

Online Gaming Laws In India & Celebrity Sponsorship Liability

written by Rajeev Rambhatla | February 9, 2021



The Madras High Court recently issued notices to Virat Kohli and other celebrities endorsing online gambling platforms, consequent to a petition filed by a Chennai-based advocate against online gambling and celebrity endorsement of online gambling. The petition highlighted how online gambling platforms, through endorsements by well-known celebrities, lure in vulnerable audiences to false promises of winning money, which ultimately puts them in huge debts. The recent suicide by an ISRO employee under debt due to online gambling was cited as an example of the dangerous effects of the same. This raises interesting questions as regards the legality of online gambling as well as the liability of celebrities that endorse such platforms.

Gaming Laws In India

When it comes to the legality of gambling and gaming in India, courts have categorised games as games of skill and games of chance. Defining this difference in the case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*^[1], the Supreme Court held that the key differentiator between games of skill and chance is the element of uncertainty. A game of chance is one where the determination is entirely or partly dependent on chance, such as the throw of dice or shuffling of cards. However, in a game of skill, the outcome is dependent more on the skill or deftness of the participant than on sheer luck.

Generally, games regarded as games of skill are made legal to bet on, while games of chance are not. As was held by the Supreme Court in the *Satyanarayana* case^[2], competitions where the outcome depends on a substantial degree of skill, even where there might be an element of chance, but if the same is still predominantly skill-based, it would not constitute gambling and would be legal.

Betting and gambling fall under List II of the Seventh Schedule^[3] of the Indian Constitution giving states the power of legalising gambling in their states if they choose to do so. Thus, different states have different laws with respect to gaming and gambling and consequently, their legality depends on the laws prevalent in that particular state. Many forms of gambling are legal in some states such as Goa, Daman and Sikkim.

Several central legislations also include gambling within their ambits. The Public Gambling Act 1867 pertains to public gambling houses and prohibits any citizen from running them. Section 12 of the Act expressly excludes games of

skill from the purview of 'gambling'. Further, under the Payment and Settlement Act 2017, any payment system or clearing house having equity less than 51% of that held by an Indian bank would require authorization for operating in India. The Information Technology (Intermediaries Guidelines) Rules 2011[4], under the Information Technology Act 2000, mandates Internet Service Providers and Website Hosts to block access to certain websites, which includes those "relating to or encouraging money laundering or gambling".

Online Gaming

Since most of the gambling and gaming laws were enacted prior to the introduction of online gaming, they do not address online gaming. Nonetheless, states such as Nagaland and Sikkim have introduced specific legislation regulating online gambling in India. The Sikkim state law pertaining to online gaming sets up a licensing regime where licenses can be obtained for conducting online games such as bingo, blackjack, etc. Telangana has also extended its respective state legislation to bring online gaming within its purview. Further, the states of Andhra Pradesh and Tamil Nadu have also passed ordinances amending their laws to ban online gaming. Online poker is permitted under the state law of West Bengal subject to license. Further, the state laws of Assam and Orissa prohibit the very activity of gambling or gaming itself including online gaming within their ambit. In other states, however, the prohibitions are in relation to public gambling houses, and not the activity itself, due to which online gaming is left outside their purview.

The IT Act and the Foreign Exchange Management Act 1999 (FEMA) would also be applicable to online gaming. While the IT Act would be applicable to block access to online gaming websites, FEMA would be applicable with respect to depositing currency other than rupees to online gambling platforms. The applicability of the Public Gambling Act, however, is doubtful as a 'gaming house' therein is defined as an enclosed premise having instruments of gaming to accrue profit to the owner of such gaming house. Thus, where a person is accessing online games through his house, it would not amount to a gaming house under the Public Gambling Act.

In *Gaussian Network Pvt. Ltd. v. Monica Lakhanpal*[5], the Delhi District Court stated that even games of skills played on a virtual platform would be illegal. It also held that attracting players by luring them with prize money is illegal. However, the case cannot be termed as a precedent as the parties withdrew the petition during the final arguments. In contrast, in the case of *Gurdeep Singh Sachar v. Union of India*[6], the Bombay High Court held that online fantasy games amounting to a game of skill are not illegal.

