
NEED FOR A COMPREHENSIVE LEGISLATION ON FANTASY SPORTS IN INDIA: CURRENT SCENARIO AND THE WAY FORWARD

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ABSTRACT

The fantasy sports industry in India has been growing at an exponential rate over the last few years. The revenue generated from these platforms has grown manifold and their user bases have reached astounding numbers very quickly.

Currently, there is no legal framework in place to help regulate these platforms. Each state regulates these platforms in a manner that it sees fit, which results in each state having different laws to govern fantasy sports. Some states allow these platforms to operate, while others have imposed blanket bans on them.

Further, in July 2023, Finance Minister Nirmala Sitharaman announced that the tax imposed on these platforms would be increased to 28%, a move from the Centre that took the whole industry by surprise, which came into effect on the 1 October, 2023. Although the real impact of this is yet to be seen, it will deal a huge blow to companies operating on these platforms.

The objective of this paper is to provide a detailed analysis into how these platforms are regulated in different states in India, the role that the government plays in regulating the growth of this industry, and why there is a need to have a uniform law in India to govern this industry. It also explores the implications of the tax imposition on the industry which is currently based on the prospect of chance over skill. It draws conclusions from existing legal battles, research data on the evidence that fantasy sports are indeed skill-based, and possible outcomes of this fledgling industry.

Keywords: Fantasy sports, games of skill, games of chance, Gameskraft case, GST.

Statement of Problem

Fantasy Sports in India generated revenues of Rs. 6,800 crores in the financial year of 2022.¹ In India, these sports are regulated by States under the State list. Despite the Supreme Court of India holding these games to be a game of skill in its past judgements, these games are still regulated by some States with the help of an archaic law, the Public Gambling Act, 1857. Even though this Act does not prohibit games of skill, States like Andhra Pradesh and Odisha have completely banned these sports. Moreover, these games are regulated by states under their power to legislate on matters under the State list. A consequence of this is that states only have the power to legislate on matters related to betting and gambling, which fantasy sports cannot be classified under. In the absence of a government regulatory body, there are self-regulatory organisations that lay down guidelines for the operation of Online Fantasy Sports Platforms (OFSP).² However, Self Regulatory Organisations are not statutory bodies, and hence the guidelines they lay now are only suggestive in nature, and no party is legally bound to adhere to these guidelines.

Another problem that arises is with the newly notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, which framed rules for “permissible” online Real Money Games (RMGs). However, the problem with these rules is that it only allows games that do not involve any wagering, but does not give any definition of wagering itself. Another recent introduction of 28% GST on online gaming, which includes fantasy sports, also poses some problems. According to several experts and top executives from companies in the industry, this will lead to a 350% increase in GST, which will ultimately lead to the burden of this tax being passed on to consumers. This warrants the need for a uniform law to regulate these sports, considering that it is an industry that is expected to generate around \$3 billion in revenues by 2027.

Research Question

1. Why are the current laws in place not effectively addressing the problems that this industry is facing?

¹Fantasy Sports: A catalyst for the sports economy Federation of Indian Fantasy Sports and Deloitte, April 2023, Last Accessed on 19th February, 2024

² Manav Mehta et.al. Is Your Dream Team Even Legal? Legality of Fantasy Sports in India and its Evolving Trends, 1(1) JSLPG 50 (2018)

2. What are the implications of the 28% imposition of GST on the functioning of OFSPs?

Fantasy Sports: A game of skill or a game of chance?

Before getting into whether fantasy sports are games of skill or chance, first, what are fantasy sports? The Cambridge dictionary defines it as, “Games in which you choose a team of real sports players from different teams and win points according to how well the players play each week.”³ Fantasy sports also have a subset under it called Daily Fantasy Sports (DFS), in which, one makes a team for each match instead of one team per week.⁴

The question at hand has been a never-ending debate. The two main contentions are that first, although fantasy sports involve a certain degree of luck, they primarily depend on the skill of the user, which the Supreme Court of India has affirmed. Second, fantasy sports do not involve any skill and the outcome of these games are completely dependent on luck, and that fantasy sports are akin to betting or gambling. Black’s Law Dictionary defines “gamble” as “to play, or game, for money or other stake; hence to stake money or other thing of value on an uncertain event. It involves not only chance, but a hope of gaining something beyond the amount played”.⁵

