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## Avinash Kumar



*Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.*

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# **USE OF ONLINE PLATFORM FOR ILLEGAL SELLING AND GAMBLING**

AUTHORED BY - MS. ANANYA GOYAL & DR. JYOTI DHARM

## **ABSTRACT**

*Due to advancement in technology, there is increase in cyber crimes. In one way or another, every person is affected by these cyber crimes. One of such cyber crime is illegal selling and gambling through the use of cyber space. This research paper deals with how does selling and gambling work in cyber space, effects of this in the society, what are the current legal provisions related to illegal selling and gambling and the need of comprehensive law to stop online gamble and illegal selling.*

## **KEYWORDS**

*Cyber crimes, online illegal selling, online gambling, online world*

## **INTRODUCTION**

Cyber crimes have been increased in a large number because of advancement in technology and the increase in use of the mobile phone by the society. As the technology advances, the use of phone and computers become very easy. These electronic gadgets reduce the workload of people and make the work very easier and faster. But as people increase the use of these technologies, they, sometimes, are unaware about the hazardous use or illegal use of these technologies by criminals which are mastermind in the use of internet for their own benefit. Therefore, being unaware about the various illegal activities in internet, they become the victim of cyber crime. One of such crime which is done using the virtual world is illegal selling and gambling. Illegal gambling can be defined as the gambling which is done in the virtual world using the internet. Online gambling has been discussed in detail in the various sub-heads as follows.

## **WHAT IS CYBER CRIME**

Cyber crime or online crime can be defined as a crime which is committed in online world. It means the crime which is done using internet, computer, laptop, etc. Cyber crime not only targets the individual or organization, but also may threaten an entire nation's security. Cyber crimes are not only limited to the crimes which are done using internet or mobile, rather it includes many more related to technology. People who commit cyber crimes are referred to as the cyber criminals. Cyber criminals use various means to get our sensitive information and then use it in a manner which is detrimental to the owner to that data. Some of the common example of the cyber crimes can be identity theft, hacking the government's sites, demanding the money for not leaking the user's sensitive information, or attacking or installing virus on the person's computer. Some of the crimes which are related to the specific individuals are identity theft, cyber crime frauds, phishing, spamming, cyber stalking, etc.

Some of the property related cyber crimes can be defined as copyright infringement, using virus to attack on computers, etc.

Various cyber attacks on the government can be hacking into the government sites, spreading false information on the internet to destroy the peace and harmony in the society, cyber terrorism, etc. It is very difficult to find out the cyber criminals as they use advanced technology and do not have any physical traces as the crime did not happen in the real world, rather in the virtual world. Given below are the various cyber crimes which are explained in detail.

## **VARIOUS TYPES OF CYBER CRIME**

Some of the cyber crimes which are very commonly seen in today's world are as follows:

### **CYBER CRIMES RELATED TO HACKING OR ANY SOFTWARE:**

- **Phishing and scam**: It is defined as the fraudulent activity in which emails are sent to various individuals, which states that the mails are from certain good and reputed company which further induces the person to give out their personal information to the hacker.
- **Internet Fraud**: It is a general term or category which includes all the crime which happen over the internet like phishing, identity theft, etc. As the name suggests it is the type of crime which uses the internet to commit a crime.
- **Software Piracy**: Piracy means stealing; therefore software piracy can be defined as use of copyrighted computer software which infringes with the copyright laws.

- Hacking Computer Networks: It is a crime in which hacker hacks into the private computer of the victim and then use the latter's personal or sensitive information to shut the computer or to destroy the data in the computer.
- Ransom ware Attack: It is a type of cyber crime in which hacker or cyber criminal locks the information of victim's data and make them inaccessible to the person until the criminal receives a certain amount of money. It is done using any malicious software.

#### CYBER CRIMES RELATED TO PERSON:

- Identity theft: It is a type of cyber crime in which cyber criminals use the personal information like picture, e-mail address and credit number of someone else i.e., he pretends to be someone else in order to commit a crime.
- Cyber bullying: Cyber bullying is a crime which is very common in social media, especially with the today's youths. It is defined as sharing the harmful and defaming content about the person online in order to embarrass them and cause pysochological trauma.
- Cyber Stalking: It means stalking or persisting someone online in order to intimidate them via continued and unwanted mails and messages.
- Social Media Frauds: It is defined as use of fake accounts in social media to perform any harmful activities in order to stalk or bully someone online. One of such example is email spam.

