



GAMING LAW CONFERENCE



IJLT

Topic 1: Decoding the Karnataka High Court's gaming judgement

Topic 2: Understanding Gaming Addiction & Policy Responses

Topic 3: Careers in Gaming Law

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INTRODUCTION

In February 2022, the Karnataka High Court struck down the ban on real-money gaming activities. The Court's judgment hinged upon multiple aspects, with the Court construing the act of skilful gaming to be a facet of the right of freedom of speech and expression under Article 19(1)(a), the right to life and liberty under Article 21, as well as a protected business activity under Article 19(1)(g). This recognition by the Court is transformational, but, at the same time, concerns have been raised by various mental health professionals and other civic society actors about gaming addiction and other negative implications of gaming. The HC too, recognizing the same, said that online gaming needs to be regulated. Given the transformational impact and the concerns raised, it becomes necessary to engage in a holistic discussion on online gaming, keeping in mind its multifaceted aspects. In that light, the Law and Technology Committee ('L-Tech') of NLSIU, in collaboration with the Sports Committee and the Indian Journal Of Law and Technology ('IJLT'), organized a Gaming Law Conference, comprising three panel discussions:

1. Decoding the Karnataka High Court's Gaming Judgement.
2. Understanding Gaming Addiction & Policy Responses.
3. Careers in Gaming Law.

EXECUTIVE SUMMARY

PANEL 1: DECODING THE KARNATAKA HIGH COURT’S GAMING JUDGEMENT

The judgement of the Karnataka High Court in *All India Gaming Federation v. State of Karnataka* struck down the bar on skill-based games in Karnataka Police (Amendment) Bill, 2021. This ruling permitted online gaming in Karnataka on the condition that it be a game of skill, and not chance.

The judgement by Karnataka High Court was pertinent in reinforcing the distinction between games of skill and chance. It affirmed the application of the ‘predominance’ test, i.e., whether the game is predominantly a game of skill or chance, rather than the impractical view of categorizing them in a mutually exclusive manner. This can be empirically tested in a range of ways, including through juxtaposing the performance of a professional and a novice at a particular game. If the difference is large, then it is likelier to be a game of skill, while a small difference is indicative of a game of chance. While the determination of a game of skill or chance can be done judicially, it would be appropriate for the judiciary to refer to technical and expert advice on certain matters.

This judgement further included games of skill as protected under Article 19(1)(a). While prior jurisprudence had mentioned the distinction between games of skill and chance, the new addition of this judgement to that jurisprudence was imbuing constitutional protection to online gaming and e-sports. This not only provides safeguards, but also legitimizes online gaming as a sport in its own right, thereby sustaining the livelihood of many professionals. Therefore, merely because a sport is being conducted online should not give rise to the presumption that it is a game of chance. Online games should be presumed to be on a level pegging with offline gaming on the skill-chance distinction.

Furthermore, regulation of gaming and e-sports must keep in mind the existing safeguards against addiction and gambling as well as accommodate the extant self-regulation mechanisms. The government should avoid the perils of overregulation in a nascent industry and must be adequately flexible. Bodies such as the All India Gaming Federation (‘AIGF’) are suited to operate within the larger governmental regulatory frameworks and assist in the ‘on the ground technical regulation’.

PANEL 2: UNDERSTANDING GAMING ADDICTION AND POLICY RESPONSE

Addiction can be understood as a recurring kind of illness. It occurs due to long-lasting changes in the brain structure. Gaming addiction, though existing earlier as well, has assumed greater space in the discourse on addiction. It's only now that we see gaming addiction as a sign of mental illness. It's very similar to gambling in its behavioural psychology of addiction. Gaming addiction is quite prevalent with approximately 2 per cent of the adult population being addicted. There are various risk factors which make some people more vulnerable to gaming addiction than others. People with pre-existing addictions are more prone to gaming addiction. Also, greater accessibility to games increases the possibility of addiction. As such, there is a need to identify these vulnerable people, and frame targeted policies.

The response of Indian Courts regarding this issue has been an extension of gambling laws to gaming. For regulation in this area, criminalisation (or complete prohibition) cannot be the solution to a public health concern as it would, then, become an illegal and underground activity. Instead, India could benefit by drawing on foreign regulatory mechanisms like restrictions on time, selective controls, and diminishing rewards in the game as the time increases. Even behavioral warnings within the game that flag the instances of addiction could prove to be helpful. Although self-regulation within the gaming industry could go a long way in overcoming addiction, there is a need for a dialogue between the game developers and the regulators. Such a dialogue must look at the larger impact that games have including gender stereotyping, racial stereotyping, violence, etc.