In India, betting and gambling is regulated under List II of the VII Schedule,⁶ and under the Public Gambling Act, 1867.⁷ While this act deals with and provides for punishments for gambling and the keeping of common gaming houses, “games of skill” are excluded from this act under Section 12.⁸ The question that arises here is whether fantasy sports are to be included under the definition of gambling, or if they are outside the ambit of the Public Gambling Act.⁹ To present a clear stand the difference between games of skill and games of chance, a brief history of the Supreme Court’s interpretation on deciding matters of games of skill is presented below:

³ Cambridge dictionary

⁴ Weston, M. A. (2021, June 3). Daily fantasy sports and the law in the USA.

https://www.researchgate.net/publication/352999368_Daily_fantasy_sports_and_the_law_in_the_USA

⁵ Black’s Law Dictionary 983 (9th ed. 2009).

⁶ Sch. VII, List II, Public Gambling Act, 1867, Acts of Parliament, No. 3.

⁷ Public Gambling Act, 1867, Acts of Parliament, No. 3.

⁸ §12, Public Gambling Act, 1867, Acts of Parliament, No. 3.

⁹ *Supra* note 5.

In *RMD Chamarbaugwala v. Union of India*¹⁰ the Supreme Court held the words “mere skill” to include games which are predominantly of skill and laid down that the competitions where the outcome depends on a substantial degree of skill will not amount to ‘gambling’ and despite there being an element of chance, if a game is preponderantly a game of skill, it would nevertheless be a game of “mere skill.”

In *the State of Andhra Pradesh vs. K. Satyanarayana*¹¹, the Supreme Court held "The "three card" game which goes under different names such as "flush ", "brag " etc., is a game of pure chance. Rummy, on the other hand, requires a certain amount of skill because the fall of the cards must be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of chance. It is mainly and preponderantly a game of skill."¹²

In *K.R. Lakshmanan vs. State of Tamil Nadu*¹³, the Supreme Court observed that betting on horse racing is a game of skill as the ability of the horse and jockey need to be assessed by the person placing the bet.

It is understood that a game of skill is any game where the element of skill significantly outweighs the element of chance, or where the element of skill plays a predominant role in the outcome of the game. These views of the Supreme Court can be further strengthened using the “predominant factor test” laid down in the U.S. case of *Dew-Becker v. Wu*¹⁴ by the Supreme Court of Illinois. This case held that daily fantasy sports are games of skill. It also laid down certain tests to determine whether something could be called a game of skill or not, since every contest had an element of chance. One of these tests was the “predominant factor test” that meant that if any game involved an element of skill and chance, and the element of skill outweighed the element of luck or chance, then the game would be a game of skill. In all of the three cases above, it is clear that skill played a significant role in determining the outcome of the game.

¹⁰ AIR 1957 SC 628.

¹¹ AIR 1968 SC 825.

¹² *id.*

¹³ AIR 1996 SC 1153.

¹⁴ 2020 IL 124472.

In India, this decision with regard to fantasy sports was put to rest when the Punjab and Haryana High Court in *Varun Gumber v. Union Territory of Chandigarh*¹⁵ held that Dream 11, the most popular OFSPs in India, was not a game that involved gambling, and that it involved a substantial degree of skill. This view was further affirmed by the Bombay High Court in *Gurdeep Singh Sachar v. Union of India*,¹⁶ where the court held that “unlike betting, winning or losing in fantasy sports was not dependent on any team winning or losing in the real world.” When the aggrieved parties challenged this decision before the Supreme Court, it dismissed these petitions, upholding the decision of the Punjab and Haryana High Court.

In another case before the High Court of Rajasthan, the court relied on the decisions of the above two cases and subsequently upheld that fantasy sports (Dream11, again, in this case) were a game of skill.¹⁷ As of now, this is the settled position of the law on whether fantasy sports are a game of skill or a game of chance.

