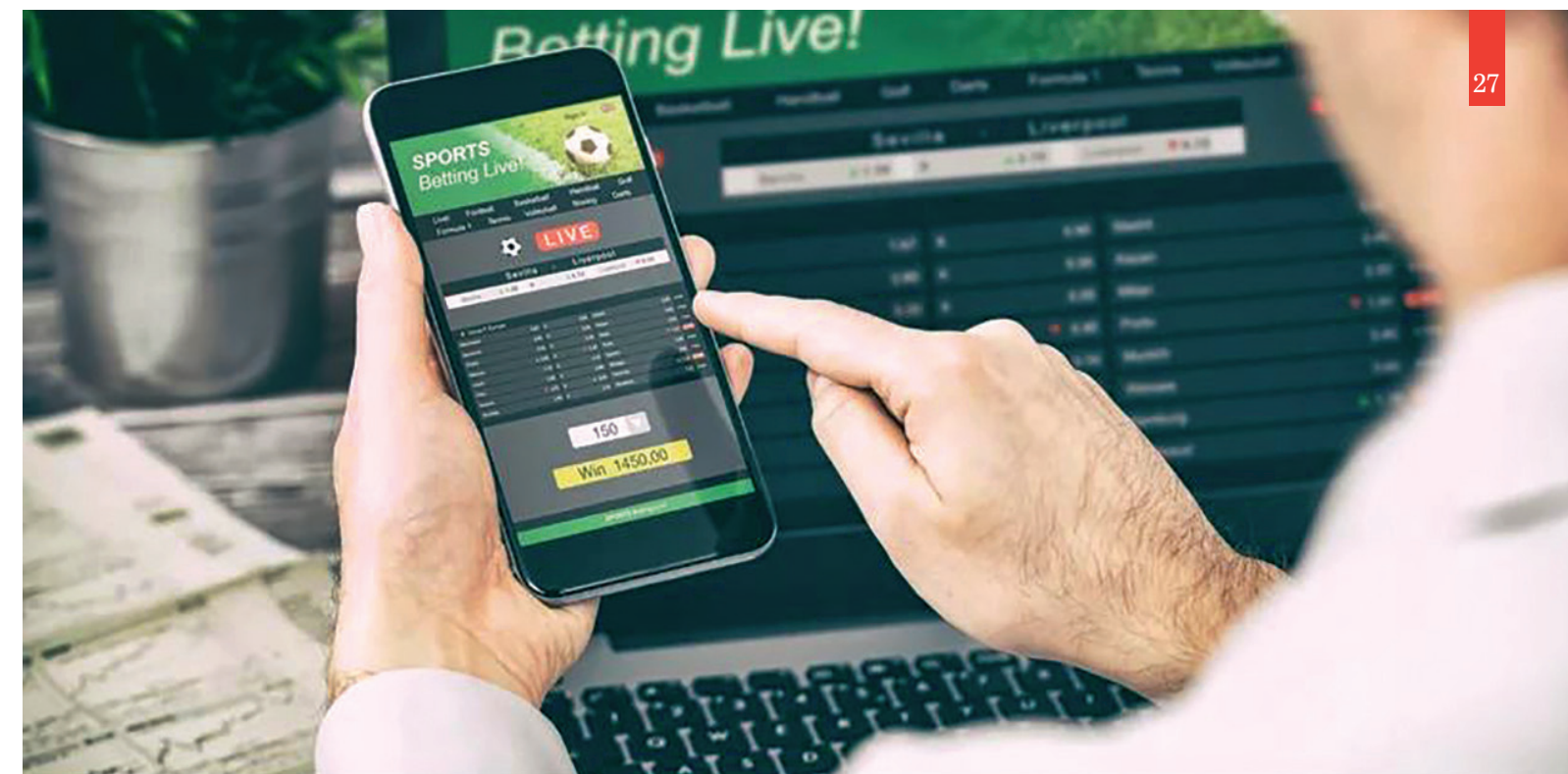
(I) *All prizes and awards offered to winning participants are established and made known to the participants in advance of the game or contest and their value is not determined by the number of participants or the amount of any fees paid by those participants.*

(II) *All winning outcomes reflect the relative knowledge and skill of the participants and are determined*

predominantly by accumulated statistical results of the performance of individuals (athletes in the case of sports events) in multiple real-world sporting or other events.

(III) *No winning outcome is based—*

(aa) *on the score, point-spread, or any performance or performances of any single real-world team or any combination of such teams; or*
(bb) *solely on any single performance of an individual athlete in any single real-world sporting or other event.*



The above definition for a ‘bet and wager’ and the exception granted for fantasy sports games lays bare the understanding adopted by the legislators in the USA that fantasy sports do involve a level of skill that isn’t commonly associated with general forms of ‘betting’ or ‘wagering’. It is also interesting to note that the principle adopted here wherein a winning outcome may not be based on the score, point-spread, or any performance or performances of any single real-world team or on any single performance of an individual athlete in any single real-world sporting or other event is comparable to the view taken by courts in India as recently as 2020 while setting fantasy sports apart from games of chance (see above).

However, while the Federal law still classifies Fantasy Sports as an activity distinct from ‘Betting’ or ‘Wagering’, States in the USA still have the final say regarding the operability of the games within their respective territorial limits. Further, in 2018, the Supreme Court overturned the federal ban on sports betting, allowing state governments to set

their own policies on the matter. Although it is now possible for sportsbooks to operate legally in the U.S., no legislation has been passed on a federal level legalizing the activity. Presently, 39 States and the District of Columbia have some form of sports betting legislation in place. Single-game sports betting is permitted in around 30 of these States and the District of Columbia .

At such a stage, one cannot ignore similarities in the development of jurisprudence in the USA to that of India. The Public Gambling Act, a la the UIGEA, acted as a Central Legislation to regulate the activity of wagering in sports and daily fantasy sports for instance. However, States did have a final say with respect to the implementation of provisions of the same to regulate gaming within their territorial limits. An order of the apex court considered the regulation of daily fantasy sports and wagering in sports subsequently in the United States and the position of law with respect to the activity was reversed. States however, continue to govern the activity.

In India, with the Ministry of Electronics and Information Technology (“MeitY”) assuming nodal power over regulation vide the IT Rules, it would appear that a ploy to centrally govern the industry as was undertaken by the Government of the USA is underway. However, subsequent clarifications made it clear that the subjects were under the final purview of the States. While Fantasy Sports has been classified as a ‘Game of Skill’, inevitable comparisons to wagering on sports and differential treatment under the eyes of the law has slowly gained mainstream attention and it is only a matter of time before a serious review of the scope of the activities is revisited by the Supreme Court, with an extension of the comparison with the jurisprudential development in the USA, a very likely possibility, under the circumstances in place – especially in light of the very comparable governance conundrum which the USA underwent.

It is important to note that sports betting is a permitted activity while other forms of gambling such as Casino-style

gambling are heavily regulated and restricted in operability. Such an approach is certainly worthy of consideration in India owing to the addictive tendencies associated with casino-style gambling and related activities while games involving prediction in sports, for instance, are to be considered as an activity that requires considerably more skill and needs to be regulated and not treated as a prohibited activity along the wide bracket of general 'betting' or 'wagering'.