As significant stakeholders, parents are responsible for monitoring their children. However, sometimes they may lack adequate information. Moreover, disciplinary measures by parents may not be the solution. Regarding the accountability of developers, tort law can be applied to attribute different liabilities to different stakeholders. The Consumer Protection Act, 2019 can also be looked into, especially for celebrity endorsements of games.

To conclude, the existing laws are under-inclusive and may not be effective to deal with the issues highlighted. Thus, before rushing into new legislation there is a need to understand all the needs and issues involved.

PANEL 3: CAREERS IN GAMING LAW

The emergence of Gaming Laws can be primarily attributed to the regulation of Gambling Activities, like the Public Gambling Act of 1867. However, the advent of technology has transformed the nature of this field into a multi-faceted, dynamic and international one, intersecting with multiple fields such as Constitutional Law, Contracts Law and Criminal Law. This dynamism and interconnection has raised challenges of regulation at the intersection of law, society and technology.

These challenges give rise to numerous opportunities for legal practitioners, especially given the nascent stage of the industry, ranging from in-house counselling for public policy and engagement, business and communications, and transactions to litigation and even teaching. The public policy space is particularly flourishing, given that there is no specific statute present across states, and entails engagement with multiple stakeholders from the industry to the government officials. However, the field of communications and transactions management is also growing, the former entailing management of public perception of the companies and gaming in general across different audiences and the latter involving working on contractual matters, commercial negotiations, cloud networking models, endorsements etc.

The challenge in front of those who wish to enter this field is moving away from a route of mere specialization in studies or fields, to be dynamic and open-minded, having the ability to wear ‘multiple hats’. Careers in Gaming Law are Careers in Innovation, involving oneself to immerse themselves in the nuances of technology, business and surrounding facets of this field to get a headway in understanding the requirements of the field. Although much of this is yet to present itself in universities and colleges at a rapid pace, knowledge of these nuances would give one an edge in the field.

PANEL 1: DECODING THE KARNATAKA HIGH COURT'S JUDGEMENT

Panel:

1. Mr. Pradeep Nayak (Managing Partner, Keystone Partners, Counsel for lead petitioner, the All India Gaming Federation in the case)
2. Ms. Shivani Jha (Director, eSports Players Welfare Association)
3. Mr. Abhinav Shrivastava (Partner, LawNK)

Student Moderator: Kanav Khanna

Opening Remarks

Mr. Abhinav

I wanted to highlight that the *All-India Gaming Federation v. State of Karnataka*, delivered by the Karnataka High Court should be seen as a continuation of the previous trend of judgements delivered by the Tamil Nadu and Rajasthan High Courts. The judgement helped to demarcate games of skill and games of chance as entirely separate, which must not be confused or conflated with each other. This judgement is hence good for the industry since it addresses a perception problem faced by the games of skill industry and provides clarity as to what form of games would fall as gambling, and what would not. It is pertinent to view gambling and games of skills as two different businesses altogether.

Mr. Pradeep

This judgement by the Karnataka High Court largely reaffirmed a position of law that has been clear since 1957. The Supreme Court and several High Courts have already examined games such as horse racing, poker and rummy to hold that they are not gambling. The interesting part here is the online-offline distinction. Should it be important if a game is played on the web instead of in a gaming house? Legally speaking, there should be no difference if a game is online or offline. Whether it is a game of skill or chance should not be seen on the basis of whether it's played online or in person, rather it should be seen in terms of its substantive structure and whether it allows an exercise of skill or not.

Ms. Jha

The nomenclature used is especially important, the repeated emphasis on games of skill and games of chance brings to light the inherent difference between skill and chance, apart from the legal aspect. This is germane in light of the nascent e-sports industry where their careers should be seen as a form of learned skill, not gambling.

Following the short opening statements, the rest of the session can be broadly divided into the following themes:

- I) Distinction between Games of Skill and Chance?
- II) Significance of the Karnataka HC judgement.
- III) Regulatory Challenges.

Speakers' Discussion

I) How do we distinguish between Games of Skill and Chance?

- a) *Through what means can we reliably determine whether a game is a game of skill or of chance?*

Mr. Pradeep: This must be seen through a test of predominance. No game is entirely based on skill, every game contains an element of chance. The judiciary must test any game to see if it is largely based on skill or chance. This can become clear through an empirical or statistical basis. For example, consider a game of rummy. Over a large set of games, you would see a professional win far more games than a non-professional. This can also be seen through the level of control that can be exercised in a game. A game that allows a high degree of control to the player is likely to be one of skill, while games outside of the player's control or predictions are likelier to be of chance.

