

SALOT AND SHAH ASSOCIATES

NEWSLETTER

www.salotandshah.com

THE LEGALITY OF ONLINE GAMING IN INDIA

The introduction of 28% GST on the face value of the Turnover of Gaming Companies by the GST council has again sparked the debate over regulation and the future growth of the gaming industry. The government has increased the tax to control the increasing addiction of players towards online games.



This move of the government was criticized by different experts and gaming companies citing that this move of the government will kill the rising gaming industries. In the past, the supreme court through its judgments settled the question of the legality of online gaming/betting by categorizing online games into games of skill and games of chance. According to the court, the games which require player skills and experience for winning a competition were considered games of skills while the games in which the chances of winning is completely based on luck was considered game of chance. The Supreme Court from time to time through its judgments has considered games that involve the use of skills by players as legal in India. Now with the introduction of 28% GST on the face value of online gaming, it is interesting to see how the gaming industry will respond.

LAWS RELATED TO GAMBLING AND ONLINE GAMING IN INDIA

The concept of gambling or betting is not a new concept. The roots of gambling can even be found in ancient India. The Mahabharata is a classic example for that. Till 1867 there is no formal statute that regulates or prohibits gambling in India. But in 1867 the British East India Company introduced the first statute which regulate gambling in India known as the Public Gambling Act, of 1867.



This act draws inspiration from the British Gaming Act, 1845, and the Betting Act, 1853. This act made gambling a punishable offense while allowing the games of skills.

After the Independence, as per Schedule 7 of the Indian Constitution, the state has the sole authority to enact laws pertaining to betting and gambling. As a result, the Public Gambling Act and other central legislation are no longer valid throughout the territory of India. While some states enacted their own statutes adopting the Public Gambling Act other states such as Telangana, Andhra Pradesh, etc. have put a complete blanket ban on all gaming including games of skill & Chance.⁶⁵

CURRENT LAWS RELATING TO ONLINE GAMING IN INDIA

In the present time, different states have taken different views relating to online gaming and gambling in India.

While some states have allowed online gaming and gambling in their state. But on the other hand, many states have also put a complete ban on any type of game in their respective states. According to the judgments of various High Court and Supreme Court and their interpretation it has been observed that if a game is a game of skill it needs to fulfill some basic parameters: -

- The game should involve the presence substantial degree of skill
- The success of the player should principally depend upon prior knowledge, training, attention, experience, and skill of the player.
- The player with more experience should be able to get greater insight into strategies for success which result in a better outcome for the player.



The Supreme Court and various High Courts have taken different views relating to different games in India which are given below: -

POKER

The Gujarat High Court in the judgment of Dominance Games Private Ltd. vs State of Gujarat has held that poker is a game that is based on the game of chance. The court went on to say that there are elements of skills and chance in every game. Therefore, it is important to use the test of "substantial degree of skill" which indicates that if a game contains both an element of skill and chance, it is necessary to determine whether skill or chance predominated in determining the outcome of the game. Applying this test, the court held that the game of poker was not satisfying the criteria of the predominance of skill.

The Calcutta High Court in the Indian Poker Association vs the State of West Bengal held that poker is a game that required skill, rather than luck.

The court further ruled that because poker is a game of skills, neither the government nor the law enforcement agencies may interfere in the poker games that are being played in the clubs. The court pointed out that poker did not fall under the description of gambling under section 2(1) (b) of the West Bengal Gambling and Prize Competition Act, 1957. Therefore, if any person plays poker without indulging in any other act which could be treated as an offense, then poker does not attract police interference.

RUMMY

The Supreme Court of India in the case of State of Andhra Pradesh vs K. Satyanarayana and Others held that the game of rummy is a game of skill, not a game of chance. The court further observed that the game of rummy requires the players to memorize the cards which required a considerable skills from the player's end for holding and discarding cards.

Further, the Kerala High Court in the case of Ramchandran K vs The Circle Inspector of Police reiterated that rummy is a game of skill but playing rummy for stakes in the club premises amount to an offense under Kerala Gaming Act, 1960 and it is open for the police officer to take appropriate action after complying with Section 5 of the Act. In Play Games 24X7 Pvt. Ltd. and Ors. Vs Ramchandran K. and Ors, the review petition of the same case the court held that whether the same act would amount to the violation of the Gaming Act will be determined based on a case-to-case basis.



