

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary  
Peer Reviewed

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# **FANTASY SPORTS AND INDIAN GAMBLING LAW: A GAME OF SKILL OR A GAMBLE IN DISGUISE?**

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## **Abstract**

Given the fast expansion of fantasy sports and the fact that they intersect with gambling regulations, the question of whether or not they should be legalised in India has provoked considerable legal and policy arguments. In spite of the fact that the Public Gambling Act of 1867 makes it illegal to engage in traditional gambling, the courts have made an exemption for games that require technical expertise. Fantasy sports operators say that their products and services are eligible for this exemption since the user's knowledge, judgement, and analysis are more important than chance in determining whether or not they will be successful. With regard to fantasy sports, the article takes a critical look at the existing legislative framework that governs gambling in India and analyses how it pertains to the industry. It examines significant legal cases that have influenced the discussion on games of skill as opposed to games of chance. When seen through this perspective, the essay examines whether or not fantasy sports actually meet the legal criteria of skill-based activities and explores the necessity of unambiguous legislative control.

## **Introduction**

A large amount of growth has occurred in the realm of fantasy sports in India, which can be attributed to the country's fervent love for cricket as well as the growing availability of smartphones and internet facilities. A multitude of applications and platforms provide fantasy leagues for a variety of sports, including cricket, football, kabaddi, and others. These leagues draw millions of people and large investments. On the other hand, the fast growth of this business has attracted the attention of the legal system, particularly with regard to the gambling laws of India. This discussion revolves around the subject of whether fantasy sports are considered gambling, which is a mostly prohibited activity in India, or if they are considered games of skill, which are allowed.

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India's Public Gambling Act of 1867 is the major piece of legislation that governs gambling in the country. In accordance with this law, the operation of common gambling establishments is prohibited, and both operators and players are subject to penalties. Nevertheless, the Act does not cover online gaming or fantasy sports, mostly due to the fact that it was formed a significant amount of time before the advent of the internet. As an additional point of interest, the Constitution of India recognises gambling as a state topic, which means that different states are free to develop their own rules regarding the subject. Consequently, governments such as Sikkim, Nagaland, and Meghalaya have built regulatory frameworks for online gambling, while other states, like as Tamil Nadu and Telangana, have moved to impose complete prohibitions on the activity.

The most important distinction that may be made in the legal system is whether or not an activity is classified as a 'game of skill' or a 'game of chance.' For a long time, the courts in India have acknowledged that legal definitions of 'gambling' do not apply to games that require skill. A decision that was made by the Supreme Court in the landmark case of *State of Bombay v. R.M.D. Chamarbaugwala*<sup>3</sup> was that games in which success is primarily dependent on skill are not deemed gambling, even if they entail stakes.

In the case of *Varun Gumber v. Union Territory of Chandigarh*<sup>4</sup>, the Punjab and Haryana High Court came to the conclusion that fantasy sports platforms such as Dream11 are predominantly skill-based. This decision gave the legal debate around fantasy sports a significant boost. The court argued that in order for users to successfully put up a fantasy team, they need to conduct research on player performance, pitch conditions, weather predictions, and any other pertinent data. This finding was backed by other verdicts, such as *Gurdeep Singh Sachar v. Union of India (Bombay High Court)*<sup>5</sup> and *Chandresh Sankhla v. State of Rajasthan (Rajasthan High Court)*<sup>6</sup>, which all confirmed the categorisation of fantasy sports as games of skill. Both of these cases were heard in the Bombay High Court.

In spite of these examples, there is still a lot of legal ambiguity. There are certain state governments that have passed laws that prohibit internet gambling, and these laws occasionally include fantasy sports in the same category as other games like as poker or rummy. It is

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<sup>3</sup> AIR 1957 SC 699.

<sup>4</sup> 2017 SCC OnLine P&H 5372.

<sup>5</sup> 2019 SCC OnLine Bom 13059.

<sup>6</sup> 2020 SCC OnLine Raj 264.

possible that the subject might still be brought to the Supreme Court, despite the fact that the Madras High Court overturned the ban on online gaming that had been implemented in Tamil Nadu in 2021.<sup>7</sup> The legal position of fantasy sports continues to be ambiguous and open to disputes because there is neither a unified national policy nor a definite verdict from the highest court in the land.

The purpose of this article is to investigate these changes and assess the coherence of the argument that the 'game of skill' represents. It proposes for going beyond individual case judgements in order to build a complete legal framework that clearly differentiates between different types of games and governs them in an acceptable manner while also ensuring that they are regulated effectively.