- b) *Is this distinction in any way affected by a game being online?*

Ms. Jha: Aside from social perceptions, perhaps, being online should not matter. Of course, a game being online brings up new forms of challenges in which chance elements may be disguised within games. For example, the presence of 'bots' or the employment of Random Number Generators (RNGs), which are often chance dependent, may be disguised. However,

the industry has taken internal measures for situations like excessive bots etc. These should still be seen as new forms of chance elements in the online mode, but they, by themselves, shouldn't lead to online games being considered games of chance. Online games should hence be seen on their own merits, much like offline games. They shouldn't be considered games of chance merely on their online nature.

II) Significance of the Karnataka High Court Judgement

a) As we noted, various previous judicial decisions have already held that games of skill are distinct from games of chance. What is the significance of the Karnataka High Court judgement in that light?

Mr. Pradeep: The Karnataka HC judgement went beyond other judgements in its link to Fundamental Rights. It held that games of skill are not only distinct from games of chance, but are protected under Article 19(1)(a) of the Constitution of India, 1950. Hence, not only are games of skills not unlawful, but they are protected under the Part III of the Constitution. Beyond just gambling jurisprudence, this judgement helped expand individual rights.

Mr. Abhinav: He added that they are also protected under Article 14 of the Constitution. Games of skill and games of chance are different and cannot be arbitrarily placed together. A blanket ban, without separating games of skill, would be to treat unequals equally and, consequently, violative of Article 14.

Ms. Jha: She felt that this would also go a long way toward legitimizing e-sport careers. She highlighted examples of e-sport Asian Games medallists who weren't even deemed to be 'athletes'. This constitutional recognition would be crucial not only for e-sport gamers, but also for other professionals in the e-sports gaming industry such as streamers on platforms like Twitch, Shoutcasters, and commentators. Hence, including games of skill within the ambit of Article 19(1)(a) does a lot to legitimize the e-sport industry as a whole.

b) In that regard, since the jurisprudence was largely settled, why did the Karnataka legislature come up with a legislation which puts in a blanket ban?

Ms. Shivani: She noted that the socio-economic problems associated with gambling may have prompted the legislature to take an unreasonable step. The current mode of regulation is

excessively concerned when any monetary values are involved. They have two broad concerns – addiction and sudden monetary losses. This is why even games of skill, which are ‘pay to play’ tend to make the government nervous which prompts them to come up with blanket legislations like this. There is a growing need for the governments to realize that there is an actual career in e-sports, which should be seen as a sporting industry rather than only a video game industry, and must be regulated accordingly.

c) Is it likely for states which have existing blanket bans on online games, such as those in Telangana and Andhra Pradesh to have those laws struck down?

Mr. Pradeep: Gambling is covered under Entry 34 in the State list in Schedule 7 of the Constitution, and hence different states are entitled to have different legislations on gambling matters. Most state legislations traditionally only covered offline and physical gambling in gambling houses. When states have moved to amend these laws to include online gambling, they have generally overstepped and extended the blanket ban to online games of skill as well. However, the courts have done a good job of demystifying games of skill, so there is a good chance that any legislations which oversteps the governance of gambling and ventures to ban games of skill, to be struck down by their respective High Courts or the Supreme Court. These three rulings will be useful to get an interim stay on the ban on games of skills during the proceedings since these High Court rulings could create a presumption against their constitutionality.

Mr. Abhinav: He maintained that the validity of these legislations depends on the decision of the Supreme Court since the Karnataka High Court’s decision is not binding in Telangana or Andhra Pradesh.

Ms. Jha: She differed from Mr. Pradeep to maintain that it was unlikely that those legislations would be struck down.

III) What form of regulation would be best suited for the current E-sports industry?

a) How can we decide if a game is of skill or chance without a lengthy litigious process on a case-to-case basis?

Ms. Jha: She mentioned that the current system includes a task-force of the central government which is concerned with the regulatory issues of gambling and its addiction. The decision of whether a game is of skill or chance must not be taken on stereotypical or personal views, but through a detailed examination of the game and its functionality, along with empirical evidence. The presumption that online games which involve money are always about gambling needs to change.

Mr. Pradeep: He added on to Ms. Jha by emphasizing that there needs to be a more nuanced mode of regulation than the current system of outright bans. The regulation must be based on technical requirements of games of skill and chance, and should include self-governance mechanisms.

a) Is self-regulation a potential solution to the current regulation problems in E-sports?

Mr. Pradeep: He was of the opinion that self-regulation models of regulation could provide a useful supplement to the current regulatory mechanisms for e-sports. A self-regulatory body such as the All-India Gaming Federation is a good example of this. It is required to put into place measures such as ensuring that aren't bot players in the games, or to put in place circuit-breakers to make sure people don't lose lakhs overnight in pay-to-play games.

