

The Gambling Quotient Of Online

RUMMY

The Evolution of Rummy & Poker sites in India

Gambling may be a vice but it has been a part of Indian culture since time immemorial. In fact in Mahabharata, one of the oldest mythological epics of India, the

opponents' strength was put to test vide board and dice games rather than waging wars.

Till recently, terms such as gaming, gambling, betting or wagering referred to the act of playing games in a physical premise. However, this

industry has witnessed a paradigm shift with the evolution of television, digital and online gaming models. Mobile and online gaming models received impetus in India owing to the telecom revolution and penetration of internet and cable in several parts of the country as also the increasing

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popularity of this new media among the masses. Historically, the most common forms of gambling in India have been the many versions of card games such as teen patti (similar to flush), poker, rummy and bridge as well as betting on sports.

Today, these games have expanded their reach through the internet, so much so, that the most popular gaming sites are card games sites hosting rummy and poker tournaments.

However, Indian laws are not very accommodative of websites hosting such games and tournaments rendering it a risky business.

The “skilled” game of Rummy

Gambling in India is largely governed by the Public Gambling Act, 1867 and corresponding laws enacted by individual States in this regard (“Gambling Laws”). These Gambling Laws typically define ‘gambling’ as ‘the act of wagering or betting’ for money and impose restrictions on/prohibit use of a physical premises often referred to as a gaming house/common gaming house, for the purpose of making any profits or gains by conducting gambling-related activities.

Generally, the games of Rummy and Poker do envisage the involvement of stakes and one would assume that they may violate the Gambling Laws. However, the Gambling Laws are limited in their reach and do not cover games of ‘mere skill’.

The exclusion of games of ‘mere skill’ from the ambit of Gambling Laws has caused much debate on which games are games of ‘mere skill’ as opposed to games of chance. The Supreme Court of India (“SC”), in the case of *State of Bombay v. R. M. D. Chamarbaugwala*¹ has held that competitions where success depends on a substantial degree of skill will not fall into category of ‘gambling’; and despite there being an element of chance, if a game is predominantly a game of skill, it would nevertheless be a game of “mere skill”. Whether a game is a matter of chance or skill is

a question of fact dependent on the nature of game and the manner in which it is played.

Most Gambling Laws do not specify whether Rummy or Poker is a game of skill or chance. In West Bengal, games of cards like Bridge, Poker, Rummy or Nap are specifically excluded from the definition of “gaming and gambling” and one can organise such games by procuring the appropriate license under the law. In the landmark verdict of the SC in the case of *State of Andhra Pradesh v K. Satyanarayana & Ors*² (“Satyanarayana Judgment”), the game of Rummy was specifically analysed on the principles of skill versus chance and it was held that Rummy is not a game entirely of chance like the ‘three-card’ games which are games of pure chance. The said judgment also subtly refers to Bridge being a game preponderantly of skill. It remains to be seen whether the jurisprudence develops in India to peg games like Texas Hold’em Poker on the same footing as Rummy.

Since most of the Gambling Laws³ were enacted prior to the advent of virtual/online gambling, the draftsmen had gaming or gambling in brick and mortar premises in contemplation. The principles of interpretation of statutes suggest that when there are new technological inventions or change in circumstances, which were not in contemplation at the time when the statute was enacted, the said invention or technological advancement may be construed to be included in the existing enactment if they fall within the same genus, as provided in the existing enactment. For instance, in the case of *Super Cassettes Industries Ltd. v Myspace Inc. & Anr*⁴, the word “Place” was deemed to include ‘place on the internet’ for the purposes of the Copyright Act, 1957.