### **Legality of Fantasy Sports in India**

The majority of the regulations that pertain to gambling in India, such as the Public Gambling Act of 1867 and state legislations, are predominantly focused on offline gambling activities such as rummy. They were silent on the topic of online gambling. The 'functional equivalence' notion was the foundation upon which the online gaming service that was supplied was built which is "premised on the maintenance of expectations and relationships within the legal framework across media formats, and is thus intended to ensure that what holds in the offline media continues to hold in the online media."<sup>8</sup>

The Public Gambling Act of 1867 states that 'games of skill' are not regarded to be gambling activities.<sup>9</sup> In light of the fact that the legislation provided a definition of the word 'games of skill,' the decision was left up to the discretion of the courts. During the course of two Chamarbaugwala cases<sup>10</sup>, the Supreme Court of India ruled that gambling does not constitute a trade and is thus not protected by Article 19(1)(g) of the Constitution. As an additional point of interest, the court decided that games that requires skill are not considered gambling and, as a result, come within Article 19(1)(g). While discussing the legality of horse races, the Supreme Court of India made the following ruling in the case of K.R. Lakshmanan v. State of Tamil

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<sup>7</sup> *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2762.

<sup>8</sup> Abhinav Shrivastava, *Fantasy Sports Games in the Online Context*, Report on The Laws Relating to Fantasy Sports Games in India, The Sports Law & Policy Centre, 2018

<sup>9</sup> Section 12, Public Gambling Act, 1867.

<sup>10</sup> *State of Bombay v. R.M.D. Chamarbaugwala*, [1957] 1 SCR 874, *R.M.D Chamarbaugwala & Anr v. Union of India*, [1957] 1 SCR 930.

Nadu<sup>11</sup>, “there are few games, if any, which consist purely of chance or skill, and as such a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element of skill predominates over the element of chance. It is the dominant element, ‘skill’ or ‘chance’, which determines the character of the game.... We, therefore, hold that the expression mere ‘skill’ would mean substantial degree or preponderance of skill.”<sup>12</sup>

In the case of *State of Andhra Pradesh v. Satyanarayana*<sup>13</sup>, the Supreme Court of India had the opportunity to examine the meaning of the term ‘chance’ in respect to Rummy and other card games and held that “The chance in Rummy is of the same character as the chance in a deal at a game of bridge. In fact, in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot be said that Rummy is a game of chance and there is no skill involved in it.”<sup>14</sup> According to the ‘dominant factor test,’ which is applied by Indian courts, in order for a game to be considered a game of skill, it is necessary for skill to be more prevalent than chance in the game.

In order to determine whether or not fantasy sports are permitted in India, operators of fantasy sports must rely on laws that deal to gambling and betting. This is because the bulk of Indian rules do not directly address internet gaming. In spite of the fact that this is a borderline situation, the amount of money that consumers are investing and participating in fantasy sports games is consistently growing.<sup>15</sup> In spite of the fact that there is a lack of clarity on the legality of gambling in India, it is believed that the gaming business is worth sixty billion dollars.<sup>16</sup> The increased popularity of fantasy gaming in India may be attributed to a number of factors, including the growth of sports leagues, the expansion of digital infrastructure, the increase in investment, the partnership between fantasy sports operators and sports leagues, and other

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<sup>11</sup> AIR 1996 SC 1153.

<sup>12</sup> *Ibid.*

<sup>13</sup> AIR 1968 SC 825.

<sup>14</sup> *Ibid.*

<sup>15</sup> Ganesh Prasad, *Online Gaming in India and the Need for Self-Regulation*, The Laws Relating to Fantasy Sports Games in India, The Sports Law & Policy Centre, 2018.

<sup>16</sup> Megha Aggarwal, *The Diplomat*, *India's Online Gambling Industry Is a Lottery*, available at <https://thediplomat.com/2024/08/indias-online-gambling-industry-is-a-lottery/>

factors.<sup>17</sup>

Furthermore, a significant development in Indian legal jurisprudence concerning fantasy sports gambling has led to an increase in consumer involvement. This is in addition to the elements that have been mentioned above. The petitioner in the matter of Varun Gumber case<sup>18</sup> argued before the Punjab and Haryana High Court whether the term ‘gambling’ applied to the activities of Dream11, which is a firm that provides fantasy sports games. It was stated by Dream 11 that in order for a user to pick a team, he must fulfil the following rules:

- “Pick a team consisting of at least as many players as required to constitute a real world team to score points for the duration of at least one entire real world match;
- Assess all the players available to make a team and evaluate the worth of a player against the other players keeping aside bias for an individual or a team;
- Based on knowledge and awareness of player’s performance, evaluate a player’s statistics;
- Adhere to an upper limit of spend to draft a team while ensuring that the team did not entirely/ substantially consist of players from a single real-world team. This pre-condition also ensures that a user does not create a situation resembling the act of betting on the performance of a single team;
- Analyse the conditions of the other factors pertaining to the game, pitch, form of players, etc;
- Constantly monitor the scores of players drafted by a user.”<sup>19</sup>

According to the court's decision, fantasy sports games are the same as horse racing because they both need the same level of “skill, judgement, and discretion,” which is what makes them ‘games of skill.’ The court made its determination based on *Dr. Lakshmanan v, State of Tamil Nadu*.<sup>20</sup> An appeal that was filed against the verdict found by the High Court was denied by a division bench of the Supreme Court. The decision of the Punjab and Haryana High Court was affirmed by the Supreme Court, which means that it can be considered legally obligatory on all of the states by the Supreme Court.