Another interesting facet to look at here is with respect to the revenue generation capacity and how the same was aided by the introduction of a favourable legislation. According to Forbes, within the first 10 months of 2022, Americans wagered \$73 billion via legal modes which marked a 70% uptick from 2021 with more platforms and States opening up to operations in the front of sports betting. The same resulted in the generation of \$1.3 billion by the Federal government. In comparison, in 2016, it was estimated that the illegal betting market in India was worth \$150 billion annually, a sum that is more than double of what was generated by the legal market in the USA. If the same rates of revenue generation apply, that would suggest a loss of over \$2 billion in possible revenues generated by the Government of India.

A comparable demographic for application of a system which incorporates both a federal and state level of governance with respect to the subject could not be identified. However, various facets from legislations across the globe have been incorporated hereinafter, parts of which should ideally be inculcated into the Indian regime. Such changes could lead to improvement in increasing the ease of doing

business in the gaming sector in India while also ensuring that the grey market or other illicit modes are cracked down upon. An overhaul of the existing system with a base that might be adopted from the USA is a prospect to build on.

It is also to be noted that a central legislation to govern the topic of 'Online Gaming' is certainly the preferred line of governance and remains our suggestion with respect to how the industry should be governed in India. While similarities to jurisprudential development and the demography exist, and the trends seem to align, ideally a central legislation is what is sought for ease of governance and ease of doing business in the industry in India.

b. How have other countries legislated on the topic of fantasy sports and prediction in sports?

A basic distinction that may be relied on to separate how certain countries have evaluated the subject and incorporated it into legislative practice is whether or not there is a licensing regime that is in place in the particular country. Considering how in India, as things stand, Sikkim, Goa and Nagaland are the only states which have implemented a licensing regime, this report analyses other legislations that have put in a licensing regime in practice to regulate the gaming industry and to understand the rationale behind classifications and modes of licensing adopted to identify a model suitable to the Indian scenario.

Here are a few prominent legislations with respect to fantasy sports and prediction in sports and provisions from the same which may be adapted to the Indian scenario:

Germany



Germany introduced an Interstate Treaty on Gambling in 2021, which brought forth a licensing regime for sports betting in the country. The German Criminal Code penalises the operation and advertising operation of games of chance without a license. Betting or wagering on horse racing was exempt (as is the practice in India presently) and does not require a license as per the current legislation, however, any other form of betting or wagering in sport requires a license which shall be granted by the newly formed Joint Gambling Authority in Saxony-Anhalt. Licenses are required by both operators and anyone intending to set up betting-shops in Germany. Licenses for such betting-shops shall be provided by the locally responsible regulator. It is to be noted that only 'fixed odds betting' is licensable for sports in Germany. Bets on spreads are prohibited.

With respect to laying down distinctions between games of skill and games of chance and the legality of fantasy sports in comparison to sports

betting, it is to be observed that Germany relies on the 'specific circumstances' and 'mechanics of a game' as the basis of determination of the nature of a game with respect to the degree of skill required to play the same. They have however, refused to generalise all fantasy sports and shall declare only those games which shall individually be deemed to be games of skill to be operational.

Such a practice may be introduced in India, considering how there are various operators functioning in the 'Fantasy Sports' market offering products that tend to go beyond the recognised format of a "Skill-based" Fantasy Game. Licensing games that stretch beyond conventional Fantasy Sports or involve predictions in sport by an authority that evaluates the offerings by such companies or engaging Self-Regulatory Bodies in the process to aid the determination could help regulate the broad section of games that involve staking on the outcomes of real-time sporting events.



Denmark



The Danish Gambling Authority (“DGA”), (also called Spillemyndigheden) is an executive authority under the Danish Ministry of Taxation. The Authority is responsible for ensuring a well-regulated gambling market in Denmark where players are protected against unfair and illegal gambling. Licensed games in Denmark are required to have games certified in accordance with the Gambling Act.

In Chapter 2 of the Gambling Act, betting is defined as activities where a participant has a chance to win a prize and where bets are placed on the outcome of a future event or the occurrence of a future event. Therefore, there is no distinction between any mode in which a ‘bet’ or ‘wager’ may be placed or what event such a bet is placed on. The relevant legislation states that “Betting are games where the participants try to predict the result of an event. Not only betting on sporting events are covered by the term. A wager on who becomes the next prime minister is also considered betting”. Betting under the Gambling Act is covered only if the participants pay a stake or if the payment provides the participant with a chance to win any prize.

Betting with stakes and prizes must only be provided with a license issued by the Danish Gambling Authority. Betting license and online casino license are the two different

types of online gambling license provided in Denmark. Games that are permitted without a license in Denmark are: (1) Games without a stake, but with the opportunity of winnings, (2) Games offered for stakes without the opportunity of winnings, and (3) Games offered for stakes with a chance of winning if there is no element of chance (e.g.: Chess, Quiz games).

Fantasy Betting as per Danish law pertains to events where payment to back a ‘league’ or ‘portfolio’ selection in relation to sports or shares. Fantasy Sports are therefore understood to be classified as a ‘Betting’ activity and therefore permissible for operation under a license issued by the Danish Gambling Authority. Denmark recognizes the fact that Fantasy Sports, in a manner comparable to that of games that offer predictions in sport, relies on future outcomes whereas the two activities are treated as almost polar opposites in Indian law. Such a conservative approach as taken by India is not ideal for the development of the multi-billion industry that gaming is.

While a drastic step such as permitting betting on any future outcome including elections with a license as provided in Denmark is not recommended, recognizing the similarities that exist between Fantasy Sports and games that may involve predictions in sport is necessary.



Betting are games where the participants try to predict the result of an event. Not only betting on sporting events are covered by the term. A wager on who becomes the next prime minister is also considered betting



In Australia, fantasy sports that are free to enter are not considered gambling and therefore, not prohibited by gambling laws. Daily Fantasy Sports as a concept was introduced in 2016, which also requires payment to enter where winners receive cash payment.

Each Australian state and territory have their own gambling- related laws and regulators that aim to ensure a viable and transparent industry. There is no single statute which regulates gambling activities in Australia. The Interactive Gambling Act 2001 (IGA) may also apply at a federal level on account of fantasy sports deeply engaged in via online services. The relevant state or territorial government issue licenses to conduct gambling.

The IGA prohibits certain interactive gambling services from being provided to end-users in Australia. Under the IGA, one of the ways that “gambling service” is defined is as a service for the conduct of a game where:

- the game is a game of chance or of mixed chance and skill;
- played for money (or anything else of value); and
- where the customer gives consideration (i.e., pays) to play the game.

Australia



On a general basis, several fantasy sports competitions would appear to fall within this definition. Although Section 8A provides for a number of exceptions including a service for betting on a sporting event or series of sporting events. Not much clarity exists thus far with respect to fantasy sports falling under this exception rooting from the undermentioned reasons:

- Question of fantasy sports involving the placing of bets, as against a game of mixed chance and skill. DFS more closely resembles “betting on” a sporting event.
- The success of participant’s fantasy team is determined by the performance of individual players relative to that of other players and not necessarily by reference to the outcome of the sporting event itself. There is also the question of whether the measures used to ascertain a player’s rating a fantasy sports competition are necessarily based on “contingencies” in the sporting event.

