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GAME OF SKILL VS GAME OF CHANCE: THE LEGAL DILEMMA OF ONLINE GAMING IN INDIA

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I. ABSTRACT

Indian courts have spent fifty years classifying games. They have assessed rummy, horse racing, poker, and fantasy cricket and asked: is this predominantly skill, or predominantly chance? This article argues that Indian law has been classifying the wrong thing entirely. Skill and chance are not fixed properties of games. They are relational properties of the encounter between a specific player and a specific platform on a specific occasion. The same game of rummy is a game of skill for an expert and a game of chance for a novice. The law's failure to see this has produced a classification regime that is simultaneously too broad, too narrow, and structurally incapable of protecting the people it was meant to protect. This article proposes that Indian courts and legislators must abandon the object-level question "what is this game?" and adopt a deeper relation-level question: "what does this platform do to this class of user?" The realignment which is grounded in existing constitutional text is the only logical response to the dilemma.

Keywords: Game of Skill, Game of Chance, Online Gaming, India, Constitutional Law, Article 19, Relational Harm, Platform Regulation.

II. INTRODUCTION: ANSWERING THE WRONG QUESTION

The trending way to begin an article about online gaming law in India is to cite the statistics, invoke the Public Gambling Act of 1867, name the leading cases, and blame the regulatory gap. This article will not do that because the problem with Indian gaming law is not a gap. Gaps can

be filled. Rather here lies a misconception, a foundational error that is "the kind of question Indian law has been trying to answer."

Indian law treats skill and chance as intrinsic properties of a games' qualities that exist in a game the same way weight exist in an object, independent of who picks it up. Under this view, rummy is a game of skill. Teen patti is a game of chance. Fantasy cricket is… contested. The court's job is to examine the game itself and declare which quality predominates.[1]

But skill and chance are not intrinsic properties of games. They are relational properties, properties of the encounter between a player and a game. The same game of chess is overwhelmingly skill-determined when Grandmaster plays Grandmaster, and overwhelmingly chance-determined when two players who learned the rules yesterday play. Nothing has changed about the game. The relation changed. And it is the relation not the game in the abstract that produces outcomes, generates harm, and demands legal attention.

Once this is seen clearly, the legal dilemma of online gaming in India reveals itself not as a classification problem awaiting a better test, but as a conceptual error awaiting correction. This article performs that correction.

III. DOCTRINE AND ITS ASSUMPTIONS

In *Dr. K.R. Lakshmanan v. State of Tamil Nadu,* the Hon'ble Supreme Court of India established the governing test where a game of skill is the one in which "*the element of skill predominates over the element of chance."* [2] Previously, the Court in *State of Andhra Pradesh v. K. Satyanarayana*, had held that rummy qualifies as a game of skill because the player must memorise the played cards and build sequences through mindful, sharp strategy making the fall of cards a beginning state rather than a determinative force.[3]

These decisions share a silent assumption and it is that the game has a fixed skill-chance ratio that can be observed by watching it being played. The Court watched rummy. It concluded that skill predominates. End of inquiry.

The assumption was defensible in 1968 for a physical card game. The rules of rummy are identical for every player. The shuffle is random in the same way for everyone. No external

[1] Public Gambling Act, No. 3 of 1867, § 12, Acts of Parliament, 1867 (India); The Promotion and Regulation of Online Gaming Act, 2025, No. 32, Acts of Parliament, 2025 (India).
[2] *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, (1996) 2 SCC 226.
[3] *State of Andhra Pradesh v. K. Satyanarayana*, AIR 1968 SC 825.

force calibrates the difficulty based on who is sitting at the table. Under those conditions, it is at least coherent if still oversimplified to speak of a game having a fixed skill-chance character that applies universally.

An online gaming platform destroys every one of those conditions. The platform knows who you are. It knows your win history, your redeposit patterns, your session length, your loss tolerance. It controls matchmaking. It controls the presentation of odds. It controls every dynamic of the game such as which contests you see, which opponents you face, and in many architectures it uses this information to shape your experience in ways that are invisible to you and disclosed to no one. In this very environment asking whether the game is predominantly skill or chance is like asking whether a road is steep without specifying who is walking on it or what load they are carrying.[4]

IV. THE RELATIONAL REALITY: SAME GAME, DIFFERENT LEGAL CHARACTER

Consider fantasy cricket the product at the centre of most recent Indian gaming litigation. A user with five years of cricket statistics memorised, an understanding of pitch conditions, and a systematic approach to player selection is playing a game in which skill genuinely and demonstrably shapes outcomes. Their choices causally produce better results than a coin flip would. For that user, in that interaction, the game is skill-dominated.

Now consider a user who downloads the same app, selects players based on their favourite jersey numbers, deposits money they cannot comfortably afford to lose, and plays twelve contests in a single evening. Their choices do not causally produce better results than chance would at that skill level. The platform's matchmaking algorithm, if it is doing what engagement-optimisation algorithms typically do, may be pairing them against users far more expert than themselves. For that user, in that interaction, the game is chance-dominated.

