
COMPARATIVE ANALYSIS OF GAMING LAWS IN INDIA: EXAMINING THE FEASIBILITY OF ADOPTING E-SPORTS REGULATIONS FROM SOUTH KOREA AND FRANCE FOR THE INDIAN CONTEXT

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ABSTRACT

Gaming in the Indian context de jure implies betting and gambling. It is an inclusive definition that includes a game of chance and skill combined or a pretended game of chance or chance and skill combined. A Gaming house would mean any house, room, tent, etc. whether enclosed or open, or any place whatsoever in which the instruments of gaming are kept or used for profits or gain by the person occupying, using, or keeping such house, room, tent, etc. whether by way of charge or otherwise¹, the rapid growth of the global e-sports industry has prompted governments around the world to formulate regulatory frameworks to address its unique challenges and opportunities. In the Indian context, where e-sports has witnessed significant expansion in recent years, this paper conducts a comparative analysis of gaming laws in South Korea and France, two countries known for their progressive and comprehensive regulations on e-sports. By critically examining these regulatory models, this research seeks to assess the feasibility and potential benefits of adopting elements of South Korean and French e-sports regulations in India. This study employs a comprehensive and systematic approach, analysing the legal, regulatory, and policy frameworks governing e-sports in South Korea and France. The paper evaluates the key components of these frameworks, including licensing, player protection, intellectual property, taxation, and event organization, to identify best practices that may apply to the Indian context. The analysis considers cultural, economic, and legal factors that influence the effectiveness of e-sports regulations in each jurisdiction. The findings of this research are expected to shed light on areas where Indian gaming laws may be strengthened, and where lessons learned from South Korea and France

¹ M.J. Sivani v. State of Karnataka, (1995) 6 SCC 289.

can be applied to support the growth and sustainability of the e-sports industry in India.

Keywords: Gambling, E-sports Regulations, South Korea KeSPA, France game laws, Gaming Industry Regulations

RESEARCH OBJECTIVE

The objective of this study is to determine and evaluate the measures taken by South Korea and France to regulate the esports industry and look into the possibility of such legislation in the Indian context concerning e-sport athlete contracts, minimum wages, promotion of events, and securities of player contracts.

RESEARCH QUESTION

1. How has South Korea and France dealt with regulating the e-sports industry?
2. What is the result of such legislation on the esports industry?
3. How can such legislation influence the esports industry in India concerning e-sports athlete contracts, minimum wages of players, promotion of events, and securities of player contracts?

LITERATURE REVIEW

In the realm of sports law and academia, Cem Abanazir, a Lecturer in Sports Law at Bilkent University, Ankara, emerges as a prominent figure with a rich academic background. Holding a PhD and qualified as a lawyer in Turkey, his expertise encompasses a wide spectrum of subjects, including Sports Law, Sporting Nationality, and Intellectual Property Law. Abanazir's academic pursuits and legal acumen make him a valuable contributor to the discourse on the intersection of sports and law. Abanazir's work forms a crucial backdrop for this research paper, which endeavours to explore the intricate realm of gaming laws in India, with a specific focus on the feasibility of adopting e-sports regulations from countries like South Korea and France. The cornerstone of his article lies in the concept of 'institutionalization' as an integral component of modern sports.² By homing in on the governance and production aspects of e-

² Cem Abanazir (2019) "Institutionalisation in E-sports", *Sport, Ethics and Philosophy*, 13:2, 117 – 131, DOI: 10.1080/17511321.2018.1453538.

sports, Abanazir critically examines the distinctive characteristics of video games. His insights underscore the fragmented production process, the absence of a monopolistic international organization, and the relative novelty of e-sports as key features deserving attention.

Furthermore, Abanazir's examination of the ongoing debate concerning the definition of sports, especially in the context of adapting it to e-sports, is highly relevant to the present research. This debate serves as a critical juncture where e-sports, with their distinct characteristics, seek their place within the legal framework governing sports and gaming. It adds to the intricate tapestry of gaming laws by addressing a fundamental aspect of classification. Additionally, his emphasis on governance and production aspects aligns seamlessly with the central theme of the research paper. The exploration of how e-sports are managed and produced offers critical insights into the legal and regulatory challenges faced by this rapidly evolving industry. This is particularly pertinent to the paper's objective of evaluating the adoption of regulatory models from South Korea and France, which have effectively navigated such complexities. Abanazir's scholarly work, therefore, constitutes a valuable source of insights and perspectives for the forthcoming research on gaming laws and e-sports regulations.