Ms. Jha: She also broadly agreed with Mr. Pradeep and commended the current self-regulation in the online gaming industry which does regulating without over-regulating.

Question and Answer Session

Question 1: What is likely to be the next step of Centre on this issue of determination of whether a game is one of skill or chance, since it essentially a question of fact (and not law) and hence lawyers and judges may not be the most qualified to adjudicate on that?

Mr. Pradeep: Practically speaking, it is unlikely that we will develop a better test than we already have, i.e., the 'predominant factor' test, which weighs both skill and chance elements and decides based on preponderance of either. It is impractical to have an exhaustive checklist of which games are games of skill and which are not. This is because too many new games come up every day, and they cannot be continuously categorized into games of skill or chance-

that must be left to the judiciary. However, the centre could appoint expert panels to give technical explanations and reports for the game at hand on empirical bases, as to whether it is a game of skill or chance.

Ms. Jha: The first responsibility to decide this rests on the developers themselves, rather than on the judicial or the regulatory system. They cannot develop the entire game, and leave its validity to the courts to decide- that would involve too much risk on the part of the game developer. So, it would be prudent to assume that developers themselves would try to keep their game to one of skill, not chance and courts would only have a secondary responsibility post-that.

Mr. Abhinav: The test of predominance is well established, and useful to determine this point of law. The task for the judiciary is an application of that principle on the basis of contextual facts of the impugned game. Moreover, in the recent question hour sessions at the parliament, it has become clear that the Centre is indeed considering regulation at the pre or during-development state. The judicial determination is always reactive, or post determination, this regulation would allow determination at a pre-development stage.

Question 2: What is the functional difference between online and offline games in terms of a skill or a chance?

Ms. Jha: The difference is largely ideological, not functional. Online games are not any more likely to be games of chance than offline games, but it is a matter of perception that online games are simply viewed as more dependent on luck than offline games. For example, Rummy played offline is not viewed as a game of chance, but as soon as it's played online over a computer, the concern of it being gambling becomes louder.

Question 3: Are voluntary self-regulation agencies enough to regulate the e-sports industry considering the addictive nature of video games?

Mr. Pradeep: Yes, I agree that self-regulation alone is not enough. My point was that self-regulation should be an added layer of regulation, and not a substitute for governmental regulation. It would be useful to cover the technical aspects of regulatory work which government regulatory agencies may not be sufficiently equipped to deal with. Moreover, e-

sports must not be seen negatively through the lens of addiction. The line between a really good game and addiction is extremely thin. Almost every product in our life— from social media, to food is trying to make us addicted to it. It's difficult to distinguish good marketing and good product from what is addictive. And so the fact that something is addictive, should not in and of itself be reason to ban an activity.

Mr. Abhinav: The self-regulation must be seen as guided self-regulation, not entirely autonomous. The legislators and governmental regulation agencies can set up the broader principles and frameworks, while the self-regulation can help enforce the same on the ground and engage in day-to-day regulation.

Question 4: Would a greater state role in online gaming in line with Law Commission's 276th report be advisable?

Mr. Abhinav: It is germane here to keep in mind the dangers of overregulation. Online gaming is a very technical and nuanced field, and it may not be possible for one governmental regulatory agency to keep with it on the ground. It is necessary to avoid overregulation and give the industry adequate breathing space.

Ms. Jha: This question must be considered while keeping in mind that online gaming is a profession for many streamers, shoutcasters etc. It's necessary to recognize that e-sports consists of capable and consenting adults earning a livelihood, there's a need to focus on that side of e-sports. Moreover, there already exist enough safeguards, like only permitting children above 14 years to play, so the need for more state regulation is not extremely pertinent as of now.

Question 5: How is horse-betting a game of skill, as ruled in *K. R. Lakhsmanan v. Tamil Nadu*, and what effects did that have on the game of skill-chance jurisprudence?

Mr. Pradeep: To lay people, horse racing may appear to be merely luck, but the levels of nuance and understanding of professional become evident over time. Professionals know all about the horse, its jockey, past performance, current state of health, and records on different tracks. Admittedly, there is an element of chance, but the skill element is preponderant. The

effect it had on the skill-chance jurisprudence is that it highlighted that there is some skill in even picking something. Skill is not just in dexterity or performance, but also in knowledge.

Mr. Abhinav: An actual bet on a horse is a culmination of a number of decisions that you make – which race to participate in, comparing each horse against each other etc. There's a wealth of information available, (we) have to analyse the probability of a horse winning or losing carefully. The opportunity to exercise choice and make decisions from the information you have in itself is an exercise of skill. It's hence a speculative activity, where the real skill is exercised in attaining and applying knowledge.