If fantasy sports have been held to be games of skill, then why have some states in India still completely banned these games? That is where the confusion arises. States have chosen to interpret fantasy sports within the ambit of betting and gambling, and therefore still use the Public Gambling Act of 1867 to regulate these games. Here are some of the states in India that have made specific legislations to regulate online gaming in India:

1. **Telangana:** The state of Telangana was the first to ban fantasy sports in India. This was done in 2017 through the Telangana Gaming (Amendment) Act, 2017. However, in 2022, the state Principal for IT, Electronics, and Communication proposed a draft bill seeking to regulate online games in India, rather than completely ban them altogether, recognising the potential revenue that this industry could generate.
2. **Meghalaya:** Meghalaya also has its own legislation to regulate online gaming called the Meghalaya Regulation of Gaming Act, 2021.¹⁸ This act has a wider scope and includes several online games like poker, rummy, solitaire and fantasy sports as well. An important distinction made in this act is between games of skill and games of chance, and that these games do not come under the purview of the Meghalaya Prevention of

¹⁵ 2017 Cri LJ 3827.

¹⁶ *SLP (Crl.) Diary No. 42282 of 2019.*

¹⁷ 2020 SCC OnLine Raj 264.

¹⁸ Meghalaya Regulation of Gaming Act, 2021, Acts of Parliament, No. 9, India.

Gambling Act, 1970,¹⁹ and fantasy sports such as Dream11 are completely legal in this state.

3. Nagaland: Nagaland enacted the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015.²⁰ This act prohibits gambling in Nagaland but regulates online games of skill by giving licences to operators of online real money games. This Act also makes a distinction between games of skill and prohibits games of chance. Under this Act, these operators also do not have to be based out of Nagaland to obtain a licence.
4. Assam: Assam introduced a law in 1974 called the Assam Betting and Gaming Act.²¹ This Act is ambiguous with respect to its stance on games of skill (fantasy sports are categorised as games of skill in India), because it only prohibits all forms of betting and wagering. Therefore, there is no clear understanding on whether fantasy sports are legal in Assam, but seeing as fantasy sports are banned in Assam, it is inferred that these games come under the purview of the Assam Betting and Gaming Act.
5. Andhra Pradesh: Gambling in Andhra Pradesh is regulated by the Andhra Pradesh of Gaming Act, 1974.²² The Andhra Pradesh Gaming (Amendment) Act, 2020²³ was introduced to amend the 1974 act by adding a few clauses. Under Section 2(2)(b),²⁴ it equates games of skill to wagering or betting. Considering that fantasy sports in India have been classified as games of skill, these games are prohibited in Andhra Pradesh under this Act.
6. Odisha: Odisha regulates gambling in the state with the Odisha Prevention of Gambling Act, 1955.²⁵ This Act prohibits all games for stakes or money. This Act has not been amended since its enactment, and since fantasy sports involve games for stakes or money, they come under the purview of this Act and are banned in the state.

¹⁹ Meghalaya Prevention of Gambling Act, 1970, Acts of Meghalaya Legislature, No. 8, India

²⁰ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, Acts of Nagaland Legislature, No. 3, India.

²¹ Assam Betting and Gaming Act, 1974, Acts of Assam Legislature, No.18, India.

²² Andhra Pradesh of Gaming Act, 1974, Acts of Andhra Pradesh Legislature, No. 27, India.

²³ Andhra Pradesh Gaming (Amendment) Act, 2020, Acts of Andhra Pradesh Legislature, No. 43, India.

²⁴ §2 (2)(b), Andhra Pradesh Gaming (Amendment) Act, 2020, Acts of Parliament, No. 43, India.

²⁵ Odisha Prevention of Gambling Act, 1955, Acts of Parliament, No. 17, India.

