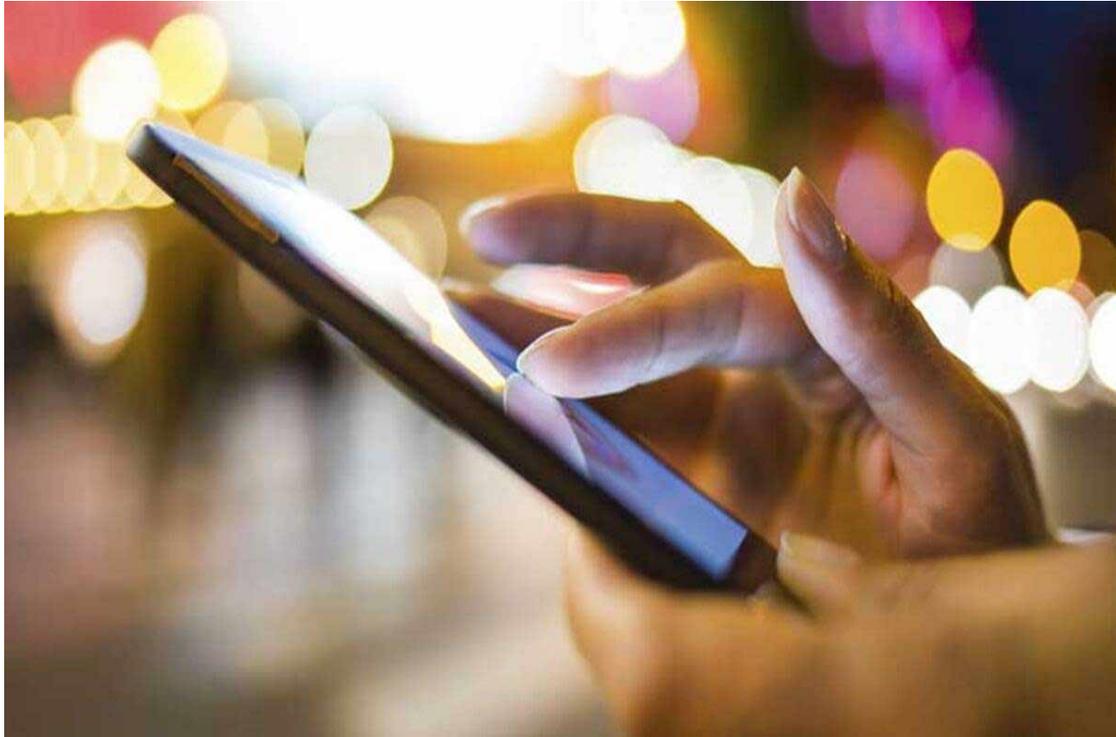


Counting on skills: Legality of online fantasy sports in India

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The commencement of the 14th edition of the Indian Premier League (IPL) was bound to revive regulatory interest in online fantasy sports in India. Within a week of IPL 2021 being launched, the National Payments Corporation of India (NPCI) announced a ban on UPI transactions below INR 50 on gaming platforms. The curb is ostensibly aimed at reducing low volume transactions, which are alleged to have spiked during IPL matches, arguably on account of people transacting on online gaming platforms such as Dream 11, Mobile Premier League, and Howzat. The (apparent lack of) legality of online fantasy sports platforms, which sponsor various playing franchisees in the widely-popular league, has been widely misunderstood, coupled with the moral and optical concerns around real-money gaming.

Rallying for numbers

Globally, India ranks as one of the top five online gaming markets with the user base estimated to be upwards of 365 million. The country's young demographic coupled with access to cheap smartphones makes it an exciting bet for online gaming companies, with annual growth expected to be at an impressive 40%. In 2019, Dream11 became the first online gaming company in India to be part of the coveted 'unicorn club', of startups valued at more than USD 1 billion. While such stellar current and future growth estimates paint a lucrative picture for investors and entrepreneurs, operating an online fantasy sports platform is riddled with challenges beyond the scope of eager product managers or proactive marketing executives.