Fantasy sports however, that require people to bet money are

regulated as a form of sports betting. In order to offer fantasy sports competitions, the operator is required to receive approval from the sporting event’s governing body in addition to an information sharing agreement which further solidifies the bond between fantasy sports operators and sports governing bodies. In lieu of the same, the sports governing bodies may charge a fee. Such a provision may be incorporated to the Indian legislation with respect to both Fantasy Sports and games involving predictions in sport as this could act as a factor that links the entire sporting community while also providing added legitimacy to the operations through a direct affiliation to the leagues.

Fantasy sports vendors in Australia are principally subject to the gambling regulatory framework in the state and territory they choose to register. Registration in one state or territory would allow a vendor to offer its services to residents in other states and territories as well. Betfair Pty Limited v Western Australia confirmed the high constitutional hurdle that must be overcome if a state or territory were to seek to prohibit its residents from engaging in fantasy sports provided by a

vendor registered in another Australian state or territory.

Another interesting proposition offered by the Australian legislation is with respect to the incorporation of a concept of games that involve ‘mixed chance and skill’. The reference to a game of mixed chance and skill is not intended to include games that would generally be regarded to be games of skill even though it could be argued that the outcome of the game might be affected by chance. For example, an on-line competition on knowledge of Australian history should be regarded as a game of skill even though it could be argued that there is an element of chance in relation to the questions that are asked. Similarly, an interactive television-based quiz game which requires competitors to answer general knowledge questions will not be covered as it does not involve mixed chance and skill. It should be regarded as a game of skill. Providing for a classification of such ilk in Indian legislation can act as a middle ground to the debate surrounding the classification of activities such as Fantasy Sports or games involving predictions in sports, i.e., activities that find themselves in a debate regarding their status as pure games of skill or chance.



The Netherlands Gaming Authority had published a Guide on Assessing Games of Chance which contains a particular section on how the Gaming Authority can determine whether a game qualifies as a game of chance within the meaning of the Betting and Gaming Act (“BGA”). The Guide deals with the aspect of predominant influence which is an essential element of the definition of game of chance under Article 1(1) (a), Betting and Gaming Act.

The guide lays down the following in this regard- “For a game to qualify as a game of skill, the presence of a certain degree of influence on the selection of the winners is insufficient; this influence must be predominant. This is the case when the influence factor is significant in relation to the chance factor. This can be seen as a tug-of-war between chance and influence.”

Further, the Gaming Authority divides the game into two categories for this determination.

- Games in which participants play against the house (jeux de contrepartie);
- Games in which participants play against each other (jeux de cercle).

Licenses are provided according to the classification of a game in each of the above-mentioned categories. To provide clarity on classification, such a distinguishing factor is also worth a look in, from an Indian perspective to evaluate the risks associated with the provision of certain formats of games. For instance, games such as Dream11 allow the users an opportunity to play against each other while an opinion exchange only indirectly provides for the same.





Belgium



s per the provisions of Article 2 (1) of the Federal Act of 7th May 1999 regarding games of chance, wagers and protection of the players, 'Games of chance' involve a player committing a stake of any kind which can be lost to other players or to the organisers of the game or a prize can be gained. Chance must play some role in determining the winner or apportioning the gain and must:

- Be a game;
- Involve a stake of any kind;
- Result in a loss or a gain;
- Involve at least a minimal degree of chance in the outcome.

Games completely free to play are not considered to be games of chance under the Gaming Act. Additionally, the Gaming Act excludes certain games from its scope of application (e.g., sports games and games where the player can only win up to five additional plays (free of charge)). The Gaming Act explicitly states that it does not apply to lotteries.

In Belgium, it is prohibited to organise wagers on events or activities which are contrary to public order or morality, whose outcome is known, where most of the participants are minors and where the uncertain act has already occurred.

Bets can be prohibited by the Gaming Commission in the following two cases:

- If the fairness of the event on which a bet is organised cannot be guaranteed;
- where it considers that specific bets

are susceptible to fraud.

In Belgium most of the provisions are contained in the Gambling Act of 7th May, 1999 on Games of Chance, Betting, Gaming Establishments and the Protection of Players which has been further amended in 2010 and 2019.

The Act contains the definitions of several key terms under Article 2. The same are mentioned hereunder-

1. Game of Chance [Article 2 (1)]:

“any game by which a stake of any kind is committed, the consequence of which is either loss of the stake by at least one of the players or a gain of any kind in favor of at least one of the players, or organizers of the game and in which chance is a factor, albeit ancillary, for the conduct of the game, determination of the winner or fixing of the gain;”

2. Bet [Article 2 (5)]:

“game of chance where each player makes a stake and that results in gain or loss which is not dependent on the acts of the player but on the occurrence of uncertain events that occur without intervention of the players;”

3. Mutual Betting [Article 2 (6)]:

“a bet where an organizer acts as intermediary between the different players who play against each other, where the stakes are merged and distributed among the winners, after deduction of a percentage meant for paying the taxes on games and bets, to cover the organization costs and for allocating a gain;”

4. Fixed Odds Betting [Article 2 (7)]:

“fixed-odds betting: a bet where



the player bets on the result of a particular event and where the amount of the winnings is determined depending on certain fixed or conventional odds and where the organizer is personally liable for paying the amount of the gain to the players;”

Further, the Act under Article 3 also lays down what are not games of chance within the meaning of the Act.

- Article 3 (1): the practicing of sports
- Article 3 (2): Games offering the player or gambler the right to continue the game free of charge up to five times.
- Article 3 (3): card or board games played outside gaming establishments Class I and II, with the exception of card or board games, played in Class III gaming establishments that use a machine, as well as games operated in amusement parks or by fairground operators at fairs, trade fairs,

etc. and on similar occasions, and games organized occasionally and no more than four times a year by a local association on the occasion of a particular event or by a de facto association with a social or charitable purpose, or by a non-profit association for the benefit of a social or charitable work, and only requiring a very limited stake and which can only provide the player or gambler with a material gain of low value;

Pursuant to the amendment in 2010 games of chance allowed under the Act can be offered online provided that the land-based operator acquires an additional license for its online activities that is to be granted by the Belgium Gaming Commission. Therefore, all forms of betting and gambling both online as well as land based require a license.
Legal games of chance
The Belgium Gaming

Commission provides for various places where one can partake in legal games of chance or betting. These are mainly:

- casinos: online and offline;
- slot machine arcades: online and offline;
- cafés: offline;
- betting shops: online and offline;
- newsagents: offline;
- racing associations: offline.

The Gaming Commission (GC) launched the Always Play Legally logo to inform players. This logo may only be used by legal gambling operators licensed by the GC.

The Belgian Gaming Commission in March 2022 published a “preliminary opinion” with recommendations that the government should take into account when regulating online games of chance. A defining characteristic of Belgian gambling policy is that there must be a certain degree of parallelism between the regulation of land-based and online games of chance.

The Gaming Act as it stands, only permits operators who are licensed to operate in the “real world” (and hold a principal A, B or F1 licence) to obtain a licence to offer bets and games of chance online (an additional A+, B+ or F1+ online licence) – and, in principle, an online licence holder may offer only the same games of chance that are offered offline.