7. Tamil Nadu: Until last year, fantasy sports and other games of skill were legal in the state of Tamil Nadu. However, in April 2023, the governor gave his assent to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill, also seeks to regulate online gaming including fantasy sports which may now need vetting by a multi-member committee.²⁶ Online games and fantasy sports in Tamil Nadu are now governed under the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act 2022, which prohibits online gambling and playing of any online games of chance with money or other stakes. However, this Act only prohibits games where the element of chance dominates the element of skill, and where the element of chance can only be eliminated by superlative skill²⁷, so for the time being, fantasy sports continue to be legal, but under scrutiny.

Another recent introduction of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023²⁸ provided some clarity on the road ahead for fantasy sports in India, but at the same time also left a few key terms that relate to these games open to interpretation, leaving some ambiguity in this regard as well. This amendment was made primarily to regulate online gaming in India and amended the IT Amendment Rules, 2021.²⁹ However, this amendment leaves room for varied interpretation. For example, the rules allow for games that do not involve any wagering on any outcome but do not define “wagering” itself. The amended rules have also introduced a category called “permissible online real money game”, which is a game “verified by an online gaming self-regulatory body”. The Ministry of Electronics and Information Technology has allowed for multiple such self-regulatory bodies to function to eliminate conflict of interest within the industry.³⁰ These rules also mention the forming of Self-Regulating Bodies (SROs) that will set and enforce norms and standards for its members. As of July 2023, there are 3 parties that have made proposals to form Self-Regulatory Organisations- the eSports Welfare Association (EPWA), the e-Gaming Federation (EGF) and the Federation of Indian Fantasy Sports (FIFS), who have made a joint

²⁶ The Economic Times, <https://economictimes.indiatimes.com/tech/technology/tamil-nadu-governor-gives-assent-to-bill-banning-online-gambling/articleshow/99388320.cms?from=mdr>, Last Accessed on November, 2023.

²⁷ Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act 2022, Acts of Tamil Nadu State Legislature, No. 9, 2022 (India)

²⁸ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.

²⁹ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2021.

³⁰ Ayesha Minhaz, New amendments to it rules lack clarity, fall short in defining key aspects Frontline (2023), <https://frontline.thehindu.com/society/new-amendments-to-it-rules-lack-clarity-fall-short-in-defining-key-aspects/article66740489.ece>, Last Accessed on February, 2024.

proposal, and the All-India Gaming Federation (AIGF). While the EPWA focuses on e-sports, which is purely skill based, the other two proposals both involve the regulation of fantasy sports. The problem with this is that there are multiple bodies trying to regulate fantasy sports operators, both of whom have different intermediaries as their members. This will not allow for uniform standards to regulate these intermediaries without the presence of a parent legislation.

From this, it is evident that there is no uniform legislation to regulate fantasy sports in India. Even though Nagaland's laws make a distinction between games of skill and games of chance, games like Dream11, which have been classified as games of skill are still prohibited in Nagaland. Odisha has not amended its laws regarding betting since 1974, which does not take into consideration the present scenario of fantasy sports in India. Betting and gambling come under the State list, which gives states the power to legislate on these matters. However, Article 246,³¹ read with Entry 31 of List I of the Seventh Schedule of the Constitution exclusively grants jurisdiction to the Parliament to enact laws for forms of communication such as wireless, telecom and broadcasting. Platforms for online gaming are intermediaries under the Information Technology Act, 2000,³² specifically under central purview.³³ This only creates more confusion with respect to the way online games and fantasy sports are legislated upon. There should either be one uniform legislation made by the centre to regulate fantasy sports, or the Centre should not interfere with matters on the State list and give states full power to legislate on matters in the State List.

Challenges to calling fantasy sports a game of skill

Although the Supreme Court of India has upheld fantasy sports like Dream11 to be a game of skill, these platforms themselves are doing everything they can to bridge the information asymmetry between the users and the contest they are playing. Earlier, these were games that not everyone could play and succeed at because these games did require a significant amount of skill to determine the best possible team for a certain contest. An example of this would be the Fantasy Premier League (FPL), which is a season-long competition based on the top flight

³¹ INDIA CONST. art. 246, entry 31 of List I, VII Sch.

³² Information Technology Act, 2000, Acts of Parliament, No. 21. India.