However, the Supreme Court recently issued an order staying the operation of this judgment, reviving the doubts relating to their legality. The Rajasthan, and Punjab and Haryana High Courts have also held that online fantasy games, particularly the ones operated by Dream11, are not unlawful as they involve a preponderance of skill. Since the Supreme Court order only barred the operation of the Gurdeep Singh judgment, the judgments of the Rajasthan and Punjab & Haryana High Courts are operative at present. Thus, the judicial position presently applies the dichotomy of chance and skill to decide on the legality of different online games.

Celebrity Endorsement Of Online Gaming

Celebrity endorsements play a major role in the sale of products and

services, as they subconsciously influence the choices of consumers to buy a product endorsed by their favourite celebrity. Up until recently, celebrity endorsers could not be held statutorily liable for the products they chose to endorse.

There was no comprehensive law in existence to regulate misleading endorsements by such celebrities. This meant that celebrities were free to feature in any advertisement of their choice irrespective of the veracity of the claims made by them. In 2017, the Advertising Standard Council of India (ASCI) issued certain 'Guidelines for Celebrity Advertising'[7] that state that advertisements featuring celebrities should not be false, misleading or unsubstantiated and that a celebrity should conduct due diligence to ensure the same.

A celebrity, as under these guidelines extends to not just actors or sportspersons but also activists, authors, doctors, and educationists. Nonetheless, these guidelines were voluntary in nature and did not subject celebrities to any liability upon non-compliance.

In 2019, the Consumer Protection Act 2019 (CPA) filled this gap by providing a statutory liability to endorsers for making misleading advertisements. CPA 2019 established a Central Authority that has the power to order for the discontinuation or modification of false or misleading advertisements. Further, it also empowers the Central Authority to impose penalties on endorsers of false or misleading advertisements extending up to 10 Lakh rupees and 50 Lakh rupees for subsequent contraventions.

Such an endorser can also be prohibited from making endorsements for a period of up to one year and up to three years for subsequent contraventions. Liability on the endorser would not incur if they can show that due diligence was conducted by them to verify the veracity of the claims made in the advertisement.

With respect to online gaming, in light of the recent cases of suicides by persons participating in online gambling, the ASCI published new guidelines specific to 'Real Money Gaming' advertising to make them safer and more responsible. These guidelines came into force from 15th December 2020 and provide for safeguards such as disclaimers to prevent such advertisements from misleading the public, especially minors.

Although these guidelines do not address the endorsers of online gaming, celebrity endorsers can be held liable under CPA 2019 for providing false or misleading claims for luring vulnerable persons to bet their money on online gaming platforms.

Conclusion

An analysis of the existing gaming and gambling law regime in India indicates numerous gaps when it comes to the regulation of online gaming. Such lacunas can be exploited further by online gambling websites in states where the laws have made them illegal in physical form. Nonetheless, it can be seen that more and more attention is being brought to such loopholes and steps are being taken to ensure that they are not misused. The legal notice issued to Virat Kohli is one instance of such sensitivity to the problems concerned with online gambling. The ASCI guidelines and the Consumer Protection Act 2019 also contribute to making the law stricter as regards celebrity endorsements of online gaming.

The current Covid-19 scenario, by putting people at home, might have increased the user base of online gaming platforms in India, which makes it

necessary for comprehensive laws to be in force to tackle the same. Laws such as the Sports (Online Gaming and Prevention of Fraud) Bill, 2018, which had lapsed in the Parliament, should be reintroduced to address the existing gaps and provide a legislative framework regulating gaming in the online medium. As has rightly been said, laws should not stay static and keep evolving to keep in touch with societal advancements.

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- [1] Dr. K.R. Lakshmanan v. State of Tamil Nadu and Ors., Writ Petn. (C) No. 665 of 1986
 - [2] <https://indiankanoon.org/doc/84963/>
 - [3] <https://www.mea.gov.in/Images/pdf1/S7.pdf>
 - [4] https://www.prsindia.org/sites/default/files/bill_files/IT_Rules_2011.pdf
 - [5] <https://indiankanoon.org/doc/62084717/>
 - [6] Bombay High Court, Criminal Public Interest Litigation Stamp No.22 Of 201923
 - [7] <https://ascionline.org/images/pdf/guidelines-for-celebrities-in-advertising.pdf>

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