Another work of Abanazir's is the article titled "Of Values and Commercialisation: An Exploration of Esports' Place within the Olympic Movement" (2022)³, published in *Sport, Ethics, and Philosophy*. In his article, Abanazir embarks on a nuanced examination of the interplay between esports and 'values.' By delving into the potential inclusion of esports in the Olympic program, he critically assesses the commercialization of the Olympic Games. Furthermore, he delves into the intricate selection process for introducing new sports to the Olympic program, shedding light on the broader dynamics of sports governance.

This scholarly work significantly contributes to the research paper's foundation, particularly by offering insights into the recognition and legitimacy of esports within prestigious international sports organizations, exemplified by the Olympic Movement. Understanding how esports is perceived within such esteemed bodies offers valuable parallels to the potential recognition and regulation of esports within the Indian context. Moreover, the article touches upon the regulatory challenges and considerations associated with esports' integration into the Olympic Movement, providing essential insights that prove relevant when evaluating the feasibility of

³ Cem Abanazir (2022) "of Values and Commercialisation: An Exploration of Esport's Place within the Olympic Movement", *Sport, Ethics and Philosophy*, 16:4, 397 – 412, DOI: 10.1080/17511321.2021.1945669.

adopting esports regulations in India. Cem Abanazir's academic rigor and expertise, exemplified by this article, offer a substantive foundation for the forthcoming exploration of gaming laws and e-sports regulations in India.

Another author, Dan L. Burk, a distinguished scholar and Chancellor's Professor of Law at the University of California, Irvine, possesses international eminence in high technology-related issues. His academic contributions span across patent law, copyright law, electronic commerce, and biotechnology law. Consistently recognized as one of the leading intellectual property scholars in the American legal academy, he has played a pivotal role in shaping debates on gene patenting, digital copyright, and computer trespass.

In his scholarly work titled "OWNING E-SPORTS: PROPRIETARY RIGHTS IN PROFESSIONAL COMPUTER GAMING,"⁴ Burk delves into the intricate legal dimensions fundamental to the e-sports landscape. These dimensions pertain to the ownership and control of rights in player performances within this burgeoning industry. E-sports, as a distinctive form of competition, introduce a novel and multifaceted legal landscape that merits meticulous analysis.

Crucially, Burk's work offers valuable insights into the legal agreements and licensing contracts that underpin the e-sports industry, both internationally and within individual countries. This exploration is of particular significance in comprehending the legal frameworks governing e-sports in diverse nations and how these might be adapted or adopted within the Indian context. Furthermore, Burk's examination of issues related to ownership and control, encompassing e-sports content, teams, and organizations, provides essential perspectives on the legal intricacies that need consideration when assessing the feasibility of adopting regulations from countries such as South Korea and France. Burk's scholarly pursuits and expertise, as exemplified in this work, furnish a solid foundation for the ensuing exploration of gaming laws and e-sports regulations within India.

INTRODUCTION

In recent years, the world has witnessed a meteoric rise in the popularity and commercial significance of e-sports, a burgeoning industry that has redefined the landscape of competitive

⁴ Dan L Burk, *University of Pennsylvania Law Review*, May 2013, Vol. 161, No.6 (May 2013), pp.1535 -1578.

gaming. India is no exception to this global trend, the nation has seen remarkable growth in its e-sports sector, transforming it into a burgeoning market for both players and spectators alike. However, the dynamic nature of the e-sports industry and the novel legal challenges it presents have prompted a critical examination of India's current gaming laws, which, despite having elements that can be interpreted to cover certain aspects of e-sports, remain primarily focused on traditional forms of gambling and gaming.

India's gaming regulatory framework is primarily governed by the archaic Public Gambling Act of 1867 and the Prize Competitions Act, 1955. These statutes were originally designed to address and regulate activities such as betting and lotteries, which bear little resemblance to the highly organized, competitive, and structured nature of e-sports. The application of these outdated laws to e-sports raises questions about their effectiveness and relevance in a rapidly evolving industry that is pivotal for economic growth, job creation, and the nurturing of talent in the country.

In contrast, countries like South Korea and France have taken proactive steps to craft comprehensive and nuanced regulatory frameworks for e-sports. South Korea, home to the Korea e-Sports Association (KeSPA), has been a trailblazer in e-sports regulation and infrastructure development, providing players, organizations, and stakeholders with a robust legal and institutional framework that addresses various aspects of the industry. France, too, has enacted legislation specifically designed to support and regulate e-sports, recognizing its cultural and economic significance. These international models have shown that tailored regulations can promote industry growth, player protection, intellectual property rights, and overall industry sustainability.