³³ Quint Studio, Why a central legislation needs to prevail to govern online games of Skill TheQuint (2022), <https://www.thequint.com/brandstudio/why-a-central-legislation-needs-to-prevail-to-govern-online-games-of-skill#read-more>. Last Accessed on March, 2024.

football division in England, the Premier League. An interview with the winner of the last season, for the season of 2022/23 revealed the amount of skill that an individual had to possess to come out on top. His interview can be read here.³⁴

However, in India, platforms like Dream11 have consistently been trying to expand their user base, and have done this by making the game much more inclusive, even for the layman. For example, for a cricket contest, Dream11 provides the user with the following information:

1. The percentage of users in a contest that have selected a particular player, and the percentage of users that have captained and vice captained a particular player (a Captain scores twice the number of points, and a vice captain scores 1.5 times the number of points he actually scores).
2. The total number of points that the player has scored in that particular tournament.
3. The number of times in that season they have been part of the Dream Team (the Dream Team is a team consisting of the top scoring players in a particular match).
4. The head-to-head results between the two teams competing.
5. The statistics of previous games held at that particular venue.
6. The pitch conditions of the venue, and if it will be a batting friendly or a bowling friendly pitch
7. The average score at that venue in that particular format of the game.
8. The winning percentage of teams that have won the game after winning the toss.

Apart from this, the app also provides for “Guru Teams”, which allows both inexperienced and experienced users to pick a team of a user with a good track record. When there is so much of information available to a user, they can make an informed decision of the team they are making, significantly reducing their chance of losing their money on a particular contest. This is particularly true in contests with a large number of players, where the probability of several

³⁴ FPLMarc, FPL 2022/23 champion interview: How I won FPL Best FPL Tips, Advice, Team News, Picks, and Statistics from Fantasy Football Scout (2023), <https://www.fantasyfootballscout.co.uk/2023/06/07/fpl-2022-23-champion-on-winning-a-late-wildcard-playing-your-own-game/>. Last Accessed on March, 2024.

users selecting a similar team is very likely. When this happens, it is unlikely that a user will lose their money, and that the only way of securing a big win (a significant return on the contest entry fees) is to pick a team different from the majority of users, which will also require some amount of luck. There have even been different data-centric approaches to try and predict a team that will score the maximum number of points in a given contest.³⁵ The question that arises at this juncture is whether luck or chance outweighs the element of skill. One argument in favour of this hypothesis is a study by Agam Gupta, Yash Khandelwal, Manish. K. Singh, and Ashutosh Singla³⁶ revealed that skill is not the dominant factor when it comes to playing fantasy sports.

A part of their detailed analysis revolved around one major question: Whether real teams (teams where users have exercised a reasonable level of skill to pick their team) perform better than randomly simulated teams (teams that were chosen without any skill)? They tested this by looking at a number of different possible situations by comparing a real team's performance with one random team's performance, and the performance of a real team with ten randomly simulated teams. In both cases, skill was not found to be the dominant factor. Another question that their research tested was whether those users that employed a significant amount of skill in selecting their team consistently outperformed those who did not use any skill in picking their team. If the argument made is that in fantasy games like Dream 11 skill is the dominating factor, then it is only logical to assume that a user who picks their team backed by a considerable amount of research will outperform another user who has randomly selected a team. However, their research revealed that even in such cases, skill only won 50% of the time, which implies that in reality, these games do not require a substantial amount of skill for a user to win.

However, betting and real money online games differ significantly on the one aspect that could potentially hold both to be games of pure chance rather than games of skill. When you place a bet, you place a wager on an event with an unpredictable outcome. Further, to win big on a particular bet, there are a series of unpredictable events that have to take place, failing which the bettor loses their money on that bet. For example, in a football game, if a bettor backs Team

³⁵ S, Sachin & HV, Prithvi & Nandini, C. (2022). Data Science Approach to predict the winning Fantasy Cricket Team Dream 11 Fantasy Sports. 10.48550/arXiv.2209.06999.

³⁶ Gupta, A., Khandelwal, Y., Singh, M. K., & Singla, A. (2022, December 12). *Do fantasy sports players' actions influence their performance in Dream11 contests? Adding data to the debate on skill vs chance*. XKDR. <https://xkdr.org/people>. Last Accessed on February, 2024.

