



# Litigation on skill games continues in India as courts send mixed signals



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Most state gambling legislations in India distinguish between games of skill and games of chance. While the latter are prohibited in most forms, laws generally exempt games of skill from the ambit of gambling.

The Indian Supreme Court in 1967 in the State of Andhra Pradesh v. K. Satyanarayana ruled that the game of rummy played in clubs required memorizing fallen cards and thus involved a degree of skill, while exempting it from the ambit of gambling.

The apex court however, while allowing rummy to be played, stated that clubs could charge nominal administrative fees for providing playing cards and other amenities to its patrons playing rummy, but left it open for police to take action if the operators made a significant profit or gain out of the activity in other ways.

In 1996, a three-judge bench of the Supreme Court in Dr. KR Lakshmanan v. State of Tamil Nadu & Another, ratified this decision and noted that horse-racing was a game of skill and so was betting and wagering on it.

Based on these two judgments and some other rulings of High Courts, operators offering online 'skill games' like poker, rummy and fantasy sports, have been flourishing in India. The state of Nagaland in the North-East passed a special law in 2015, expressly recognizing several games like rummy, fantasy sports, poker, quizzes, bridge etc.

and imposing a licensing and regulatory regime for the conduct of such games.

The trouble for online skill games however started in June 2017, when the state of Telangana in South India (which is one of the largest markets for online rummy operators) passed an ordinance, which among other amendments to the 1974 Gaming Act, prohibited gaming in cyber spaces, stated that only games involving pure skill would be exempted from the definition of gaming and expressly classified rummy as a game of chance.

Major online rummy operators including Ace2Three, Rummycircle, Junglee Rummy and Classic Rummy immediately approached the Andhra Pradesh and Telangana High Court stating that the ordinance issued by the Telangana government violated their right to free trade and commerce and also that the ordinance through an explanation overruled express decisions of the Supreme Court.

While the matter was pending in the court, the Telangana government in an unprecedented move passed another ordinance in July 2017, which amended portions of the



previous ordinance to nullify some of the arguments raised by the online rummy companies in court.

The new ordinance, deleted the exemption to games of skill altogether and stated that risking of money on any game, including games of skill falls within the penal provision of gaming.

The rummy companies are still challenging the validity of the two ordinances in the High Court, with the state government stating that it had power to restrict games which caused disturbance to public order. The government also noted that rummy and other games caused social problems as citizens, including youth, were getting addicted to gaming and losing vast amounts of money, causing distress to their families, and even compelling some to commit suicide.

The state government also used portions of the 1967 Supreme Court judgment to argue that the police and authorities could dub rummy and other skill games operations as illegal gaming, if operators make profit or gain through commercial gaming websites.

The challenge to the ordinances and the state's power to ban skill games is still pending in the Andhra Pradesh and Telangana High Court. The state government is expected to file its reply and the online rummy companies will also file their rejoinders. The arguments in the matter are expected to continue for the next couple of months.

While the online rummy companies are battling the legality of the Telangana government's actions, poker clubs in another major state, Gujarat, are challenging an order from the commissioner of police of Ahmedabad city classifying poker as a game of chance and citing police harassment. They have filed a petition in the Gujarat High Court asking to hold poker as a game of skill, that should be allowed to be played for stakes.

A single judge of the Gujarat High Court is currently

hearing the matter and is expected to come out with a judgment in the next couple of months.

Interestingly however, before the controversy over skill games arose in Telangana, the Punjab and Haryana High Court in April 2017 in Varun Gumber v. Union Territory of Chandigarh & Others noted that fantasy sports could be classified as games of skill that requires considerable skill, judgment and discretion.

The court analyzed the business model of fantasy sports website Dream11 and stated that operating online fantasy sports for entry fees was not illegal. The court placed reliance on the 1996 judgment of the Supreme Court that held horse-racing and betting thereof to be a game of skill.

The ongoing cases in Gujarat and Telangana have resulted in a situation of uncertainty prevailing over the future of online skill gaming websites. It is widely believed that the two cases will eventually be appealed to the Supreme Court in the near future. An eventual verdict of the Supreme Court on the legality of online rummy, poker and fantasy sports is the only way to bring clarity and stability to the online skill gaming businesses.

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Jay Sayta is a B.A. LL.B. (Hons.) graduate from W.B. National University of Juridical Sciences (NUJS) Kolkata. He runs <http://glaws.in/> India's first and only website monitoring gambling, betting and lottery laws. Jay has researched and written extensively on gambling and betting laws for online and offline publications and academic journals, and has advised many Indian and International gaming, betting and lottery companies on various legal, regulatory, taxation and commercial aspects. Jay is also a consultant and legal advisor to Delta Corp Ltd., one of India's largest and only publicly listed gaming and hospitality company.