

Demystifying The Legal Stakes In Online Gaming:

Are Your “Bets” On The Indian Market Legally Sound?

By Ranjana Adhikari and Gowree Gokhale

India has a burgeoning untapped potential for online businesses, given the rapid increase in Internet and smart phone users amongst its population of over 1.2 billion people¹. This is only amplified manifold by the proliferation of 3G (followed by 4G) acting as an important catalyst for this paradigm shift. In a recent industry report released by FICCI-KPMG², the statistics are telling. According to KPMG’s analysis, there are over two hundred million Internet users in India out of which approximately one hundred thirty million use the mobile for going online, dominating the total Internet user base by capturing an overall share of sixty-one percent.³

The market size does lend credence to why India is now beginning to find a place in the business plans of many foreign corporations, including gambling companies. Traditionally, in India gambling and its many forms have been a source of entertainment, finding references even in one of the oldest mythological epics of India, *Mahabharata*, where the opponents’ strength was tested at board and dice games rather than by waging wars. Card games are extremely popular in India, especially the games of Bridge, Rummy and Poker. Of late, a number of online Rummy and Poker sites have mushroomed. However, the Indian laws on operating

such online Rummy and Poker tournament sites is still unclear, and the multiple stringent laws make this a risky business option.

This article sets out the current regulatory framework and some of the key issues and developments affecting the online gaming and gambling businesses in India with an emphasis on the popular card games of Rummy and Poker.

The Gambling Laws of India and the Virtual World: Grey boundaries undefined

Different states of India regulate gambling under their separate state laws with the Public Gambling Act, 1867 being the only central legislation (albeit covering only a few states) (Gambling Laws). These Gambling Laws typically define “gambling” as “the act of wagering or betting” for money and impose restrictions on/prohibit the use of brick and mortar premises (often referred to as gaming houses/common gaming houses) for the purpose of making any profits or gains by conducting gambling related activities.

The State of Sikkim is so far the only state in India which has enacted a law for online gaming and sports betting.⁴ An interested person can obtain a “license” for the purpose of conducting, organizing, managing or promoting online games



Nestled in the Himalayan foothills, Sikkim is the only state in India which has enacted a law for online gaming and sports betting. Pictured here is Gangtok, the capital of Sikkim.

such as such as Roulette, Black-jack, Pontoon, Punto banco, Bingo, Casino Brag, Poker, Poker dice, Baccarat, Chemin-de-fer, Backgammon, Keno, Super Pan 9 and sports betting. Further, a licensee can take the prior approval of the state government of Sikkim to offer any other/additional online games under the license. However, at present the Sikkim licenses are in a state of flux due to a variety of reasons.

The Gambling Laws, with the exception of the Sikkim Online Gaming (Reg-

ulation) Act, 2008, were enacted much before the advent of online gaming. There is considerable debate on whether online gambling attracts the prohibitions prescribed under the Gambling Laws. Two approaches may be adopted. The first is that the laws should be construed to include new technological inventions which were not in existence at the time when the laws were enacted. For instance, in the case of *Super Cassettes Industries Ltd. v Myspace Inc. & Anr*⁵, the word “Place” was deemed to include “place on the Internet” for the purposes of the Copyright Act, 1957. On the other hand, one can argue that principles of interpretation of statutes require a strict interpretation to be accorded to penal statutes. Since the Gaming Laws are penal in nature, online gaming cannot be controlled, until the legislature specifically seeks to do so through amendments.

Games of Skill: An Exception to the Rule

As is the norm in several countries, games of “mere skill” are typically culled out as an exception to the prohibitions, though what amounts to “mere skill” as opposed to games of chance has caused considerable debate. The Supreme Court of India (SC)⁶ has held that competitions where success depends on a substantial degree of skill will not fall into the category of “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.” Whether a game is a matter of chance or skill is a question of fact to be decided on the facts and circumstances of each case.

The Gambling Laws do not specify whether games like Rummy or Poker are games of skill or chance. Only under The West Bengal Gambling & Prize Competition Act, 1957 card games like Bridge, Poker, Rummy or Nap are specifically excluded from the definition of “gaming and gambling” and one can organize such games by procuring the appropriate license under the law. In the landmark verdict of the SC in the case of *State Of Andhra Pradesh v K. Satyanarayana & Ors*⁷ (Satyanarayana Judgment), the game of Rummy was specifically analyzed on the principles of skill versus chance. It was held that Rummy is not a game entirely of chance like the “three-card” games. While Rummy is the only game which has been

tested on this principle and the courts have arrived at a settled position, it remains to be seen whether the jurisprudence develops in India to peg games like Texas Hold’em Poker on the same footing as Rummy.