Concluding Remarks

Mr. Abhinav: Earlier judgements were based on specific regulatory aspects, but now we use broader principles which effectively turn the question into a question of fact, which brings a lot of clarity in the jurisprudence of online gaming. The clear distinction between games of skill and games of chance also helps in addressing the perception problem around online games, where they are often conflated with games of chance.

Ms. Jha: Ideology is pertinent when it comes to online games. They should not, in the absence of other reasons, be seen as harmful or addictive. It is also germane to consider the issue of self-regulation – whether it's on you to control your addiction or if you can pass that off to the state.

Mr. Pradeep: It's fortuitous that these judgements came at the time of lockdown when online games were of particular importance in the post-Covid era. Part of this success has to be attributed to the increased access to the online and technology world during the pandemic, which has demystified online gaming to judges. The constitutional expansion by including games of skill within the ambit of Article 19(1)(a) is another positive aspect of the Karnataka High Court judgement.

PANEL 2: UNDERSTANDING GAMING ADDICTION & POLICY RESPONSES

Panel:

1. Ms. Anna Chandy (Social Psychologist and Founder, Anna Chandy and Associates)
2. Dr Vivek Benegal (Professor of Psychiatry, NIMHANS Bengaluru)
3. Prof. Saurabh Bhattacharjee (Professor of Law, NLSIU Bengaluru)

Student Moderator- Shivangi Mishra

Opening Remarks

In the Karnataka High Court judgement, the court recognized that there are some negative aspects and harms of gaming. While it rejected a call for a ban on gaming, it realized that there needs to be regulation to address these aspects. The most prominent concerns that have been raised concerning gaming are the impacts that it has on the gamers. The impacts have to be seen in light of the addiction, the money lost in real-world gaming activities, etc. So, this panel is devoted specifically to discussing this very aspect- the mental aspect, the other negative repercussions of gaming, and how they can effectively be addressed.

Following the opening statement and introductions, the panelists address the following broad themes:

1. The prevalence of gaming addiction in recent times and the susceptibility of individuals to this problem.
2. Responses of the court to addiction and public policy issues.
3. Possible alternatives to address the problem of gaming addiction.
4. Discernible trends in gaming addiction.
5. The feasibility of a model of accountability for game developers.

Speakers' Discussion

Shivangi – Has an addiction to gaming always been a problem or is it a recent phenomenon? What is its prevalence? Who is more vulnerable to addiction? How can we deal with this issue?

Dr. Vivek Benegal – In order to understand addiction to gaming, we must first understand what addiction itself connotes. Addiction can be defined as the loss of control over any activity. This activity could be the abuse of substances such as drugs, alcohol, etc. The preoccupation with such an activity is such that it overrides all other (considerations). Such a preoccupation occurs due to long-lasting changes in the function and structure of brain development. Having said that, gaming addiction has only been observed fairly recently. If you look at it then, addiction to gaming is very similar to gambling in a behavioural sense. Moreover, addiction puts education, sleep cycle, and other prospects of individuals in jeopardy. Approximately, 2% of the adult population is addicted to gaming. As per a recent study, conducted by Dr. Nagpal, 35% of the people surveyed could be categorized as dealing with gaming addiction. It has also been observed that people who have a prior history of substance abuse/addiction are more prone to getting addicted. Moreover, it has been observed that ease of access (to games) is proportionate to the risk of getting addicted.

Criminalization cannot be the appropriate way to deal with this issue, as it would have the effect of creating a large group of criminals who are engaged in doing something which is very common. Moreover, upon criminalisation, people would not come forward for treatment because there would be this fear of being held accountable for a criminal act. The problem actually lies with determining the criterion, the difference between something which is a game of chance versus a game of skill. This has never really been properly decided and this is something that needs to occupy our thinking. Lastly, when one sees the rash of advertisements, one wonders about endorsement liability.

Shivangi – What has been the court's response to addiction? Can restrictions or prohibitions solve this issue of addiction? Is there a need for change from a public policy perspective? Are there other possible alternatives?

Prof. Bhattacharjee – The court has dealt with this issue by extending The Public Gambling Act, 1867. This is problematic because a 19th-century statute is ill-suited to deal with gaming addiction, which is a relatively new phenomenon. Moreover, criminalisation or complete

prohibition cannot be the solution to a public health concern. The only consequence of criminalisation or prohibition would be that it would become an illegal and underground activity. Thus, criminalizing the behaviour of already vulnerable individuals. Some viable solutions could be: implementing time restrictions upon which servers would be operational, selective controls, and reducing the rewards that one obtains as the gamer spends more time on the game. However, it is pertinent to note that South Korea has had more than a decade of restrictions placed on internet timings with respect to online gaming and the empirical literature suggests that the results have not been particularly satisfactory. Though there are some studies that suggest that there was a significant decline in the time spent on online gaming, there is also literature that suggests that may not have been the case. Moreover, one needs to consider the efficacy of these restrictions, especially when through Virtual Private Network ('VPN'), any Internet Service Provider ('ISP')-based restrictions can be easily bypassed.