The expansion of e-sports in India has been marked by increased participation, investment, and viewership, with professional leagues, tournaments, and gaming events gaining prominence. This burgeoning industry holds significant potential for the country in terms of economic development and job creation. However, the absence of a dedicated legal framework tailored to e-sports raises concerns regarding issues such as player contracts, taxation, intellectual property rights, and event organization. These challenges highlight the need for a comprehensive and forward-thinking regulatory framework that ensures the healthy growth and sustenance of the e-sports ecosystem in India. By examining the strengths and weaknesses of the international models and their potential applicability to the Indian context, this study

seeks to offer insights and recommendations that will facilitate the development of a comprehensive and tailored legal framework to support the flourishing e-sports industry in India.

LEGAL FRAMEWORK AND AMBIGUITIES

The Public Gambling Act, enacted in 1867, is one of the primary statutes governing gaming and gambling in India. It aims to curb gambling activities by penalizing those who operate or visit common gaming houses. The act categorizes certain games of chance and skill and distinguishes them from games of skill. However, the act does not clearly define the concept of "games of skill," which has led to ambiguity in differentiating between skill-based games and games of chance. The distinction between skill and chance in various games, especially card games and sports betting, often becomes a matter of subjective interpretation, leading to legal disputes.

The Prize Competitions Act, enacted in 1955, primarily regulates prize competitions and crossword puzzles. It requires organizers of such competitions to obtain government permission and comply with certain conditions. However, the act is outdated and does not explicitly address e-sports or modern online gaming. The application of this act to e-sports and online gaming is unclear, as it was designed for a different era of gaming and competition.

South Korea, often regarded as a global e-sports hub, has a comprehensive legal framework for e-sports, with the Korea e-Sports Association (KeSPA) playing a pivotal role. KeSPA is a non-profit organization recognized by the government, responsible for developing and regulating the e-sports industry. The key features of this organization are:

- KeSPA establishes rules and standards for e-sports competitions and player contracts.
- It assists in intellectual property protection for e-sports content.
- The government recognizes KeSPA's certifications and decisions regarding e-sports organizations and events.

France has also taken significant steps to promote and regulate the e-sports industry through the Digital Republic Law, passed in 2016. This legislation recognizes e-sports as an official sport and provides a legal framework for its development. The law classifies e-sports players

as professional athletes and offers them benefits such as health coverage and retirement benefits. It allows e-sports organizations to be recognized as non-profit sports clubs. The law addresses the protection of minors in e-sports and promotes education alongside professional gaming.

The French National Olympic and Sports Committee (CNOSF) is also another significant body that plays a key role in the recognition and regulation of e-sports in France. It oversees the registration and governance of e-sports clubs and associations.

DATA -PROBLEM

In the process of conducting this several challenges have arisen in the collection of data. These challenges have, at times, posed significant hurdles and complexities for the researcher. Notably, one of the foremost challenges has been the scarcity of comprehensive and current data concerning e-sports in India. E-sports has rapidly emerged as a substantial industry within the country, yet there is a distinct lack of official statistics and data that accurately depict the industry's size, growth trajectory, and economic contributions. This absence of data has made it arduous to assess the exact impact of current gaming laws on the e-sports ecosystem and to pinpoint specific areas where regulatory enhancements are required. Additionally, the inconsistency in legal reporting and documentation of e-sports and gaming laws in India has further complicated the data collection process. Gaming regulations in India are spread across a multitude of statutes and regulations, making it challenging to compile a coherent and all-encompassing dataset. The lack of consolidation and transparency in the legal landscape has, at times, made the comparative analysis a convoluted task. The presence of ambiguities within Indian gaming laws, particularly regarding the definition of "games of skill" and the distinctions between "games of chance" and "games of skill" in the context of e-sports, has added another layer of complexity. The imprecise definitions and vague guidelines surrounding what constitutes a "game of skill" in e-sports have made it difficult to determine how these laws are being applied. These ambiguities have also extended to the definitions of "betting" and "gambling," making data collection and interpretation challenging.

Collecting comparative data between India, South Korea, and France has been a demanding task due to differences in legal frameworks, cultural contexts, and industry structures. Ensuring that the data is consistent and suitable for cross-country comparisons has required meticulous

attention to detail. E-sports is an ever-evolving industry characterized by frequent changes in game titles, formats, and revenue models. Keeping data relevant and up-to-date in such a dynamic environment has proven to be a perpetual challenge. Accurate data is of paramount importance to assess the adequacy of regulations, and any delays in data collection and analysis can hinder the development of responsive legal frameworks.