The game has not changed between these two descriptions. The app is identical. The rules are identical. The Supreme Court's skill-classification, if it applies, applies to both. But the legal outcome it produces constitutional protection for a skill-based trade flows entirely to the platform operator, whose product is simultaneously protective of one user's genuine skill and

[4] *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2762.

exploitative of another user's genuine vulnerability. The classification is doing no work for the person who most needs legal protection.

This is the legal dilemma of online gaming in India, stated precisely: not that we cannot decide whether games are skill or chance, but that the skill-chance classification is addressed to the wrong object. It classifies platforms. It should classify interactions.

V. RELATIONAL FRAMEWORK AND THE CONSTITUTIONAL CASE

Rearticulating the legal question as relational "what does this platform do to this class of user?" is not a departure from the constitutional framework governing gaming regulation. It is, this article contends, a more faithful application of it.

Article 19(6) permits the state to restrict the right to carry on a trade in the interests of the *general public.*[5] The proportionality doctrine, as articulated in *Justice K.S. Puttaswamy (Retd.) v. Union of India*, requires that restrictions bear a rational nexus to a cognisable public harm and employ means proportionate to addressing that harm.[6] The cognisable harm in online gaming is not the presence of chance in a game. Chance is morally neutral. The cognisable harm is the systematic exploitation of informational and skill asymmetries between platforms and specific categories of user a harm that the skill-chance binary, precisely because it ignores the relational dimension, cannot reach.

Article 21's protection of life with dignity, read expansively as it has been since *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, encompasses the right not to be systematically deceived in ways that cause economic harm.[7] A user who plays a platform that controls their opponent quality, knows their psychological vulnerabilities, and optimises against their continued financial participation while disclosing none of this is not exercising autonomous economic choice. They are performing a ritual of choice that the platform has engineered. Article 21 has something to say about that. Indian gaming law, preoccupied with its classification taxonomy, has not yet listened.

VI. WHAT REFORM MUST DO AND WHAT IT MUST STOP DOING

[5] INDIA CONST. art. 19, cl. 6; *Skill Lotto Solutions Pvt. Ltd. v. Union of India*, (2022) 7 SCC 235.
[6] *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1.
[7] *Francis Coralie Mullin v. Administrator, Union Territory of Delhi*, (1981) 1 SCC 608.

Any reform of Indian online gaming regulation that begins by trying to define skill more precisely is starting in the wrong place. More precise definitions of skill will produce more sophisticated performances of skill-dominance by platform designers, without altering the underlying relational dynamic that generates harm. The law will sharpen its taxonomy; the industry will sharpen its response to the taxonomy; users will remain unprotected.

What reform must do instead is shift the object of regulation from the game to the relationship. Concretely, this means three things. **First**, platforms must be required to disclose, to users and to regulators, the actual expected financial return for users in each skill-percentile band and not the theoretical return in an ideally competitive market, but the actual historical return for users who play with the frequency and deposit level of the user in question. **Second**, matchmaking must be disclosed and audited: users must know whether they are being placed in contests against randomly selected opponents or algorithmically selected ones, and on what basis that selection operates. **Third**, the constitutional protection available under Article 19(1)(g) must be conditioned not on judicial classification of the game but on demonstrated platform compliance with these relational disclosure obligations. A platform that discloses its relational conduct is entitled to operate. A platform that refuses disclosure cannot shelter behind a skill-classification it has engineered.

The existing MeitY framework under the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 already creates the architecture for this approach it establishes Self-Regulatory Bodies and a certification mechanism for online gaming intermediaries.[8] What it lacks is the relational conception that would make that architecture meaningful. Self-Regulatory Bodies currently certify games. They should certify platform conduct toward user cohorts. The amendment requires no new primary legislation, only a substantive expansion of what certification must assess.

VII. CONCLUSION: CHANGE THE QUESTION AND THE DELEMMA DISSOLVES

The legal dilemma is not what it appears to be. Online Gaming in India is presented as an irresolvable classification dispute: is this a game of skill, or a game of chance? In fact it is a conceptual error: the law has been asking a question about objects when the actual harm it needs to address is a question about relationships.

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

The skill-chance binary will not be abolished by a single statute or judgment. It has constitutional roots, judicial authority behind it, and fifty years of precedent. But it can be supplemented and in the online gaming context effectively displaced by a relational framework that asks what platforms actually do to actual users, and conditions legal protection on honest disclosure of the answer.

The dilemma dissolves the moment the law stops asking what a game is and starts asking what a platform does. That shift is not radical. It does not require the Supreme Court to overturn *Satyanarayana* or *Lakshmanan*. It requires Indian law to acknowledge what has always been true: that a game of skill played between unequal players, on a platform that knows the inequality and exploits it, is not a game of skill for the player who loses. And the law exists, at least in part, for that player too.