A to win, in order to win, he will not only have to consider the outcome of this, but also other factors that happen during the game, such as “Player X to score a goal at a certain time”, or “Player Y to get a red card during the game”, both of which the outcomes for a particular game could be very uncertain. The outcome of the bet depends on the team winning in real life. On the other hand, when a user plays a fantasy sport, they do not make any bets on the outcome of the game itself. They must select a team that they think has the best chance of winning statistically, but the outcome of the game does not depend on one team winning in real life. This has been a point of contention between people on both sides of the game of skill or game of chance argument.

Effects of the imposition of 28% GST on online gaming platforms

In July 2023, Finance Minister Nirmala Sitharaman announced in the 50th meeting of the GST Council that irrespective of whether it is a game of skill, chance or both, online gaming will be taxed at 28%, an increase from 18% being levied on Gross Gaming Revenue (GGR). Initially, this caused a lot of chaos within the industry, as they were unsure if the tax was going to be levied on the initial bet or on the winnings of the user. However, it was clarified that the tax amount will only be on the initial amount and not on the winnings. This was met with stiff opposition from the online gaming industry. Top executives of several companies of this industry expressed their concerns over this 28% tax. Most of their concerns revolved around the fact that the margins these companies made were not enough to pay this excessive increase in GST. However, the GST Council did not make any changes regarding its decision, and this tax rate was in effect from October 2023.

In September 2022, the Directorate General of GST Intelligence (DGGI) issued a whopping 21,000 crore tax evasion notice to Gameskraft, an online real money gaming platform that primarily involved online rummy, on the grounds that since the platform was involved in betting and gambling activities, they were liable to be taxed for actionable claims under the Central Goods and Services Act, 2017.³⁷ Gameskraft argued that the services it offered were games of skill, and therefore they were not liable to pay any tax amount, with which the Karnataka High Court agreed. However, on appeal, the Supreme Court stayed the decision of the Karnataka High Court, and the parties are now awaiting the next hearing, which is expected

³⁷ Central Goods and Services Act, 2017, Acts of Parliament, No. 12, India.

to take place by the end of 2023. As of January 2024, there haven't been any updates on this case.

In October 2023, once the new GST regime for online gaming was introduced, the DGGI issued tax notices to over 40 real money gaming companies for an amount of over Rs. 1.5 lakh crore. The government further stated that they were only clarifying existing law since the introduction of the GST Act in 2017³⁸, and that they were not introducing any new law with respect to the levying of tax on these online real money gaming companies. Further, there were also concerns raised on the retrospective nature of this tax, which subjected these companies to shell out a significantly higher amount of money to comply with this new tax regime, which they claimed was not tenable. The government by stating that it was merely only clarifying the laws that were already in place made this new introduction of 28% tax capable of retrospective application.

However, upon a closer reading of the Bombay High Court's judgement in *Gurdeep Singh Sachar v. Union of India*³⁹ states exactly what is wrong with the government's approach towards this whole issue:

1. *“Under Section 7(2) read with Schedule III of the Central Goods and Services Tax Act, 2017,⁴⁰ (“CGST Act”) “actionable claims, other than lottery, betting and gambling,” cannot be considered a supply of goods or services and are therefore not taxable as such. Since online fantasy sports do not amount to “gambling” or “betting”, there is no scope to infer the possibility of GST evasion*
2. *Amounts pooled in the escrow account maintained by the operator would amount to an actionable claim as the same is to be distributed amongst the winners of the game. However, since fantasy leagues do not amount to “gambling” or “betting”, the said actionable claim would not fall under Section 7(2) read with Schedule III of the CGST Act; and*
3. *Actionable claim referred to in Rule 31A of CGST Rules, 2018 is only limited to “lottery” or “betting” or “gambling” or “horse racing in a race club”, and thus has*

³⁸ *Id.*

³⁹ Criminal Public Interest Litigation, Stamp No. 22 of 2019.