FANTASY GAMES

The Haryana and Punjab High Courts in the case of Varun Gumber vs Union Territory of Chandigarh and Others which is also known as the Dream 11 judgment held that Dream 11 is a game of skill not a game of

chance. The court further held that the Dream 11 game involves the skill of the player while playing the game and the player with more experience and training has a greater chance of success than compared to the player who is newer to the game. Hence the court held that fantasy sport did not amount to gambling and was protected under Article 19 (g) of the Indian Constitution.

In similar petitions filed in Gurdeep Singh Sachar vs Union of India and Ravindra Singh Chaudhary vs UOI, the Bombay high court and Rajasthan High Court are of the same view that fantasy sports games outcomes were not dependent on player luck but the skills of the player. The winning or losing of the teams created by the layer is the independent outcome of the game that was played in the real world. Hence these games cannot be classified as a game of chance.

CONCLUSION

In conclusion, the Indian gaming Industry has witnessed multifold growth and popularity in recent times with an increase in its user base. Currently, the industry is facing challenges in the form 28% GST rate and the Data protection Act. No need to say that the industry required regulation as many illegal gaming platforms still operating in India. The Supreme Court and various high courts have recognized that games that required a substantial degree of skill cannot be included in the category of gambling or any other activity which is prohibited by law. In neutral view, along with taxing the gaming industry at higher rates, the government should try to regulate the industry in a better way which should prevent any fraud and try to protect the interest of the players / end users who are citizens of India. A capping limit on a person may be initiated; a check on transactional flow of the money along with verification of the users and higher value may be mapped with PAN Card Number, etc. may be initiated.

DIGITAL PERSONAL DATA PROTECTION ACT, 2023

The Digital Personal Data Protection Act, 2023 was introduced in the Lok Sabha on August 3, 2023, and was passed by the Lok Sabha on August 7, 2023, and by the Rajya Sabha on August 9, 2023. This digital data protection measure is critical in controlling data fiduciaries as well as in the formulation of regulations to regulate data subjects' personal data.

REASON FOR INTRODUCTION

The Digital Personal Data Protection Act, 2023 outlines provisions for the processing of digital personal data, balancing individual rights to safeguard personal information and the legitimate need to process such data for lawful purposes, along with related matters.

- Stipulating obligations for Data Fiduciaries such as individuals, companies, and government entities processing data with regards to data processing operations including collection, storage, and other relevant activities.
- Establishing the rights and responsibilities of Data Principals - individuals to whom the data pertains.
- Imposing financial penalties of up to 250 crores for violations of rights, duties, and obligations.

CORE PRINCIPLES OF THE ACT

This legislation is founded upon seven core principles:

- Consent-based, lawful, and transparent use of personal data.
- Data usage limited to the precise purpose sanctioned by the Data Principal during consent acquisition.
- Data gathering should be limited to only what is required to serve the specified objective.
- Assurance of data accuracy. Imposition of storage restrictions based on the data's relevance to the intended purpose.
- Adequate security measures must be implemented.
- Accountability is enforced through resolving data breaches, violating Act requirements, and imposing penalties.



- This Act has several novel features, including its compact and approachable nature, which is characterized by the use of plain language, illustrated aids, the absence of provisos, and limited cross-referencing. A major inclusion characteristic is the use of "she" rather than "he," recognizing women in legislative law-making for the first time.

RIGHTS GRANTED TO INDIVIDUALS

The Act grants individuals the following rights:

- The right to access information regarding the processing of personal data.
- The right to rectify and erase data.
- The right to seek resolution for grievances.
- The right to appoint a representative in case of death or incapacity.
- To enforce these rights, affected Data Principals may initially approach the relevant Data Fiduciary. If dissatisfied with the response, they can escalate the matter to the Data Protection Board for resolution.