Of note in the March 2022 opinion is the Gaming Commission’s suggestion that the “offline regulations” should not be blindly made applicable to online games of chance, as they may be outdated or simply unsuitable for online games of chance.

- Federal Act of 31 December 1851 regarding lotteries (Lotteries Act).
- Federal Act of 19 April 2002 to rationalise the functioning and the management of the National Lottery (National Lottery Act).

The (Belgian) Gaming Commission is the most important body regulating gambling. It has, in essence, a threefold competence:

- Advisory competence: On request from Parliament or a respective minister, the Gaming Commission provides advice about legislative or regulatory issues within the scope of the Gaming Act.
- Granting licences: The Gaming Commission is responsible for granting licences for certain games of chance.
- Supervisory competence: The Gaming Commission is responsible for monitoring compliance with the Gaming Act (and its implementing decrees) and controlling the licences that have been granted.

Prohibitions:

Art. 4. § 1. It is prohibited for anyone to operate in any form, in any place and in any direct or indirect manner whatsoever, a game of chance or gaming establishment, without a licence obtained in advance from the Gaming Commission as governed by the present Act and by the exceptions as governed by the Act.

§ 2. It is prohibited for anyone to participate in a game of chance, to facilitate the operation of a game of chance or gaming establishment, to advertise a game of chance or a gaming establishment, or recruit players for a game of chance or gaming establishment when the person involved knows that it concerns the operation of a game of chance or a gaming establishment which is not licensed in accordance with this Act.

§ 3. It is prohibited for anyone to participate in any game of chance whatsoever if the person involved may have a direct influence on the result.

Belgium has one of the most comprehensive legislations with regards to governing gaming and there are provisions that address concerns associated with morality and legitimacy of operations. The blueprint provided by Belgium sheds light into how a paternalistic approach may be combined with a liberalised view to permit the operations of the gaming industry while ensuring that the vices generally associated with the industry are also addressed. A holistic approach a la Belgium should be the aim of legislators in the long run after observing any pitfalls that might flow from regulating Fantasy Sports and games offering predictions in sports.



Online gambling in Ireland is a multi-million industry and players are enabled to gamble on sports, casino games, poker, bingo, lotteries and more on licensed and legal gambling websites. Currently, gambling on licensed offshore betting sites as well as online casinos and domestically licensed sites located in Ireland are permissible.

Online gambling is considered legal in Ireland provided gambling is conducted on websites holding a valid remote gambling license from a reputed authority such as the UKGC i.e., UK Gambling Commission. Currently, the online gambling industry in Ireland is regulated by three authorities, namely: The Revenue Commissioners, the National Lottery and the Department of Justice and Equality.

Betting on horse racing through the internet is legal and so are sports such as football pursuant to

the implementation of the Betting (Amendment) Act in 2015. A bookmaker must obtain the relevant license from the Irish Revenue Commissioners to facilitate such bets.

Section 1 of the Betting Act of 1931 provides that the word "bet" includes a wager, and that cognate words must be construed accordingly. The scope of this definition has been established by a relatively small body of case law. The Betting Act 1931 has been amended by the Betting (Amendment) Act 2015.

Gaming is defined as "playing a game (whether of skill or chance or partly of skill and partly of chance) for stakes hazarded by the players" and is governed by the Gaming and Lotteries Acts 1956-2029 which prohibits gaming unless a gaming license or permit is obtained.

A "stake" is defined as any payment for the right to take part in a game or any other form of payment required to be made as a condition of taking part in the game but does not include a

payment made solely for facilities provided for the playing of the game (Section 2, Gaming and Lotteries Act).

Although the Gaming and Lotteries Act does not distinguish between land-based and online gaming, in practice, the new licensing and permit regime is only available for land-based gaming activities. The Betting Act does not define the act of "betting", except to say that it includes activities such as wagering. Therefore, Sports betting is treated in the same way as non-sports betting in Irish law.

At present, residents are able to enjoy and participate in online casinos, sports betting, daily fantasy, lotteries, and online poker. DFS, i.e., Daily Fantasy Sports are among the most popular forms of gambling in Ireland and the local and offshore Daily Fantasy sites have been secured the right to operate legally in Ireland provided a license is obtained from the corresponding authorities.

In Ireland, the Betting Act was amended in 2015 which extends the licensing regime to all bookmakers and intermediaries who accept remote bets from Irish customers. Thus, it brought remote bookmakers (e.g., Internet and Mobile betting providers) and intermediaries (e.g., Betting Exchanges) within the scope of existing licensing regime which earlier applied to physical betting shops.

The 2015 Amendment also incorporated certain important definitions into the Act in this regard, which are as follows-

1. 'Remote Betting Intermediary' means a person who, in the course of business, provides

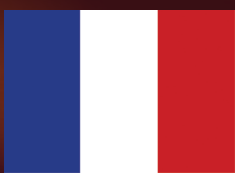
facilities that enable persons to make bets with other persons (other than the first-mentioned person) by remote means;

2. 'Remote Bookmaker' means a person who carries on the business of bookmaker by remote means;
3. 'Remote bookmaking operation' means the business or activities of a remote betting intermediary or remote bookmaker;
4. 'Remote means' means, in relation to a communication, any electronic means, and includes—
 - (a) The internet
 - (b) Telephone and
 - (c) Telegraphy (whether or not wireless telegraphy)

The Amendment has also introduced Section 7B which lays down provisions pertaining to Remote Bookmakers License and Section 7C which lays down provisions pertaining to Remote Betting Intermediary License.



France



The Code de la sécurité intérieure (hereinafter CSI) defines gambling as 'any operation made available to the public, regardless of its designation, for the purpose of causing the hope of a gain whose realisation depends, even partially, on chance and in consideration for which the operator requires a financial contribution from participants'.

Therefore, a prohibited gambling offer is regarded as any game:

1. that is offered to the public;
2. that presents a chance of gain for the players;
3. whose outcome partially results from chance; and
4. that requires a financial contribution from the player, regardless of the actual designation and nature of the game, and whether a later reimbursement of the financial contribution is possible or not.

Fantasy sports is not part of dedicated list of sports events on which operators are authorised to organise bets. Instead, they are categorised as "lotteries" under Law of May 21, 18368 (the French Internal Security Code).



Section 10 of the CSI defines online gambling as follows:

1. Online gambling and betting means gambling and betting whose commitment takes place exclusively via an online public communication service. Does not constitute an online game or bet the game or the bet recorded by means of terminals used exclusively or essentially for the offer of games or the taking of bets and made available to players in public places or places private open to the public;
2. An online gaming or betting operator is any person who, on a regular basis, offers online gaming or betting services to the public involving stakes in monetary value and the terms of which are defined by a regulation constituting an a membership contract for the game subject to the
3. An online player or bettor means any person who accepts a gaming membership contract offered by an online gaming or betting operator. Any amount committed by a player, including that resulting from the rollover of a winning, constitutes a bet;
4. An online player account means the account assigned to each player by an online gaming or betting operator for one or more games. It traces the stakes and winnings related to games and bets, the financial movements related to them as well as the balance of the player's assets with the operator.