The question of whether games of skill can be offered for money on virtual platforms recently came up for consideration before the New Delhi District Court⁵ where the petitioners had filed a petition under Order 36 of the Code and Civil Procedure Code



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¹ AIR 1957 SC 699; ² 1968 AIR 825; ³ Except the Sikkim Online Gaming (Regulation) Act, 2008; ⁴ 2011(48)PTC49(Del);

("CPC") for seeking the opinion of the Hon'ble court on *inter alia* the question of whether there was any restriction on taking stakes from games of skill on websites making profit. The Court opined that when skill-based games are played for money in virtual space, the same would be illegal and observed that the degree of skill in games played in a physical form cannot be equated with those played online. The court seems to have assumed that the degree of chance increases in online gaming; and there is a possibility of manipulation including randomness, cheating, collusion in the online space. However, the factors relied

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on by the court can be addressed by building in adequate fraud control checks in the systems.⁶ This is a standard practice globally and also helps address anti-money laundering issues that plague these websites.

"Stakes" in Online Rummy

Another important issue that arises is whether the organiser of such online tournaments of Rummy can collect stakes or derive profits from

the players from participating in the tournaments. While this issue has not been dealt with for the virtual world, a similar question came up for consideration in the context of physical clubs in the Satyanarayana Judgment. The SC tested whether a commission or fee can be charged by the clubs where playing cards were supplied by the club to the players at an extra charge and a sitting fee was charged for each person who joined the game.

The SC *inter alia* observed that "*clubs usually charge an extra amount for anything they supply to their members because it is with this extra payments that the management of the club is carried on and other amenities are provided... an extra charge for playing cards (unless it is extravagant) would not show that the club was making a profit or gain so as to render the club into a common gambling house*". The SC also observed that charging a nominal amount as "sitting fees" for playing Rummy does not amount to the club making "profit or gain" from playing Rummy.

While the SC did not delve directly into the question of legality of playing Rummy with stakes, it made an observation that "*if there is evidence of gambling in some way or that the owner of the house or the club is making a profit or gain from the game of Rummy or any other game played for stakes, the offence may be brought home*." The Andhra Pradesh High Court has been taking a consistent view that playing Rummy for stakes cannot be construed to be an offence⁷ and stated that penal statutes should be strictly construed and benefit of any loophole in the statute is to be given to the accused. The high courts of Bombay, Madras and Karnataka have also concurred with this view.

However, recently the High Court of Madras has expressed a different view in the matter (which is a writ appeal) of the *Director General of Police, State of Tamil Nadu, Chennai & Ors v. Mahalakshmi Cultural Association*⁸, wherein the High Court of Madras interpreted the Satyanarayana Judgment differently in the context of a statute in *pari materia* and held that Rummy played with stakes would amount to gambling. Different interpretations by different high courts have given rise to ambiguities on the position of law on collection of stakes from the game of Rummy. However, this matter is in appeal before the Supreme Court, which has currently temporarily stayed the operation of the relevant part of the order.

Conclusion

Since the internet space is not limited to any specific territorial jurisdiction, the implementation of law is getting difficult since different Indian states and High Courts have adopted different laws. Even developed countries like USA are still struggling to resolve the cross border liquidity among member states.

Apart from Gambling Laws, a Rummy site owner needs to be also wary of the Indian laws relating to foreign investment, exchange control, payment systems, anti-money laundering etc. which may restrict the manner in which such tournaments are conducted and the businesses are structured. The bets are high on the Indian market and the stakes even higher; hence, it would be interesting to see how the Indian jurisprudence evolves over the next few years and how governments, especially that of Sikkim, monetise this existing and burgeoning business.



⁵ *M/s. Gaussian Networks Pvt Ltd ("Petitioners") v. Monica Lakhampal and State of NCT*; ⁶ Since this judgement was given by the Court as a result of a petition made under Order 36 of CPC, it is binding on the parties *inter se* and not generally. Thus, this opinion does not necessarily by itself alter the position of law in India as regards offering of skill based games for stakes through online portals. ⁷ *Executive Club formed by Lalitha Real Estates (P) Limited v. State of A.P.*, 1998 (2) ALT (Cri.) 207, *Twin Cities Cultural Cinema Cultural Centre v Commissioner of Police and Ors*, 2002 (2) ALD (Cri) 232., *D. Krishna Kumar and Anr. v State of A.P.*, 2003 CriLJ143. ⁸ W.A.No. 2287 of 2011; 2012 (2) CTC 484.

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