Recently, Karnataka High Court in the case of *Indian Poker Association and Ors. v. State of Karnataka and Ors*⁸ confirmed that in the state of Karnataka “if the game of poker is played as a game of skill, license is not contemplated.” As such there is no requirement for a license under the applicable laws in the state of Karnataka to run a society or a recreational club for the conduct of skill based games.⁹ However, as and by way of abundant caution, societies and recreational clubs have in the past approached the police and other relevant authorities in order to inform them of their intention to conduct such skill based games and obtain a “no objection” certificate in that regard. The Court did not go into the substantial merits of whether poker *per-se* is a game of skill under Indian laws. While on one hand the court said that no specific license or permission is required in Karnataka for conducting the game of poker if it played as a game of skill, on the other hand it clarified that the enforcement authorities (concerned Police Departments) have all rights to take appropriate action under law if it is found that members and / or the club are indulging in illegal activities under the guise of recreational activities. Given the large number of online poker websites offering their services to Indian customers or looking to offer the same, such decisions are helpful to gauge the mind-set of the India judiciary while evaluating the activities of clubs and websites hosting poker tournaments.

Stakes In Games of Skill? A question for the supreme court to decide

The legality of playing skill based games with stakes has been the subject matter of discussion in some case laws in India. Until recently, the position was fairly settled that the prohibitions under the Gambling Laws are not applicable in the case of games of skill. Therefore one could take stakes or make profits from games of skill.

In the landmark case of *State Of Andhra Pradesh v K. Satyanarayana & Ors* (Satyanarayana Judgment), the SC delved into the question of

Continued on next page



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>> NEW DEVELOPMENTS IN JURISDICTIONS: INDIA

Continued from previous page

whether a commission or fee can be charged by the clubs in the form of an extra charge along with the sitting fees, for the playing cards which were supplied by the club to the players. The SC observed that clubs usually charge an extra amount for anything they supply to their members because the extra payments are used to manage the club and provide other amenities and observed that merely charging an extra fee for playing cards (unless excessive) will not amount to the club making a profit or gain so as to render the club a common gaming house. It is noteworthy that the SC also made an observation that

[I]f there is evidence of gambling in some way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home.

The Madras High Court in the matter of *Director General of Police, Chennai v. Mahalakshmi Cultural Association*¹⁰ interpreted the Satyanarayana Judgment differently and held that Rummy played with stakes would amount to gambling. This new judgment has unsettled a rather settled position of law. Different interpretations by different High Courts have given rise to ambiguities on the position of law on collection of stakes from games of skill, especially Rummy and Poker. This matter is in appeal before the SC¹¹ which has currently temporarily stayed the operation of the aforementioned part of the order. Importantly, while the said appeal pending before the SC pertains to playing Rummy with stakes on physical premises, certain online platforms offering Rummy have also filed Special Leave Petitions before the SC challenging the Madras High Court order. These cases have also been combined with the appeal before the SC. The arguments of this matter began in the SC in the middle of August 2014. It seems that the SC is open to consider and settle various issues relating to operations of the online Rummy websites. The impending judgment of the SC will



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have a cascading effect and will be binding on all States of India which have adopted gaming legislation similar to the Chennai Police Act. All eyes have been watching the developments closely, of what promises to be a landmark case sealing the fate of online gaming businesses in India.

Interestingly, the question of whether games of skill can be offered for money on the virtual platforms came up for consideration in the matter of *M/S Gaussian Networks Pvt Lts (“Petitioners”) v. Monica Lakhanpal and State of NCT*, before the New Delhi District Court¹². In the instant case, the Petitioners, an Internet start-up company, had sought the opinion of the court on the issues mentioned in their petition, to ensure that they are compliant with applicable laws while offering games which may be construed as “gambling or betting.” One of the questions was whether there was any restriction on taking stakes from games of skill on websites making profit. The New Delhi District Court had opined that when skill based games are played for money in virtual space, the same would be illegal and observed that the degree of skill in games played in a physical form cannot be equated with those played online. The court seems to have

assumed that the degree of chance increases in online gaming; and there is a possibility of manipulation including randomness, cheating, and collusion in the online space. However, the factors relied on by the court can be addressed by building adequate fraud control checks into the systems. This is a standard practice globally and also helps address anti-money laundering issues that plague these websites.

It is important to note that this particular judgment is only binding on the parties to the matter and that it has already been appealed before the Delhi High Court. While the nature of the petition precludes the High Court from staying the order of the lower court, the High Court has stated that if the state takes any action against the petitioners, then the petitioners are at liberty to approach the court. The fate of this appeal will depend upon the outcome of the SC order.

Caveats for the foreign player

While Internet gaming in India (i.e. game of skill) is a lucrative business opportunity on offer, online gambling appears to be a somewhat distant dream. Even in the online gaming business, foreign players in

Continued on page 35