⁴⁰ §7(2), Central Goods and Services Act, 2017, Acts of Parliament, No. 12, India.

no application in this case.”⁴¹

Although this judgement was delivered before the implementation of 28% tax on online gaming companies, this judgement aptly describes why such companies are immune from being taxed under a different slab. It is a well settled position of law that fantasy sports platforms like Dream11 are games of skill and not games of chance. By making this classification, the government cannot include them under a tax rate of 28% because only actionable claims such as lottery, betting and gambling are liable to be taxed as such, which would mean that there can be no retrospective application of this tax amount on these online real money gaming companies where the outcome of these games were predominantly reliant on skill rather than chance.

Conclusion

The immediate effects of this heavy increase in tax is yet to be felt as it has come into effect only in October 2023. Experts in this industry stated that the ground level impact will only be realised in around 5-6 months, and that until then, these companies will try to do everything they can to offset this increased burden in tax compliance by means of offering vouchers and other such benefits to users.

The Gameskraft case will play a huge role in determining the future of this whole scenario.

If the Supreme Court holds that rummy is only a game of chance and not a game of skill, it could open the gates for other parties to raise a question as to whether fantasy sports are games of skill or games of chance, despite both of these online games having been previously held as games of skill by the Supreme Court itself. For the moment, advocates against real money online gaming will have to wait for the decision of the Supreme Court in the Gameskraft case before they can present a strong case before the court to declare fantasy sports as purely games of luck as well.

The very regulation of fantasy sports in India still lies in a rather grey area, where although it could be argued that fantasy sports are regulated by states under Entry 34 of List II of the Seventh Schedule of the Constitution of India, at the same time, there seems to be a conflict of opinion between the judiciary and the legislature of states. The judiciary has upheld fantasy

⁴¹ *id.*

sports to be games of skill. However, state governments have taken it upon themselves to either allow these fantasy sports or ban them in their states based on what you could say is a very out of the ark definition of a game of skill. The problem with States regulating fantasy sports under Entry 34 of the State list is that Entry 34 only includes “betting and gambling”. Since it has been well established that fantasy sports do not fall within the purview of either of the two, this is where a problem arises.

In *Junglee Games v. State of Tamil Nadu*⁴², *Junglee Games* challenged the constitutional validity of the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021,⁴³ which imposed a blanket ban on all forms of online gaming. The Madras High Court held that the Act was in violation of Article 19(1)(g) of the Constitution since games of skill enjoyed protection under Article 19(1)(g).⁴⁴ It also held that this Act did not satisfy the test of reasonableness, most notably laid down in *State of Madras v. V.G. Row*⁴⁵. It was only following the decision in this case that the government of Tamil Nadu introduced the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act 2022, which has already been discussed above briefly.

This whole debate on skill versus chance primarily brings up two problems. First, the absence of a uniform regulator for fantasy sports produces a vacuum of legislative power. As a result, these game are allowed in some states, while they remain prohibited in others. For example, Nagaland’s Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015,⁴⁶ expressly provides for the regulation of games of skill and prohibits gambling. However, *Dream 11*, which has been upheld to be a game of skill remains prohibited in Nagaland. If states are given the power to legislate on these matters, and still provide ambiguous guidelines for these platforms to follow, it raises a question as to the competence of the State when it comes to legislating upon these matters.

On the other hand, the second problem that this brings up is a two-step compliance test for online gaming platforms. They not only have to comply with the guidelines laid down by the Central Government, but also have to ensure that they do not violate the laws of the concerned

⁴² 2021 SCC OnLine Mad 2762.

⁴³ *Supra* note 18.

⁴⁴ INDIA CONST. art. 19, cl. (1)(g).

⁴⁵ 1952 AIR 196

⁴⁶ *Supra* note 25.

state that they operate in. This increased requirement of compliance, while being a burden on these companies, will ultimately be passed down to the consumer, either directly or indirectly, just as it is the case with the 28% imposition of GST.

The potential returns that this industry can generate is only growing by the day, and with the laws governing it still remain ambiguous, it only acts as a hindrance that the boost that this industry could provide to our economy.