Then, there is also the issue of monitoring. In terms of enforcement, we go back to the same question of state power, with respect to restrictions on internet gaming parlours and internet cafes in India. Do we see any value in such forms of restrictions on access to internet gaming arcades and internet cafes?

We will have to integrate and think about some other suggestions that have come up with respect to policy preferences. They are not in terms of regulation, but more in terms of behavioural nudges such as those of game warnings. So you could have warnings displayed, both at the beginning of the game as well as during the game at different stages of the game. Warnings could be based on their addiction potential and have disclosure norms, where the potential possibility of addiction could be flagged in the packaging itself in the software. Nonetheless probably less intrusive forms of behavioural control can also exist and be introduced. There are others who have suggested tax and other fiscal policy measures, where we incentivize gaming companies to have more stringent forms of parental control. Furthermore, self-regulation within the gaming industry and inculcating a code of ethics could also be a possible way ahead. However, one thing is certain: we need to have regulatory models or we are going to see the sort of sledgehammer-based approach that the Telangana or Tamil Nadu governments have come up with it. These are some of the issues that we must think about, but we should not exclusively be concerned with liability.

From the state's end, an appropriate response must deal with providing counselling and the aim must be towards rehabilitation. This can be achieved by improving the public health care

infrastructure, incentivising educational institutions to have some form of counselling, and nudging healthcare establishments towards setting up appropriate support services. Both norms of liability for game developers as well as norms of support for other stakeholders involved in the gaming industry have to be the way forward.

Shivangi – Your organisation has personally worked with these individuals who are getting addicted to gaming? What have you observed? Is there any discernible trend and how can we overcome this?

Ms. Chandy – The number of people getting addicted to gaming is increasing. There is an urgent need for dialogue between the game developers and regulators. It has been observed that younger children are getting addicted and suffering from various symptoms of excessive violence and aggression. This stems from the fact that there is this need for immediate gratification. Moreover, one must also consider the other social consequences that games bring about such as gender and racial stereotyping. The need for sensitisation on these issues cannot be over-emphasised.

Shivangi - Professor Bhattacharjee, as a lawyer, do you think that can there be any particular model of accountability for these game developers?

Prof. Bhattacharjee - I think there has to be one, and I agree with the point which Ms. Chandy made about the need for not just dialogue between different stakeholders, but also a variegated response, based on the different types of stakeholders that are concerned. Certainly, the game developers have a role, and within tort law, one can see possible doctrines that can be developed for liability of game developers for the impact it has, especially now that we know that there's a fair amount of literature to show the addictive potential of these games. What sort of measures has been taken from mitigation? We need to think in terms of liability for different types of stakeholders and game developers, which, certainly, fall within the framework of the law. We can think in terms of holding developers liable. Then, the question of course would be to determine what are the specific evidentiary standards to establish negligence.

I also believe that accountability can be affixed to the endorser since the Consumer Protection Act of 2019 now provides for the liability of the endorser. We need to think very strongly about endorsements that are made by celebrities and sportspersons around these games and see

whether they can be brought within our consumer protection framework. Additionally, I believe that there has to be some form of regulation on what kind of access you have. Do we have advertisements during sporting events? Do we have restrictions on who would be the age group to whom you sell these games? These are questions that we may have to think through, and we don't need to also think in terms of liability. Instead, we can think in terms of support for schools, support for educational institutions incentivizing some form of appropriate counselling or establishment of counselling institutions and support services. Maybe healthcare institutions can also be nudged towards setting up appropriate support services. Both norms of liability for game developers, as well as norms of support for other stakeholders involved in the entire industry, have to go hand-in-hand.

So I have an additional point of view. It's also important for us to have a dialogue and discussion with game developers to emphasize that regulation is not to come in the way of their freedom of expression and creativity. But I think they need to know the domain that they're working with. They need to have a conscious awareness of ethics. Besides, I think they need to have ethical guidelines. While game development can be a commercial enterprise and something for people to earn a living, we also need to have ethics governing our broad activities. Of course, ethics needs to be there as a guideline, and doesn't obviate the need for a posited regulation, but I also think developers need to develop a personal conscience. All of us, in whichever domain we work, are internally guided by ethics at some point. So, we have to make these choices.