#### CYBER CRIMES RELATED TO PROPERTY:

- Online Drug Trafficking: Due to advancement in technology and crypto currency, money is transferred in a secure manner. Drug transfer become easier as no involvement of cash and thereby increase in use of drug trafficking. It is done more specifically on dark web.
- Electronic Money Laundering: It is one of the most easy money laundering methods. Here, online platform is used to illegally hide the origin of black money by involving various complex banking transfers.
- Cyber Extortion: In cyber extortion, criminal gets the important of the victim and to give back that information; they induce the latter to deliver the money or any property of the person.
- Online Gambling: It involves participating or placing bets in the events or any games in order to win various prizes. It may include virtual poker, sports betting, etc. \_

## **HOW DOES ONLINE ILLEGAL SELLING AND GAMBLING WORK?**

### **HOW DOES ILLEGAL SELLING HAPPEN IN VIRTUAL WORLD?**

One of the most concerning use of online world is to illegally sell the things which should not be sold in the first place. Illegal selling in virtual world is referred to as the act of selling or distributing the goods or rendering the services which are either prohibited by the law or which are not in consonance with the terms and conditions of the online platform. Dark web is very commonly used in today's world to sell illegal stuff. Various means or ways to sell the illegal products online are as follows:

- ❖ Sale of counterfeit products: Counterfeit products can be defined as the goods which are of inferior quality posing to be as the products of any known brand and are sold without that person authorization. Counterfeit goods are often sold in the online platform as people are unable to see it physically and are judging the products only through the photographs or videos. As per certain guidelines by IT Rules of 2011<sup>1</sup>, it is mandatory for companies to remove any unlawful or counterfeit product within 36 hours.
- ❖ Sale of Illegal Items: Online world is very often used to sell various products online which the seller do not have any right to possess or sale and buyer have no right to purchase. It is the responsibility of every buyer and seller to see that the goods bought and sold by them are not illegal and comply with all the laws of that particular country or state. It is the duty of all the online platforms to follow all the laws related to illegal selling of that country<sup>2</sup>.
- ❖ Sale of Personal Information: It is illegal to sell the information of any person online. And this provision differs from country to country.

### **HOW DOES GAMBLING HAPPEN IN VIRTUAL WORLD?**

Online gambling is one of the fastest growing industries in the world as it is used by millions of people because of easy accessibility and easy use. Given are methods of how does online gambling actually works:

- ❖ Platform and Accessibility: Online gambling can be done anywhere as it only requires stable internet, an electronic device and money so it is easily accessible to every person. It is a virtual space to easily access various activities like casino, poker, betting, etc. It can be played easily from the person's own home.

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<sup>1</sup> Information Technology (Intermediaries Guidelines) Rules, 2011, Rule 3(2), (India).

<sup>2</sup> Information Technology (Intermediaries Guidelines) Rules, 2011, Rule 6, (India).

- ❖ Registration and Account Creation: Users in order to online gamble must register in order to create their own account. Because of this registration, personal information of the gambler like name, age and address is shared.
- ❖ Depositing Funds: After registration, in order to gamble, a person can deposit the money in their gambling accounts. It can be done with the help of debit or credit card, crypto currency, bank transfers or e-wallets. And, this money will then be used for placing bets in the online games.
- ❖ Game Selection: After depositing the funds, a person has the right to choose any game from wide variety of games; Users can easily surf for the available game in the platform and bet on it.
- ❖ Random Number Generators: These generators are used by the gaming company to randomly select the outcomes for any game like deciding the lottery number, symbol on slot machine, etc. It ensures the fairness and randomness of the games.
- ❖ Placing Bets and Playing Games: After selecting their game, users can actually start placing the bets or playing the games. The main gist of the whole games is to wager money in order to win more from those games. Users can even communicate with gaming interface to know the results of their bets.
- ❖ Withdrawals and Cash outs: If the money is won by the users in the online bets, they can withdraw their rewards by following the procedure of the gambling company or they can keep their money deposited for their next game or bets. Withdraw method will be chosen by the user and within stipulated time it will be received to them through online wallet, paytm, etc.