Despite these challenges, the researcher has attempted to address these data-related hurdles and has worked diligently to ensure that the study provides a robust and comprehensive analysis of the gaming laws and e-sports regulations in the respective countries, shedding light on the intricacies and ambiguities that require careful consideration and resolution.

CASE LAWS

The case of *R.M.D.C and Anr. v. Union of India and Anr.*⁵ raises pivotal questions relevant particularly to the Prize Competitions Act and its application to e-sports regulations.

The central issue revolves around the Act's applicability to competitions involving significant skill, which are distinct from gambling, and whether specific Act sections and rules can be enforced on competitions leaning more towards gambling. This debate hinges on the interpretation of the Act's "prize competition" definition in Section 2(d), which, on a literal reading, appears to encompass skill-based competitions. However, it's argued that interpretation should consider the broader context rather than relying solely on the text. The Act distinguishes between competitions predominantly reliant on skill and those predominantly dependent on chance, akin to the difference between commercial and wagering contracts. While classifying specific competitions might pose challenges, once their true nature is determined, they align with one of these categories. In conclusion, if the Act's definition is interpreted to encompass all types of competitions, the challenged provisions remain separable and can be applied to competitions where success isn't significantly skill-dependent. This legal interpretation is a crucial aspect of our research into the application of existing gaming laws to the rapidly evolving e-sports landscape in India.

In the case of *State of Andhra Pradesh v K. Satyanarayana and Ors.*⁶, the core issue pertains to the determination of whether the premises of the "Crescent Recreation Club" were being

⁵ R.M.D.C and Anr. v. Union of India and Anr. AIR 1957 Sc 628.

⁶ Andhra Pradesh v K. Satyanarayana and Ors. AIR 1968 SC 825.

used for gambling and if the individuals present during a police raid could be considered as participants in gambling activities. The crux of the argument centres on the definition of a common gambling house, with Section 4 of the Gambling Act being particularly relevant as it outlines penalties for individuals associated with such establishments. The case draws a comparison between the card game of rummy and the "three-card" game. While the latter is regarded as primarily chance-based, rummy involves a significant element of skill, driven by card memory and strategic decision-making. Rummy is predominantly categorized as a skill-based game, with chance coming into play mainly through card distribution, aligning it with games like Bridge. Consequently, the court concludes that rummy is not purely reliant on chance. Nevertheless, if evidence suggests gambling through alternative means or if the house derives profits from the game, legal charges could be applicable. In the specific case at hand, the absence of these elements led the High Court to appropriately endorse the reference. This legal precedent provides valuable insights into the distinction between games of skill and games of chance, a pivotal consideration in the comparative analysis of gaming laws in India, with a specific focus on e-sports regulations. It underscores the importance of discerning the role of skill and chance in gaming activities, a fundamental aspect of the regulatory framework for e-sports in India.

In the legal case of *Varun Gumber v Union Territory of Chandigarh and Others*⁷, the court references precedent judgments to establish two crucial principles:

- i) contests that predominantly rely on substantial skill do not qualify as gambling, and;
- ii) if a game is primarily skill-based, even if it incorporates some element of chance, it falls under the category of a "mere skill" game.

The court's primary focus revolves around the determination of whether horse racing can be classified as a game of "chance" or a game of "mere skill." The case pleadings assert that horse racing necessitates a considerable degree of skill owing to factors such as training, jockey expertise, and objective assessments made by racegoers. Importantly, these claims were not explicitly refuted in the counter affidavit. Additionally, the Encyclopaedia Britannica acknowledges horse racing as an activity involving skill assessment. Based on these observations and considerations, the court contends that horse racing, much like other skill-

⁷ Varun Gumber v Union Territory of Chandigarh and Others, 2017 SCC OnLine P&H 5372.

based endeavours, entails the application of judgment and skill, rather than being purely dependent on chance. This same principle extends to the current case, which concerns fantasy sports. Participants in fantasy sports competitions are required to apply skill, judgment, and discretion when crafting virtual teams, evaluating the strengths and weaknesses of athletes, and taking into account various factors that influence game outcomes. This critical distinction sets such activities apart from games of pure chance, such as gambling, as the decisions made by participants have a substantial impact on the final results, rather than being solely reliant on random luck. This legal perspective underlines the importance of recognizing the role of skill and judgment in competitive activities, a fundamental consideration within the context of our research on the comparative analysis of gaming laws in India, especially concerning e-sports regulations. It reinforces the notion that skill-based elements play a significant role in shaping the outcome of such activities, thereby distinguishing them from games of pure chance, and is relevant to the regulatory framework for e-sports in India.