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<sup>17</sup> *The fantasy sports market in India*, Report on The evolving landscape of sports gaming in India, KPMG & IFSG, March 2019.

<sup>18</sup> *Shri Varun Gumber v. Union Territory of Chandigarh and Ors.*, CWP No. 7559 of 2017.

<sup>19</sup> *Ibid.*

<sup>20</sup> AIR 1996 SC 1153.

In the case of Gurdeep Singh Sachar<sup>21</sup>, the activities of Dream 11 were challenged once more before the Bombay High Court on the same grounds as before. The court held that, “The petitioner has lost sight of the fact that the result of the fantasy game contest on the platform of respondent No. 3 (Dream 11), is not at all dependent on winning or losing of any particular team in the real world game. Thus, no betting or gambling is involved in their fantasy games.” Thus, it can be concluded from the above cases that fantasy sports gaming cannot be considered as gambling. The courts have rightly applied the ‘dominant factor’ test or ‘predominance test’ to conclude that fantasy sports involve skill as a player needs to have skill in the formation of a team.

### Conclusion

Through a series of consistent judicial rulings, the legal status of fantasy sports in India, particularly their designation as games of skill, has become increasingly resolved. This is particularly true with regard to the previous sentence. The nature of fantasy sports has been thoroughly investigated by courts in a variety of countries, and they have all come to the same conclusion: these games require a significant amount of skill, judgement, and analytical thinking. As a consequence of this, fantasy sports are not regarded as ‘gambling’ in accordance with Indian law; rather, they are classified as skill-based games, which are shielded from legal sanctions.

A long-standing principle that was established by the Supreme Court in the case of *State of Bombay v. R.M.D. Chamarbaugwala*<sup>22</sup> provides the foundational basis for this conclusion. In that case, the Supreme Court held that competitions in which success is substantially dependent on skill are not gambling, even if they involve stakes. Additionally, this idea was confirmed in the case of *K.R. Lakshmanan v. State of Tamil Nadu*<sup>23</sup>, in which it was acknowledged that horse racing is a game of skill despite the inherent uncertainties that are present in the sport.

In light of this body of precedent, the High Courts have expressly reviewed whether or not fantasy sports are within the bounds of the law. The Punjab and Haryana High Court was the first to determine that the fantasy cricket format used by Dream11 is a game of skill. This

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<sup>21</sup> *Gurdeep Singh Sachar v. Union of India & Ors.*, [2020]72GSTR75(Bom).

<sup>22</sup> AIR 1957 SC 699.

<sup>23</sup> AIR 1996 SC 1153.

decision was made in the case of *Varun Gumber v. Union Territory of Chandigarh*.<sup>24</sup> The court made the observation that in order to put up a team that is capable of competing, the players need to have knowledge of statistics, analysis of their previous performance, familiarity with the laws of the game, and the ability to make strategic decisions. Furthermore, it was argued that the element of chance that is present in actual matches does not dominate or overwhelm the skill-based basis of the selection process for professional teams.

In the case of *Gurdeep Singh Sachar v. Union of India*<sup>25</sup>, which was heard by the Bombay High Court, and in the case of *Chandresh Sankhla v. State of Rajasthan*<sup>26</sup>, which was heard by the Rajasthan High Court, same viewpoint was reiterated and strengthened. Every single one of these cases resulted in the courts upholding the legitimacy of fantasy sports platforms and acknowledging that they do not represent gambling in accordance with the Public Gambling Act of 1867 or the regulations that are applicable in each state.

These consistent verdicts have essentially established a legal standard: fantasy sports are to be regarded lawful games of skill when they are structured in a manner that is comparable to that of Dream11 (that is, there is no betting on the results of matches, there is no money from winning margins, and team selection is based on skill). This viewpoint has not been challenged by the Supreme Court, and it continues to serve as a guiding principle for judgements on legal and regulatory matters throughout India.

Although a number of states have voiced concerns over the potential for addiction, financial risk, or moral harm associated with online gaming in general, these concerns are not sufficient to override the established interpretation of the law. Legislative attempts to enforce blanket prohibitions, like as those seen in Tamil Nadu and Telangana, have either been thrown down or are under judicial dispute. The primary reason for this is that the measures failed to differentiate between skill-based games and chance-based gambling.

To summarise, the question of whether or not fantasy sports constitute a game of skill has been answered unequivocally in the positive by a number of High Courts. In making these rulings, constitutional principles, well-established case law, and rational thought were taken into

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<sup>24</sup> 2017 SCC OnLine P&H 5372.

<sup>25</sup> 2019 SCC OnLine Bom 13059.

<sup>26</sup> 2020 SCC OnLine Raj 264.

consideration. As things currently stand, fantasy sports are afforded the same legal protection and are accorded the same status as other skill-based activities such as chess, bridge, or horse racing. With regard to this particular issue, the law in India has reached a conclusion, and any future policy considerations must be able to operate within this preexisting legal framework.