Section 12 of the law deals with sports bets and lays down the following:

- I. Notwithstanding Articles L. 320-1 and L. 324-1 of the Internal Security Code, any person holding the authorization

provided for in Article 21 of this law and the company holding exclusive rights mentioned to Article 137 of Law No. 2019-486 of May 22, 2019 relating to the growth and transformation of companies as an online sports betting operator may organize, under the conditions provided for by this Law, the taking such bets. The list of competitions or sporting events on which sports betting is authorized in whole or in part is set by the National Gaming Authority with regard to the risks of manipulation that the competitions or sporting events present and according to the procedures defined by regulation,

- II. The types of support results for bets as well as the corresponding game phases are set, for each sport, by the National Gaming Authority with regard to the risks of manipulation they present and according to procedures defined by regulation, distinguishing where applicable between bets under exclusive rights and online bets.
- III. The rules governing the taking of bets in the mutual form do not preclude the use, by betting operators authorized pursuant to Article 21, of mechanisms for matching winnings, provided that this practice remains ad hoc and does not have the effect of distorting the mutual nature of the bets.
- IV. Only the organization and taking of online sports bets in the form of mutual or odds within the meaning of the second and third paragraphs of I of Article L. 322-18 of the Internal Security Code are authorized.

- V. The president of the National Gaming Authority may, if there are serious and concordant indications of manipulation of a competition or sporting event

registered on the list defined in I of this article, prohibit, for a period that it determines, any wager on it. The organizer of the competition or sporting event can seize it for this purpose.

The National Gambling Authority (ANJ), referred to in the clause above, was created by virtue of Ordinance No. 2019-1015 of 2 October 2019. It is an independent administrative authority that has been set up with the object, in particular, of issuing approvals to online betting operators, subject to compliance with binding specifications and it also decides which sports competitions may be subject to betting and the types of bets that are authorised.

The ANJ has clarified on its website that sports betting is permitted in the form of pari-mutuel and fixed-odds betting. On the online medium, they can be taken live (or live betting), that is to say on a competition in progress. The maximum proportion of the amounts paid on average to players for online sports betting is capped at 85%, and at 76.5% for sports betting at points of sale by virtue of Decree No. 2019-2061. After having consulted the delegated sports federations concerned and, where applicable, the minister in charge of sports, the ANJ College decides and modifies the list of sports events and types of results that may be the subject of bets.

Assigning responsibilities for routine evaluation of the needs of the industry and constant updation of the legislation to a dedicated body is therefore a consideration in practice in France that might be borrowed to an Indian context. States may have individual bodies for such a function, subject to the control or supervision of a national body for the same.



Italy

G

ambling under Article 721 of the Penal Code is defined as “those games in which the purpose of profit occurs and the win or loss is entirely or almost entirely random” and gambling locations “the places of conference intended for gambling, even if private, and even if the purpose of the game is disguised in any form”

The Legislative Decree n. 496/1948, establishes in Article 1 that “The organization and exercise of skill games and prediction competitions,

for which a reward of any kind is paid and for whose participation payment of a cash stake is required, are reserved to the State” and that “the organization and exercise of the activities referred to in the previous article are entrusted to the Ministry of Finance, which can carry out the management either directly, or through natural or legal person, which give an adequate guarantee of suitability” in Article 2.

The Decree of the President of the Republic (DRP) no. 33/2002,

established that “the functions of the State in gaming and betting competitions and the management of the related revenues are exercised by the Ministry of Economy and Finance through the Autonomous Administration of State Monopolies” (A.A.M.S.) incorporated with Law n. 135/2012 into the Customs and Monopolies Agency/A.D.M.), which is also the guarantor of the legality and safety of Amusement Machines with or without cash prizes (regulated by art.110 TULPS)

Article 1(3) (o) of Decree 666/2011 defines a skill game as “a game in which the results that determine the payout depends on the player, predominantly with the element of chance”.

The said Decree states that a card game organised in the form of tournament would be considered a game of skill. Keeping in view the current mannerism with respect to regulation of participants and a reading of the above mentioned provisions, it is to be understood that the ‘Agenzia delle Dogane e dei Monopoli Piazza Mastai’ (“A.D.M”) would categorize fantasy sports as a skill-based game because the same involves statistical knowledge and tournament style competition. However, an extension of the same would mean that games involving predictions in sports should also be treated likewise.

Further, Article 3 of Finance Law 1996 states that “The organization and exercise of totalizator and fixed odds bets reserved for the Italian National Olympic Committee (CONI) on sports competitions organized or carried out under its control can be entrusted in concession to individuals, companies and other entities that offer adequate guarantees”, and the consequent Decree of the Ministry of Finance

no. 174/1998 (which entered into force on 20/6/1998) contained “rules for the organization and exercise of totalizator and fixed odds bets on sports competitions organized by CONI”;

Additionally, the Italian Legislative Decree No. 79 of 1999, also known as the “Bersani Decree” exposed the horse racing and sports betting market to new national and foreign operators while expanding on a consistent basis the number of stakeholders with the provision of a structured network of sales points. This exercise was opened to all operators having certain reliability requirements and introduced a new type of games, i.e., the Skill Games defined as “remote games with cash winnings, in which the result depends, to a greater extent than the random element, on the skill of the players”. Few examples of such skill-based games are Draughts, Chess, Bridge, Poker, Texas Hold’Em, etc.). The same can only be played on online sites managed by concessionaires authorized by A.D.M.

Law no. 88/2009 contains provisions on online gaming and betting. They are:

- Fixed odds and totalizator bets on sports events, including simulated ones, including those relating to horses, as well as on other events;
- Competitions with sports and horse racing predictions;
- National horse racing games
- Games of skill;
- Fixed odds bets with direct interaction between players;
- Online Bingo;
- National totaliser number games;
- Instant and deferred lotteries

To carry out an activity in the gaming and betting sector as listed above, one would have

to obtain the relative concession by participating in the call for tenders prepared by the A.D.M.

Games of Skill are not directly defined under Italian law. However it is mentioned in the Rules Governing Games of Skill Remotely Played with Cash Prizes issued by the Ministry of Economy and Finance on 17th September, 2007. Therefore, the definitions of Games of Chance and Fantasy Sports are not explicitly mentioned under Italian law.

The ‘Rules governing games of skill played remotely with cash prizes’ (“Rules”) by the Ministry of the Economy and Finance, contains the following in its objective in Article 1: “This decree regulates the remote playing of games of skill with cash prizes in which the results depends to a large extent, allowing for the element of chance, on the skill of the players.”

Article 14 of the Rules contains the elements of the Plan of the Game of Skill which shall detail certain details of the game such as name of the game of skill, rules for determining and allocating the winnings derived out of gameplay, the rules which regulate the participation of players in competitions, in relation to the level of skill, and those regulating solo playing, defining the levels for judging the winnings. Such factors are therefore accounted for while determining the legality and operability of games in Italy.

United Kingdom




Gaming, betting and lotteries in the United Kingdom are regulated by the Gambling Commission of Great Britain as per the current legislation, i.e., the Gambling Act 2005 (GA), which defines these three forms of regulated gambling. "Betting" as is understood largely to be the staking of money or other value on the outcome of a doubtful issue.