## **EFFECTS OF ILLEGAL SELLING AND GAMBLING ON SOCIETY**

### **EFFECTS OF ILLEGAL SELLING ON SOCIETY**

Illegal selling and buying be it on physical or virtual world is very wrong and have some negative effects on the society. Given below are some of the consequences of online illegal selling:

- ❖ Fraud and Scams: It is because of illegal selling in virtual world that there are various fraudulent activities like selling counterfeit products, fake products, etc., are increased and thus the buyers are suffering because of that.
- ❖ Financial Loss: Because of illegal selling buyers have to suffer the financial loss as they get the wrong or bad products for the full amount. Because of the fraudulent sellers, their personal information like debit or credit card may also get leaked.

- ❖ **Loss of Consumer Trust:** If the consumers get cheated due to fraudulent sellers, their trust in the platform might be affected. This loss of trust will lead to very negative impact on the overall online marketplace.
- ❖ **Negative Impact on Legitimate Businesses:** As the illegal sellers sell the bad products in the lower cost, more consumers are attracted towards it. As a result, the legitimate business will get affected due to it and they will also start the malpractices.
- ❖ **Damage to Brand Reputation:** If the seller sells the product using the good product name, then the reputation of that brand name will also be damaged. It will lead to loss of consumers and less sales.
- ❖ **Safety and Security Risks:** If bad quality products are sold in the online platform, then it might even be bad for the safety of the customers. These products might even affect the health of the customers.
- ❖ **Negative Impact on Society:** Sale of illegal drugs or weapons online will pose a great threat to the society and thus will bring negative impact on the society.

Therefore, it is very important that the e-platforms follow every necessary guidelines and try not to sell fraudulent goods in their websites.

#### EFFECTS OF GAMBLING ON SOCIETY

Some of the main negative effects of the online gambling in the society are:

- ❖ **Financial Consequences:** Online gambling can lead to loss of huge amount for the gamblers and their family. The easy access and faux prizes lead to waging the huge amount to the gambling company, which often lead to losses and financial debt to the person.
- ❖ **Addiction and Mental Health Issues:** Gambling addiction is very hazardous. It might lead to various mental health problems which may include stress, depression, anxiety, etc. In worst scenarios it might even lead to suicide.
- ❖ **Society Isolation:** In online gambling, individual spend a lot of time in the computers or their mobiles which often lead to them isolating from the rest of the world. As a result, the individuals lack good social behavior and communication skills.
- ❖ **Increased risk of Problem Gambling:** Since, the accessibility to the online gambling and its publicity is very huge and vast, the people who are not even interested in gambling, are drawn to it.

- ❖ Increase in Crime: To get money for gambling, gamblers often indulge in various crimes like theft, robbery, kidnapping, etc.
- ❖ Relationship problems: Gambling might often lead to various relationship problems as the gambler might often give more importance to earn money by illegal means rather than their family or partner.
- ❖ Negative Impact on Youth: Youth are the people which are most exposed to these online gambling sites and they might often become addicted to them. As a result, their entire future, financial situations and mental health be affected.

Thus, it is very clear that online gambling might be detrimental effect to individual and may cause them financial, mental health or various other problems.

## **LEGAL PROVISIONS AND JUDICIAL PRONOUNCEMENTS** **RELATED TO ILLEGAL SELLING AND GAMBLING**

### **LAWS ON ILLEGAL SELLING USING CYBER SPACE**

As such there are no specific laws in India related to illegal selling. It is governed by some of the provisions of Narcotic Drugs and Psychotropic Substances Act, 1985, Indian Penal Code, etc.

In the writ petition filed by *Dr. Zaheer Ahmed in Delhi High Court*<sup>3</sup>, HC directed Centre and State Government to take strict action against people who are involved in selling and buying the drugs including medicines without any proper license. The Court was of the opinion that the sale of the drugs and medicines put the lives of the people at high risk and thus it is in contravention with right to safe and healthy life.<sup>4</sup>

Even though there are no specific laws related to online selling and buying in the internet, there are some points which need to be considered while engaging in the online market:

- Selling Restricted Items: Just like in physical items, certain restricted items like alcohol, medicals, tobacco, should not be sold without any license; same should be done in the virtual world.
- Platform Restrictions: Sellers should check and keep in mind the various restrictions which are put in the particular website or platform and should not sell those restricted items.