Dr. Vivek Benegal- I'm making a point which is slightly different from what we made earlier. That is, we are, we have, or we are getting there (in terms of progress in understanding and dealing with gaming addiction). We understand a lot more about who is vulnerable. And we really need to put in interventions which protect the vulnerable, or to actually reschedule them or upscale them. And, the funny part is that some of these games are also good for training children with difficulties say attention deficit disorder, autism, etc. So, then, there is a grey area here that we need to keep in mind, and not cut off these games' heads entirely. Let's not throw the baby out with the bathwater. This is just an area which we really need to study better, we need to dialogue amongst ourselves a little bit more, before we plunge headlong into creating laws which can probably have a lot more damage than benefits. My biggest worry, and this is something that I've written a long time back, is about the gambling laws of India. You know

its legal premises. I mean, gambling law comes straight from the 1867 English law, and despite all the things that have changed, people are still treated as if they are gambling in that era.

Question and Answer Session

Question 1: Do you think addiction stems from a social problem or a psychological problem, and what role do parents have to play in this situation?

Dr Benegal- Addiction occurs because of repetitive use. Especially in vulnerable brains, where addiction changes the structure and functioning of the brain. So, this repetitive substance-taking and substance-seeking become a habit-forming process. So, both the biological, genetic and social factors are vulnerabilities. But ultimately, there is a strong biological change which occurs in the human brain, which allows it to be long-lasting. This is why you can pick a person, put him in the rehabilitation centre for six months, nine months, or ten months and the person relapsing back after he comes out is the rule, rather than the exception. And this is something that occurs because of changes caused to the genetic expression in the brain. There's a huge amount of data and evidence to support this. But, having said that, there are certain people who are inherently vulnerable to developing addictive disorders. I mean, nearly 30% of our male population consumes alcohol, but only 10% develop severe problems. Probably 80% of the adult population uses the internet, and only 1% develop problems. So, we need to keep in mind that there are some people who are at much greater risk. It is related to childhood adversity, temperament and a whole host of issues. But ultimately, it is a neuro-biological phenomenon at its core. Thus, the treatment needs to take into account not just one particular problem. You necessarily have to consider psychological, social and biological interventions for any addiction. This is a long point, but it needs to be made because people make simplistic assumptions. It is not just this or that- several factors have to be considered.

Question 2- When we think about putting out a Gaming law or policy, it is sufficient to find refuge in Acts like the Consumer Protection Act or Tort, or any other specific legislation? Or do we need to reimagine a new model altogether?

Prof. Saurabh Bhattacharjee: I believe that the existing legislations are not adequate. But they are a useful start to consider the reliefs that actually exist in the law. But simultaneously, there are several aspects of the intervention that would be required in areas of law that are neither covered by the Consumer Protection regime, nor the tort-law regime. We need to be

thinking in terms of regulatory interventions in the paradigm of juvenile protection as other jurisdictions have done. But, nevertheless, when we move towards newer forms of interventions, we need to develop more clarity on the kind of regulatory steps that would ensure optimal balance between ensuring sufficient protection against cases of addiction and the survival of an entire gaming industry altogether. Therefore, we need to think in terms of a separate regime altogether. We need to take small steps, analyse what existing spaces are available, and also parallelly talk in terms of greater dialogue between the different stakeholders more than regulation. This session is about policy responses. Instead of direct forms of state regulation, we also need to talk about financial incentives and the kind of investment the State is engaging in for support services. We also need to ask the appropriate ethical questions. All these aspects move hand in hand. We have to be wary of thinking in terms of legislation, without first developing enough clarity about these issues. Otherwise, there is the danger of going down the same path as narcotics control laws, or with gambling prevention laws. And the scale of the crisis is much more serious given the ease of access that games have. We need to have a different approach in terms of thinking about existing spaces before considering entirely new regimes altogether.

Question 3- Is there any specific digital health or well-being habit that you have incorporated into your daily lives like regulating screen times, for instance?

Ms. Anna Chandy- I consciously try to keep my phone away for two hours before I sleep to avoid any sleep problems.

Dr. Vivek Benegal- (jokingly) My first response would be to say, 'Get a life.' By this, I want to convey that you should find other interests which you do outside the confines of your mobile. Secondly, go back to playing games in playgrounds. Thirdly, find something that really works for you- find your Mt. Everest. This is something which especially works for children who are at high risk. They can use this opportunity to change themselves and change the world. Yes, you can make many rules for yourself, and having a structure in your life is extremely important. But above all, finding something to do to save yourself and save the world has worked enormously well for our forefathers. It has worked for us, and I'm sure it will work for you as well. I know I'm being poetic, but go, get the life that is right in front of you.