Courting trouble

In the past 5 years, online fantasy sports companies have seen a steady stream of litigation, a majority of which relate to the involvement of real money on such platforms. Consider the case of Varun Gumber, who filed a Civil Writ Petition titled 'Varun Gumber vs. Union Territory of Chandigarh and Ors.', before the High Court of Punjab and Haryana against Dream11. As per the Petitioner's case, he had signed up on Dream11, and transferred an amount of INR 50,000/- to his account for participation in various fantasy sports leagues operated on the platform. He made two teams for cricket and football, placing an amount of INR 24,000/- and INR 26,000/- respectively on the teams' winning. However, both the teams lost their matches, and he resultantly lost almost the entire amount in a very short span of 2 days. In his Petition before the High Court, Gumber alleged that the platform was not a skill-based one, but chance-based, and therefore, fell foul of the provisions of the Public Gambling Act, 1867 (PG Act). Pleas on similar lines have subsequently been filed before other courts in the country, alleging that fantasy sports platforms that involve use of real money constitute betting or gambling.

The legal uncertainty for online fantasy sports companies is further evidenced from a telling disclosure on Dream11's website, which states: "The laws in Assam, Andhra Pradesh, Odisha, Telangana, Tamil Nadu, Nagaland and Sikkim are unclear on games of skills that may be played for a fee. Hence, residents of these states are not permitted to join any cash contests on Dream11." While the archaic PG Act is the only Central statute that deals with gambling in India, 'betting and gambling' fall under the State List, meaning that compliance requirements vary from state to state.

As an example, the Sikkim Online Gaming (Regulation) Act, 2008 is the first regulation introduced anywhere in India which deals with online gaming. The said Act had brought in a mandatory licensing regime for providers of inter alia 'online games', but it was subsequently amended to reduce its scope to physical gaming parlours and online games hosted through intranet in the state. Similarly, Nagaland introduced the Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, which among others categorizes virtual sports, virtual team selection games, and virtual sport fantasy league games as 'games of skill', distinct from betting or gambling. On the other hand, by way of an amendment in 2017, the Telangana state made two significant changes; it added "online gaming for money or any other stakes" within the definition of "gaming", and included 'game of skills' within the meaning of 'wagering or betting'. This amendment effectively prohibits in the state all forms of online games involving money, irrespective of whether they are games of skills or of chance.

Game, set, legal

From the cases put forth against various High Courts, there seems to be a common misunderstanding of online fantasy sports being chance-based games, and that no significant skill is required to play them since the participants are alleged to be betting on the outcome of a real-time offline match. Fortunately, courts in India have been proactive in dispelling the common

misconceptions, and have rightly categorized online fantasy sports as 'games of skills'. As early as in 1957, the Supreme Court of India in 'R.M.D. Chamarbaugwalla vs. Union Of India' had settled a two-fold method for distinguishing sports from betting/ wagering based on their predominant nature; first, where success of the player depends significantly on their skill, and second, even where there is an element of chance, success in the competition dominantly relies on skills of the player(s). As an example, consider the games of snakes and ladders and ludo, both of which are based on rolling of dice by the players, ostensibly becoming games of chance. However, in snakes and ladders, a player has no agency in terms of movement – the player has to move the number rolled and suffer the consequences of the moves. While even in a game of ludo a player moves the rolled number, how and where the player moves is based on a strategic, skill-based choice made by the player. Therefore, even though both games have an element of chance, ultimate success in ludo is dependent largely on a player making skill-based judgment, mastered over a period of time.

In Indian jurisprudence, games that are purely chance-based have been absorbed in the meaning of gambling or betting, and are largely prohibited across states. At the same time, the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 is the only statute in the country to define 'games of chance' and 'games of skill', and the latter is defined to include "all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen". Given this background, there appears to be a consensus amongst courts so far on online fantasy sports being 'games of skill', with even the Supreme Court refusing to intervene against the Punjab High Court's finding in Varun Gumber. Separately, even though new regulatory decisions, such as the one by NPCI, place limits on online fantasy sports platforms, they are a step towards greater regularisation and provide operational clarity to the platforms.

Follow-on concerns

In spite of the favourable court orders, it is evident that online fantasy sports companies have elected to operate on the side of caution. Given the optical and moral challenges around money being spent online on gaming, ads between IPL matches are followed with disclaimers on the game involving potential monetary risks. Mobile Premier League, one of the marquee names in the space, has gone one step further and designed its campaign with the tagline "Hai Akal, Toh Khelo MPL". The obvious stress on the skill-based nature of the platform is almost a disclaimer to publicity seekers looking to drag the company to court on misguided concerns of betting.

Given the continued regulatory uncertainty, the favourable court orders are unlikely to offer any comfort to the online fantasy sports companies. While dismissing a petition against one of the leading platforms, the Gujarat High Court ordered the state government to among others examine whether the platforms lead to money-laundering or violate laws governing foreign exchange. For companies operating in this space, the regulatory uncertainty and potential litigations are likely to continue.