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<sup>3</sup> Dr. Zaheer Ahmed v Union of India & Ors., Writ Petition no. 11711/2018, Delhi HC, 2019.

<sup>4</sup> The Constitution of India, Article 21.

- Legal Agreements: It is very important to have the legal agreement between seller and buyer for protection of consumer's personal data. Agreement can be related to refund policies, privacy policies, terms and conditions to be followed, etc.
- Return and Refund: Consumer should be very well aware about the refund and return policies regarding their products.
- Privacy: Consumers data shall be protected by the seller and the online platform i.e., the intermediary.
- Consumer Protection: Seller should follow all his duty towards the buyer which the seller has to follow on the physical world also.

Therefore buyer should take all the precautions and try to not indulge in any unfair trade practices online.

### LAWS RELATED TO ONLINE GAMBLING

There is no comprehensive law in India related to online gambling and therefore no clarity and no standardization. It is important and recommended that centre must try to bring a uniform legislation related to gambling. Because of Covid-19, there is a huge increase in the gambling as people were free and do not have other means to satisfy their financial needs. Gambling is regulated in India by various judicial pronouncements and some state laws. Given below are some of the points how the online gambling is regulated by various states:

- The Public Gambling Act, 1867 was the first law which prohibited any form of gambling in the country but it was to be noted that no person was prosecuted under this act for online betting.
- In the states of Goa & Sikkim and Union Territory of Daman, the online gambling is legalized and even online lottery is accepted.
- In Maharashtra, gambling is prohibited under Bombay Prevention of Gambling Act, 1887<sup>5</sup> and is considered illegal.
- In Nagaland also e-gaming is legalized. Sikkim and Nagaland, were the first state to include online gambling under the purview of gambling.
- In Telangana and Arunachal Pradesh, gambling is considered as the games of skill and is considered illegal.

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<sup>5</sup> Bombay Prevention of Gambling Act, 1887, §3 (4 of 1887) (India).

- Telangana was first state which banned online gambling. After that, even Kerala, Tamil Nadu, Andhra Pradesh and Karnataka have banned online gambling.
- In 2018, many customers were arrested for not following the state gambling rules. But since most of the laws do not include the online gambling, there was no punishment specified and thus they were governed by general principles.

The case of *M/s Gaussian networks Pvt. Ltd. v Monica Lakhanpal and State of NCT Delhi*,<sup>6</sup> court discussed online gambling and held that a game of skills is not a gamble, game played only due to money are illegal, if games are played only for money in virtual world will be illegal, even if same is not the case in physical world and gaming sites were not allowed to promote gambling.

In the case of *All Kerala Online Lottery Dealers Associations v State of Kerala*<sup>7</sup>, court has held that the banning of online lotteries will not infringe the rights of the gambling companies.

Therefore from above points and case laws it is very clear that the laws on gambling are only state based and there is need for strong gambling laws in India.

## CONCLUSION

It can be rightly said, in the end that illegal selling and gambling is harmful for the society as it cause financial loss and mental stress to the individual as well as his family. In case of online gambling along with financial loss and mental loss, it will also cause an addiction problem, social isolation and a very negative impact on the future of the individual especially to the young generation. In case of illegal selling, it will also cause damage to the brand name, safety risk, loss of consumer trust in the online platforms and a very negative impact on the society.

There is no comprehensive law in India which has all the penalties and punishments related to every cyber crime. It is open to wide interpretation from the criminals, whom they use to get away from the punishment and hence the justice is not served to the innocent. As a result there are various criminals, who indulge in online gambling and illegal selling, are not punished. Hence, it is need of the hour that the legislation shall bring single law in the country so that all the cyber crimes are covered and speedy delivery of justice is possible.

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<sup>6</sup> *M/s Gaussian networks Pvt. Ltd. v Monica Lakhanpal and State of NCT Delhi*, C.R.P. 119/2012, Order dated 21.04.2016 (Delhi, April 21, 2016).

<sup>7</sup> *All Kerala Online Lottery Dealers Associations v State of Kerala*, [(2016) 2 SCC 161].