OBLIGATIONS ON DATA FIDUCIARIES

Data Fiduciaries are mandated to:

- **Implement Security Safeguards:** Prevent data breaches.
- **Notify Breaches:** Inform affected Data Principals and the Data Protection Board about data breaches.
- **Erase Data:** Remove data when no longer necessary.
- **Grievance Redressal:** Establish a redressal system and designate an officer to respond to queries.

- **Additional Obligations:** Notified Significant Data Fiduciaries have further responsibilities, including appointing data auditors and conducting Data Protection Impact Assessments.

PROTECTION OF CHILDRENS' DATA

The Act provides safeguards for children's personal data:

- **Parental Consent:** Processing of children's personal data requires parental consent.
- **Protection from Harmful Practices:** Processing detrimental to children's well-being, tracking, behavioral monitoring, or targeted advertising is prohibited.

EXEMPTIONS

The Act allows exemptions in the following areas for the collection of data:

- **Notified Agencies:** In the interest of security, sovereignty, or public order.
- **Research and Statistics:** Data processing for research, archiving, or statistical purposes.
- **Startups:** Certain exemptions for startups and other notified Data Fiduciaries.
- **Legal Enforcement:** Data processing to enforce legal rights or claims.
- **Judicial and Regulatory Functions:** Processing for judicial or regulatory purposes.
- **Prevention and Investigation:** Processing to prevent, detect, investigate, or prosecute offences.
- **Cross-Border Processing:** Processing non-residents' data under foreign contracts.
- **Mergers and Demergers:** Approved mergers, demergers, etc.
- **Locating Defaulters:** Data processing to locate defaulters and their financial assets.

FUNCTIONS OF THE DATA PROTECTION BOARD

The Data Protection Board is entrusted with key functions, including:

- **Data Breach Management:** Directing remedies for data breaches.

- **Complaint Resolution:** Investigate breaches and complaints, imposing fines.
- **Alternate Dispute Resolution:** Referring complaints for resolution.
- **Website Blocking:** Recommending website or app blocking for repeat offenders.

obligations and penalties for data processing entities. It is imperative to monitor and potentially revise the critical aspects of the Act to uphold its effectiveness in safeguarding personal data and privacy.

CRITICAL REMARKS

- As defined within this data protection Act, a child is identified as an individual under the age of 18 years. However, it's noteworthy that data protection legislation in various countries worldwide has opted for a lower age threshold for children. This decision stems from the aim of ensuring optimal safeguarding for children and their personal information against potential risks.
- The two significant rights, namely the "right to be forgotten" and the "right to data portability," have been excluded from the scope of this Act. In the current landscape, these rights have gained prominence globally due to their relevance in data privacy. Many jurisdictions internationally have integrated these rights into their data protection frameworks, recognizing their importance in empowering individuals with control over their personal data and facilitating data transfer between services.
- The Act permits the government to collect data for specific purposes, and certain entities are granted exemptions from adhering to the provisions of this Act. While these provisions might currently appear justifiable, they could potentially pose challenges in the future. The exemption of certain organizations and the government's data collection authority could, over time, undermine the data protection of individuals. This susceptibility to threats emphasizes the need for continuous evaluation and potentially revisiting these clauses to ensure that data subjects are not left exposed and vulnerable.

CONCLUDING REMARKS

The Digital Personal Data Protection Act, 2023, seeks to create a comprehensive framework for the processing of digital personal data, striking a balance between individual rights and legitimate data processing needs. It incorporates innovative elements for clarity and inclusivity while establishing stringent

SOUTH WEST TERMINAL VS. ACHTER LAND & CATTLE LTD

The King's Bench for Saskatchewan, Canada in a peculiar instance has held that a thumbs up can be considered an acceptance of a valid contract. T.J.Keene, J recognized in this particular case that although an emoji is a non-traditional way to "sign" a document, it was an acceptable way to express the two functions of a "signature", identifying the signatory and conveying acceptance of the flax contract--under these circumstances. The Court also determined that the deferred delivery purchase contract (flax contract) under dispute complied with the provisions of the Sales of Goods Act, RSS 1978. The Court also held that a signature in a traditional presentation does imply identity and agreement confirmation; nevertheless, this does not exclude the use of a modern-day emoji such as the Thumbs Up emoji. In the current case, Kent Mickleborough from SWT spoke with Chris Achter about the delivery of flax and sent him a picture of the contract to deliver the flax later asking "to confirm the flax contract" to which Achter replied with a thumb's up emoji, but the goods were not delivered to SWT.