"Betting" as defined under Section 9(1) of the Gambling Act 2005 provides what constitutes as a bet: "making or accepting a bet on:

- a. The outcome of a race, competition or other event or process;
- b. The likelihood of anything occurring or not occurring; or
- c. Whether anything is or is not true."

Gaming is the playing of a game (being a game of chance or game that combines skill and chance) for a prize. With respect to the issue of skill or chance, the amount of chance required to fulfil the test is not defined. Therefore, the determination or identification of any game to be skill based or chance based, is of the discretion of the courts.

There is no formal de minimis level, and neither a 'balancing act' to see which of the two factors predominates in the outcome. Hence, any material amount of chance in the game will satisfy the definition. However, the mere presence of chance in an otherwise skilful activity is not considered to have the necessary impact on the result and are discounted.

Section 11 of the Gambling Act 2005 states:

(1) "For the purposes of section 9(1) a person makes a bet (despite the fact that he does not deposit a stake in the normal way of betting) if—

- a. he participates in an arrangement in the course of which participants are required to guess any of the matters specified in section 9(1)(a) to (c),
- b. he is required to pay to participate, and
- c. if his guess is accurate, or more accurate than other guesses, he is to—
 - (i) win a prize, or
 - (ii) enter a class among whom one or more prizes are to be allocated (whether or not wholly by chance).

(2) In subsection (1) a reference to guessing includes a reference to predicting using skill or judgment."

UK Government's Explanatory Notes to the above cited Section 11 of the Act seeks to make it clear that paid-for prediction competitions, such as fantasy football, will be regulated as betting products in Great Britain rather than prize competitions by stipulating that:

"Schemes purporting to be prize competitions will fall within

the definition of betting in this Part, even though they may not involve the deposit of a stake in the way normal to betting, if they satisfy specified conditions. One of the conditions is a requirement to pay to enter; and Schedule 1 defines what amounts to "payment to enter".

The effect of making such schemes subject to regulation as betting is to ensure that all the relevant protections provided by the Act in respect of betting apply. Therefore, schemes such as "fantasy football" competitions or the Racing Post's "Ten to Follow" competition will be regulated in the same way as bets placed on single events. However, the definition is intended to exclude prize competitions (such as prize crosswords) where the elements of prediction and wagering are not both present."

With the legalisation of betting in the UK a long time ago, land based and online sports betting were enabled to be considered legal activity. With the liberalisation of the gaming market in Europe, Great Britain also experienced a significant liberalisation of its gambling market in Europe becoming a progressive and liberal jurisdiction for gambling and the second largest gambling market in the world.

The main legislation governing gambling in the three forms identified in English Law (gaming, betting and participating in a lottery) is the Gambling Act 2005. Almost all forms of gambling are permitted for those of 18 years and over, and some forms of gambling (lotteries and some small prize amusement machines) are even permitted for those over 16 years. Since its promulgation, contracts in relation to gambling (e.g., a bet or a gaming contract, or credit given to permit gambling) are

enforceable at law just as any other form of contract while private betting and gaming are permitted on domestic premises without a license.

'Gaming' is considered as the playing of a game for a prize regardless of being a game of chance or a game that combines skill and chance. 'Sport' is specifically excluded from the definition of gaming. As to the issue of skill or chance, the amount of chance required to fulfil the test is not defined and hence is determinable by the court.

The concept of a 'prize' is widely drawn, to mean essentially anything of value. 'Betting' can be summarised as the making of a bet (normally considered to be the hazarding of value on a future uncertain event, or a past event or fact that is not generally known). Pool betting, i.e., 'pari-mutuel' is where an organizer takes in the stakes from the participants and then returns from that 'pool', a portion of those funds to successful participants, whilst keeping a portion of profit for himself/herself. Pool betting can also be operated with a non-monetary prize.

In a 'Fixed odds' betting, an operator/bookmaker offers odds on a specific outcome in a match or event to customers interested in placing bets, that are calculated to deliver an 'over round' profit. The same are then adjusted as volumes of bets.

'Spread betting' is where a 'spread' of results are offered by a bookmaker and the customer/participant decided whether the actual result will be above or below the upper or lower limited of the spread. The multiple of the staked amount is the amount to be lost or won and the same is dependent on the extent to which the actual result exceeds the spread. The risks associated

with Spread betting are high and in requirement of cautious advertising with strict controls. Primary difference between fixed odds betting and spread betting is that with fixed odds betting the potential profit or loss is 'fixed' by the odds offered by the bookmaker. But with sports spread betting the potential profit or loss can be many multiples of your original stake size.

The two forms of betting that created uncertainty with respect to the legality under the former regime and led to the legislation for under the Gambling Act 2005, are:

- 'Betting prize competitions', which covers the playing of 'fantasy league' contests, involving some form of prediction of an event within the meaning of Section 9 of the Gambling Act 2005 as mentioned above.
- 'Betting intermediaries' are those which organize peer-to-peer betting network consisting of the marketplace of 'bids and offers', in which the bet is struck directly between two end parties holding stakes and paying out the winnings upon deducting a small commission.

Fantasy Sports in the UK is regulated under the Gambling Act, 2005. The operation of a fantasy sports league requires a pool betting license and gambling software license under the Act, from the Gambling Commission of the UK due to the prize value being determined by the number of entrants.

Pool Betting is defined under Section 12 of the Act as follows-

"Pool betting:

1. For the purposes of this Act

betting is pool betting if made on terms that all or part of winnings—
(a) Shall be determined by reference to the aggregate of stakes paid or agreed to be paid by the persons betting,
(b) Shall be divided among the winners, or
(c) Shall or may be something other than money.

2. For the purposes of this Act pool betting is horse-race pool betting if it relates to horse-racing in Great Britain."

The exception to this would be when the same is not run in the course of a business, where it is run privately. The United Kingdom Gaming Commission (UKGC) has also provided a list of questions that are used to determine whether there would be the need for a gambling license. They are as follows-

- Does it look and feel like commercial gambling?
- Is it run for profit?
- Is there any deduction for running costs?
- Is the source of participants beyond a genuine circle of friends and relations?
- Is advertising used to obtain participants?
- Is the size of the league beyond what is normal for a private league?
- Can any member of the public view or join the league?
- What is the level of activity required in running the league?
- Are there any wider revenue sources?

With respect to sports bets, the same is covered under the definition of "betting" provided under the Act. The same is reflected in the Explanatory Notes, UK

Gambling Act, 2005. The Note elaborates on the definition of "Betting" in the following manner:

"Betting: general

This section defines "betting" for the purposes of the Act. The present law contains no statutory definition of "betting" as an activity. In broad terms it is taken to mean the staking of money or other value on the outcome of a doubtful issue. Betting can be at fixed odds, by means of a spread, or by way of pool betting.

By virtue of this section (which is subject to the qualification in Section 10) betting covers making, accepting or negotiating a bet in relation to:

- the outcome of any race, competition or event,
- the likelihood of anything occurring or not occurring, or
- whether something is true or not.

Subsections (2) and (3) extend the meaning of the term to include bets on races, competitions, or events that have occurred in the past."

Such a comprehensive governance and licensing scheme has enabled the United Kingdom to be a hub of activity in the industry and the initiatives taken by the Gambling department to provide detailed guidelines to operators has borne dividends that speak for themselves in a quantitative sense.