In the case of *Gurdeep Singh Sachar v Union of India Through Ministry of Finance and Ors.*⁸, the petitioner asserts that fantasy games enable participants to create diverse virtual teams, including a free option. However, it is contended that, over time, individuals tend to transition from playing for free to investing money. The petitioner contends that these games are intentionally designed to lure individuals into spending money with the expectation of quick gains, resulting in financial losses for many, ultimately categorizing them as a form of gambling or betting. They view fantasy games as games of chance, entirely contingent on luck. The Finance Act of 1994 employs the terms 'betting' and 'gambling' interchangeably within Section 65B (15). The decisive criterion applied is whether the game's outcome is determined by chance or skill. If money is wagered with an awareness of risk and a hope for gain primarily based on chance, it is classified as gambling or betting. The argument suggesting that substantial skill still introduces an element of chance is refuted. In the case of Dream11, its success is predicated on users' skills, knowledge, judgment, and attention. The outcome is not directly tied to the real-world performance of teams on a specific day, establishing it as a game primarily based on skill rather than chance. This legal perspective on the classification of fantasy games as games of skill rather than games of chance is pertinent to our research paper's exploration of the regulatory framework for gaming and e-sports in India. It underscores the significance of distinguishing between skill-based and chance-based elements within gaming

⁸ Gurdeep Singh Sachar v Union of India Through Ministry of Finance and Ors. (2019 SCC Online Bom 13059).

activities, a core consideration for shaping effective regulations in the evolving landscape of e-sports within India.

RECOMMENDATIONS

In the contemporary landscape of e-sports, the formulation of comprehensive and tailored legal and regulatory frameworks is pivotal for fostering its growth and sustainability. India, as a nation experiencing the burgeoning popularity of e-sports, can draw valuable insights and recommendations from the regulatory models established in South Korea and France, both renowned for their proactive approach to e-sports legislation.

In alignment with South Korea's Korea e-Sports Association (KeSPA) and France's recognition of e-sports as an official sport, India could consider the creation of a dedicated regulatory body for e-sports. This governing body should be entrusted with the responsibility of setting industry standards, addressing legal and regulatory issues, and promoting the interests of players, organizations, and stakeholders. The existence of such an authoritative body can provide the necessary structure to govern a rapidly evolving industry effectively.

India can benefit from adopting a precise and all-encompassing definition of e-sports within its legal framework, akin to the way France recognized e-sports in the Digital Republic Law. A clear definition that distinguishes e-sports from other forms of gaming, recognizing its competitive and skill-based nature, is essential. This will facilitate the inclusion of e-sports under the ambit of legal regulations, offering the industry a distinct identity and status.

Taking inspiration from France's recognition of e-sports players as professional athletes, India should consider measures to protect the rights and welfare of e-sports athletes. This includes health coverage, retirement benefits, and educational support, recognizing that e-sports is not only a form of entertainment but also a legitimate career path for many talented individuals.

Intellectual property rights are paramount in e-sports, especially regarding content, branding, and in-game assets. Indian laws should provide comprehensive intellectual property protection for e-sports content creators and organizations. This aligns with both South Korea and France, which have established legal frameworks to safeguard intellectual property within the e-sports industry.

Indian regulations should be designed to support and facilitate the organization of e-sports events and tournaments. Provisions should be made for efficient licensing processes, tax considerations, and incentives for event organizers to promote and host e-sports competitions. This approach can stimulate the growth of the industry and attract international tournaments to the country, contributing to its economic development.

France's approach to supporting educational initiatives alongside professional gaming can be an inspiration for India. Encouraging educational institutions to integrate e-sports into their curriculum, offering scholarships, and fostering the development of talent at a grassroots level can be integral to the long-term growth of e-sports in the country.

India should consider adopting a collaborative approach in developing e-sports regulations, engaging with stakeholders, industry experts, and international best practices. The development of a dynamic and responsive legal framework should be an ongoing process, allowing for the adaptation of regulations as the e-sports landscape evolves.

CONCLUSION

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In conclusion, India stands at the threshold of a promising era for e-sports. By drawing inspiration from the regulatory models implemented in South Korea and France, and by creating a framework tailored to the unique characteristics of the Indian e-sports industry, the nation can pave the way for a flourishing and sustainable e-sports ecosystem. These recommendations underscore the importance of proactive legal measures that balance the

interests of all stakeholders, thereby ensuring the robust and responsible development of e-sports within India.