Based on this SWT sued Achter Land & Cattle Ltd. for breach of contract, demanding compensation for their losses. The Court relied on the undisputed past conversations supplied by the plaintiff in the case wherein the defendant had acknowledged and accepted the photographs of the drafted contracts by the way of text messages using words like "ok", "yup" or "looks good" and the Court rejected the defendant's contention that he did not mean what the communication of the thumbs up emoji would signify, the Court stated that "it is not what the defendant may or may not think a 👍 emoji means. It is what the informed objective bystander would understand", further the Court also determined that an emoji is "an action in electronic form" that can be used to communicate acceptance as defined under The Electronic Information and Documents Act, 2000, SS 2000, c E-7.22 (EIDA). Justice Timothy Keene, who referenced a dictionary.com definition of the symbol at one point, remarked that the case "led the parties to a far-flung search for the equivalent of the Rosetta Stone in cases from Israel, New York State, and some tribunals in Canada, etc. to unearth what an emoji means."

Keene also declined defense arguments that permitting the thumbs up emoji to imply acceptance would "open the floodgates" to new interpretations of other emojis such as the "fist bump" and "handshake." In ruling that the thumbs-up emoji can be used to enter into contracts, Keene stated that the court "cannot (nor should it) attempt to stem the tide of technology and common usage" of emojis.

PREVIOUS JUDICIAL PRECEDENT

While this can be considered a novel case it is not the first of its kind, in 2017 a couple in Israel had communicated their willingness to rent a house with a string of celebratory emojis and had later ceased all communication with the owner. The court had considered this to be a valid acceptance to offer and imposed a substantial fine on the couple.

This decision, however, poses a very pertinent point in these tech driven times, as well as the importance of carefully considering the words we express, even through seemingly innocuous means like emojis. It also underscores the necessity of precise and explicit communication in contractual agreements, as the purpose of the parties concerned can be scrutinized by the courts.

IN THE INDIAN CONTEXT

Which communications can be considered valid acceptances to offer? If we attempt to juxtapose this decision against the Indian contract scenario, under the Indian Contract Act, 1872 the process of entering a contract begins with an offer and its acceptance. In order for an offer to be accepted it needs to be communicated to the offeree, communication can be either explicit or implicit. It can be communicated through phrases like word of mouth, messenger, telegram, and so on. According to Section 4 of the Indian Contract Act, communication of a proposal is complete when it reaches the knowledge of the person to whom it is made. An offer needs to be valid in order to construe a valid contract when accepted.

Acceptance under the Indian Contract Act as defined under Section 2 (b) states that "the offer is said to be accepted when the person to whom the proposal is made

signifies his assent thereto." As a result, when the proposal is approved, it becomes a promise." Before an offer is accepted, it can be revoked. Acceptance can be either express when declared in writing or orally, implied when shown by conduct or conditional when a counteroffer is expressed to accept the proposed offer. For an acceptance to be considered valid it must be absolute, communicated to the offeror and such communication should be within the specified amount of time. Communication is considered to be completed when transmitted or put in course of transmission to the offeree and cannot be withdrawn by acceptor, or when it comes to the knowledge of the offeror.



MEETING OF MINDS

An important point in the Canadian case was the reliance placed by the Court on consensus ad idem which means "the meeting of minds" of all the parties involved, a cornerstone of the contract law. This is the first principle that serves as the foundation for enforceable contracts because contracts require agreement or a meeting of the minds of all concerned parties in order to be enforced. Consensus is unique in each case and has to be determined as per the facts of the particular case.

CONCLUSION

If the aforementioned case were to be deliberated within the Indian context, then the sending of any other affirmative actions might be considered as a valid acceptance to an offer considering all other conditions of a valid contract are fulfilled, and as any communication received by the offeror shall institute a valid contract whether emojis might construe such valid agreements remains to be seen.