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Switzerland



Switzerland enacted its Federal Law on Money Games (The Gaming Act) in January, 2019 and through the legislation, defined the various categories of games it sought to regulate as:

1. Article 3 (a) defining "Gambling Games" as - Games in which a monetary gain or other monetary advantage is promised in return for a monetary stake or the conclusion of a legal transaction;
2. Article 3 (c) defining "Sports Betting" as- "Money games in which winnings depend on the correct prediction of the course or outcome of a sports event;"
3. Article 3 (d) defining "Skill Games" as- "Money games in which the winnings of the game depend entirely or predominantly on the skill of the player;"
4. Article 3 (e) defining "Major

Games" as- "lotteries, sports betting and games of skill that are automated, intercantonal or online;"

5. Article 3 (f) defining "Small Games" as- "lotteries, sports betting and poker tournaments that are not automated, intercantonal or online (small lotteries, local sports betting, small poker tournaments);"

Licenses are provided for the operation of various modes of gaming including for terrestrial/land-based and online betting operations. However, what is to be looked at is how the legislation provides for definitions in various categories and aims to identify differences wherever applicable so as to ensure that the licensing process is streamlined.



Macau



Under the laws of Macau, Games of chance are defined as 'those in which the result is contingent because it depends exclusively or mainly on the luck of the player'. Games falling under the criterion defined as above are only permitted to be offered commercially by private players only upon engagement of a contractual arrangement between such entity and the Government of Macau.

The Government appoints an individual to the post of Chief Executive, and said individual is responsible for the determination of rules and regulations pertaining to the offering of Games of Chance within the limits of Macau. Further, Administrative Regulation No. 19/202116 provides for the organization of the Gaming Inspection and Coordination Bureau, the public department in the Macao Special Administrative Region responsible for assisting in the formulation of gaming industry policies, implementing relevant policies, as well as regulating, monitoring and coordinating gaming operations and activities.

Beyond merely defining "Games of Chance", the laws of Macau provide for a definition of "Interactive Gaming" which refers to Games of Chance that offer a prize that may be won by a player who may participate in such game via any means of telecommunication, that may also be offered in Casinos in Macau as table games or gaming machines. Such Interactive Games may also be provided commercially only upon entering into a contract for the same with the Government of Macau. Additionally, Macau also allows the placing of bets in sports competitions, namely in football (soccer) and basketball.

With respect to the applicability and scope of the legislations pertaining to gaming, it is interesting to note that The Gaming Inspection and Coordination Directorate, issues instructions that are binding on the entities that it supervises, including:

- casino concessionaires;
- gaming promoters;
- the sports betting concessionaire;
- the horse racing concessionaire;
- lottery concessionaires;
- casino management companies and service providers; and
- Electronic Gaming Machine manufacturers and suppliers.

Within the entities who are included within the scope of the Gaming Inspection and Coordination Directorate, the awarding criterion for grant of a contract to operate the forms of gaming that may be offered in Malta under a license include:

- Proposed variable premium.
- Plans for attracting foreign players.
- Experience in the operation of casino games of chance.
- Relevance of the proposed investment plans in gaming and non-gambling.
- Casino management plans.
- Proposal to monitor and prevent illegal activities in casinos.
- Corporate social responsibility programme.

Further, to ensure far-reaching control over the operators who function in the gaming industry, the legislation also provides for certain limitations on the operators, especially pertaining to their presence and functionality in other countries. For instance, if the licensed company operates casino lucky games or other forms of gambling in other countries or regions, it must obtain permission from the Chief Executive after hearing the opinions of the Gaming Commission. Shareholders of such companies may be punished under the laws of Macau in the event they own or operate casino games of fortune or other forms of gaming in other countries or regions and are expected to duly inform the authorities in the event such an instance takes shape.



Conclusion

The Way Ahead



With the legal environment in India pertaining to Daily Fantasy Sports and games involving predictions in sports laid down herein and with the provisions adopted by various nations examined, before proposing the way ahead a look into the various players in the market and their offerings is necessary.

It is to be understood that there are a multitude of platforms engaging in the business of daily fantasy sports in India, especially in the sport of cricket, which reigns supreme amongst sports in India. And naturally, with there being so many companies in the same market, companies have been forced towards making tweaks to what is being offered resulting in the generation and presence of products in the market which tend to be hovering a thin line between Daily Fantasy Sports and Sports Betting.

Considering how the common activity of 'Fantasy Sports' is to be understood as 'Daily Fantasy Sports' in India, the fact that the law has failed to comprehend such a distinction has made an evaluation of the Fantasy Sports market under the existing legislations appear extremely

problematic. Data presented herein in the paper makes it clear that at least 25% of the operators in the market operate under the guise of the general status granted to Fantasy Sports while deviating from the standard model of 'Daily Fantasy Sports' offering in search of a distinct market to capture. It is at such a stage that regulating activities that involve wagering on predictions in sport requires consideration.

An amalgamation of the two worlds is bound to happen and India needs to prepare itself and sprint with the times rather than having to play catch-up going ahead. As indicated earlier, with "betting" not being a stranger to the Indian soils as it stands, missing out on revenues owing to a lack of suitable legislation and acting blind towards a growing industry is definitely not a desirable mean to adopt. Games offering predictions in sports act as a perfect bridge between the burgeoning gaming industry and the lack of regulation and taboo status associated with betting, a regulated activity which has become a way of life in various legislations abroad as evidenced herein in this report.

With the Federal system and how historically Daily Fantasy Sports and Sports Betting have while the United States of America could provide some learnings. This, however, is not suggestive of a deviation from the suggestion that governance of the industry should be left to the consideration of the Central Government and relevant authorities in tandem with the Central Government. The comparisons arise from the demographic similarities and how jurisprudence has evolved with regards to fantasy sports and games involving predictions in sport. Beyond the same, an exact replication of how the law is applied is not what the authors intend to propose from an Indian context.

In the alternative, introducing the same with the

provision of licenses and a well-laid out legislation which scrutinises pure games of chance while allowing users to indulge in activities which can reward them for their knowledge in one of the most riveting aspects of society also presents itself as an opportunity worth considering in an Indian context. Relevant pointers which may be adopted from the various well-established jurisdictions have been highlighted herein in this report.

Factors such as how 'Daily Fantasy Sports' and 'Wagering in Sports' are treated inherently distinctly despite the fact that both involve "wagering on future outcomes" as prescribed under the IT Rules 2023, show that in terms of jurisprudence pertaining to the industry,

India has taken a paternalistic and unequitable approach. An approach comparable to Denmark, for instance, where a license is required to operate all activities that involve wagering on future outcomes is something that might be considered as the way ahead when it comes to regulating the industry in India.

With more and more Indian operators entering the market and with 'Make in India' and 'Digital India' campaigns spearheading a digital revolution with respect to innovations from India, providing creators to dabble with a wider space of work can also prove to be game-changing with respect to revenue and employment generation in India. Considering how important and hotly contested sports are in the Indian





subcontinent, encouraging operators to develop games that actively enable participation from across the world through games focussed on indigenous leagues also proves to be an enticing prospect in terms of generating revenue from foreign countries and as a mean of generating foreign investments.

With the inevitable coming together of the activities already initiated, the clock is running down on Indian legislators in terms of envisaging an all-encompassing legislation that can account for the future of the gaming industry. Rather than allowing entities to thrive in a market that is perceivably grey and cracking down on operators at a later stage, it is advisable that the law be one step ahead. Regulation, rather than prohibition is certainly the way to go, considering how historically it has been proven that prohibition isn't a method that can be implemented easily, especially in the sphere of gaming where the advent of the internet has made a noise louder than what any legislation could have envisaged.

Considering how the market is already full with varied 'Daily Fantasy Sports' offerings and with various deviant applications occupying the same space owing to a lack of legal segregation and clarity to escape scrutiny in comparison to wagering on predictions in sport for instance, the need of the hour in the gaming industry for regulation cannot be understated. Wagering on predictions in sport is an activity that has global popularity and is certainly an activity where a winner requires to be well-versed with sport and the background on which he wagers. Providing for a legal system wherein 'Daily Fantasy Sports' and 'Wagering in predictions on sports' be treated similarly

owing to the comparable natures of the activities is key and is certainly the way to support the gaming industry in India. A flourishing industry capable of generating lucrative amounts of revenue is not to be handicapped by a legislative error in status determination.

Starting from determining the scope of the MeitY to govern 'online gaming' as opposed to the understanding that has flown over decades with respect to States governing 'gaming', there are various issues to be cleared out in an Indian context when it comes to the gaming industry. Studying legislations as laid down herein while re-evaluating the modes of governance adopted till date is crucial. While the hurdle isn't one of extremely tall order, there still remains the fact that the hurdles in place are to be cleared. This race certainly requires the application of knowledge, adroitness and awareness of the people involved to make the right plays that may result in a win for the Indian gaming sector.

If the authors were to suggest a roadmap on how the issue of governance with respect to 'Fantasy Sports' and games involving predictions in sports, the following are the measures recommended for implementation by the Government of India:

- While jurisprudential comparisons align closest with the United States of America, it is not the approach that is recommended to be implemented in India. In light of the same, it is recommended that the MeitY or a Central Authority assigned specifically to govern the subject shall oversee the industry. Setting up of a 'Skill Gaming

Commission' comparable in nature to that of the 'Gambling Commission' established by the United Kingdom is something to be considered to exclusively deal with the needs of the industry, with timely evaluation and revision of how the industry is governed to keep up with the changing to be performed as laid down in the French gaming legislation.

- One of the primary objectives of such Centrally appointed authority should be to separately define 'Gaming', 'Gambling', and 'Betting' alongwith the help of the SRBs so that the confusion pertaining to their interchangeable use across legislations and judicial orders be addressed. In addition to the same, recognition and clear definition of various types of games and 'Games of Mixed Skill and Chance' may be done so that any operator intending to enter the market and existing operators are well aware of the scope of gaming under which their offerings may be brought under. Definitions as adopted by Switzerland and listed herein above and the adaptation of the concept of 'Mixed Skill and Chance' as laid down hereinabove in the cases of Australia for instance, may be relied on as the basis of the same.
- As worded currently, the IT Rules prevents any activity that may involve 'wagering on future outcomes' from being offered in India. The contents of this report highlight the fact that Fantasy Sports also come under such a definition along with games involving prediction in sports. Considering how various

legislations listed herein such as Denmark, Australia, UK etc treat both Fantasy Sports and games involving prediction in sports similarly, a similar approach may be adopted by India.

- Introduction of a licensing regime to look at the 'Specific Circumstances' and 'Mechanics of a Game' to grant license as a Fantasy Sport or a game involving predictions in sport may be appropriate. This shall provide an option for entry into the Indian market to various legitimate operators while also providing the Government of India with the power to closely monitor their operations and extract revenues on the basis of the income generated by such Companies in India and the other relevant taxes they may be expected to pay as legitimate operators in the Indian market.
- Licensing may also take into account factors such as whether the game allows participation against the house or whether it is limited to inter-participant interactions. Such factors might be relied on to set the licensing fee, for instance.
- Incorporating Self-Regulatory Bodies ("SRBs") into the regulatory mix, while in a different capacity from what is envisaged of them by the IT Rules is another suggestion which can aid the growth of the gaming industry in India. Rather than appointing them as the final word in a hands-on decision making process with respect to the legality of games, introducing such bodies as a peer-review mechanism to evaluate and



systematically provide support to gaming companies which seek to enter the sphere of regulation is a method that can be adopted. This would ensure a more trust-worthy environment for operators where peer review forms the first layer of scrutiny while also ensuring that conflicts that might be associated with granting such SRBs regulatory powers can be avoided.

- Such SRBs may be tasked with moderating a platform where common issues faced by stakeholders in the gaming industry, may be placed for consultation with the proposed 'Skill Gaming Commission' and can extend their support and expertise to said 'Skill Gaming Commission' to adjudicate on such matters in a manner conducive to the growth of the gaming industry in India. The SRBs can therein be a layer of transparency between the operators and the regulators that binds the industry together and enables future prospects of growth.
- Further, with their intrinsic knowledge of the industry, the SRBs may also be tasked with enforcing the first stage of regulatory action in case

any violations of the relevant rules are identified against any operator by said SRBs. The SRBs, being comparable to a peer-review group shall present their observations and provide the operators with a chance to rectify any deviations from the laws of the land and shall elevate any issues that do not stand adequately corrected to the 'Skill Gaming Commission' for issuance of action against such operators. This can provide for a mode of dispute resolution that does not appear hostile and targeted while offering an internal mode for rectification, something which can serve the industry at good stead.

A comprehensive overhaul of how the gaming industry is governed is certainly a necessity from an Indian context. Keeping a more open-minded approach rather than adopting a paternalistic approach is what the authors propose with respect to how gaming should be governed in India. Implementation of the above-listed means could prove to be crucial in setting the gaming industry forward at a time where the scope for investment and growth in the industry is at an all-time high.



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Dr. Aruna Sharma is a development economist, renowned for her distinguished career in public service and her significant contributions to policy development and economic growth in India. She has served as Secretary in the Union ministries of Steel and MeitY. She spearheaded the rollout of Direct Benefit Transfer system and played a pivotal role in establishing a common household database, leading to a revolutionary shift in the implementation of social welfare schemes. Dr. Sharma served as a member of the high-level committee of the Reserve Bank of India for advancement of digital payments. As a key architect of India's steel policy, her contributions have been instrumental in shaping the growth and sustainability of the nation's steel industry. The Steel Policy of 2017, which she championed, provided a comprehensive roadmap that continues to propel the progress of the steel sector. Dr. Sharma's groundbreaking work, "Resource Convergence Mantra," introduced the concept of convergence in schemes, optimizing the utilization of resources. Her book "U@Game Changer," available in multiple languages, serves as a transformative guide for public representatives, equipping them with the knowledge and tools necessary to drive positive change. Her latest publication, "Dancing towards the \$5 Trillion Economy on Holistic Beat," is a testament to her commitment to inclusive and sustainable growth. Dr. Sharma continues to be a guiding voice for policymakers and businesses through her expert counsel and insightful writings across diverse domains.



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