Prof Bhattacharjee- You can call it irony, but I don't think it would be appropriate for me to speak at all on this topic since, from the age of 16 to 18, I was severely addicted to Brian Lara Cricket 99, and then Cricket 2000. Other than that, as a person, heavy obsession is something I'm especially susceptive towards. But, I'm not a smartphone person, and only got a mobile very late in my life. So I can't say that the mobile phone has affected my mental well-being substantially. I try keeping the phone turned off as much as possible. And it is not just the mobile phone. Several social media sites like WhatsApp, Facebook and Instagram play pivotal points in structuring our lives. These have to be curbed. Ensuring discipline in your life, and , as Dr. Benegal said, 'getting a life', ensuring social interaction and developing new interests are all extremely important habits to incorporate into your lives.

PANEL 3: CAREERS IN GAMING LAW

Panel:

1. Mr. Dibyojoyoti Mainak (Policy, Communications and Legal Head at Mobile Premier League)
2. Ms. Sakina Retiwala (Counsel, Dream Sports Inc)
3. Mr. Nandan Kamath (Founder and Principal Lawyer, LawNK)

Student Moderator: Ankit Kapoor

Introduction

This panel discussion deals with careers in gaming law. Gaming laws have primarily and historically been enacted to regulate gambling activities, such as the Public Gambling Act of 1867. However, today with the advent of technology, gaming law has become multi-faceted, dynamic and international in nature. Thus, to explore the legal opportunities and careers in this field, the Law and Technology Committee of NLSIU organized a conference on “Careers in Gaming Law” as one of the three-panel discussions.

Gaming Laws are laws that regulate games that include betting or wagering. Now, games can be distinguished on the basis of skill and chance. Games of chance are prohibited under various state laws, and only skill-based games are legal. These laws were made to govern traditional modes of gambling. However, with the advent of technology, gambling (and games) has gone online, which gives rise to a number of legal issues. This gives rise to opportunities for lawyers to practise in this nascent industry. Careers in gaming law can include working as an in-house counsel in hotels and casinos, gaming companies (like MPL, Dream11, etc.), law firms and governments, amidst other opportunities. In addition to this, gaming law also intersects with other laws, including contracts, criminal and taxation, and lawyers may explore these areas of law as well while practising. In today’s times, a career in gaming law can prove to be a very lucrative option, filled with opportunities and innovation.

Opening Remarks

Ankit initiated the discussion, asking the panellists their general views on the panel topic.

Ms. Retiwala: I would like to commend the interesting nature of the previous two discussions on the Karnataka High Court judgement and policies surrounding Gaming Addiction. This is particularly important for someone like me, who is working in the field of online gaming. The industry is nascent and needs to be mindful of these challenges. It's not just the existing laws, but rather how we incorporate the existing gaming laws in contemporary times. We need to find the right balance.

Mr. Mainak: I started my career at Luthra, then shifted to Inshorts where I spent 3 years, and thereafter joined MPL in 2018. At MPL, I first worked in Consumer Service, then functioning. My experience indicates that careers in gaming are careers in innovation. It is about doing new things and taking new risks.

Mr. Kamath: I started my career by working in the field of Sports Law and then expanded my practice to include Gaming Law. The visible difference was in terms of technology. The field of Gaming Law encapsulates many things and is a gateway to what is about to come in the future. It involves the sociology and technologies of the Digital World, understanding which is extremely useful for young lawyers. Young lawyers in this field can even compete with their seniors as even they don't have much experience in this field. There exists much diversity in the gaming law field and we need to understand the inter-relationship between law and technology, law and society, society and technology.

Speakers' Discussion

Following the short opening statements, for this report the rest of the conference can be broadly divided into the following themes:

1. Why is there a sudden interest and increase in the discussions surrounding Gaming Law?
2. What is the role of the panellists in their respective field of work and what does such a role entail?
3. What is the nature of their interaction with bureaucracy and officials?

4. What kind of opportunities exist in this space in present and the future?
5. What should be the approach of students towards this field?

Ankit: Why is there a sudden interest and increase in the discussions surrounding Gaming Law?

Mr. Mainak: (jokingly) There is a lot of money in this field!

Ms. Retiwala: Firstly, I would like to point out that there is presently no law other than the Public Gambling Act 1867 and the respective state laws that is specific to the field of gaming. The distinction between Games of Skill and Games of Chance has existed since time immemorial. The thing that has changed is the advent of technology. There are new games and sports which now have to face a certain lack of regulation. These games and sports reflect the diminishing boundaries of territoriality.

However, this issue is not exclusive to India, but it's something that's happening across the world. Every country has come up with rules and regulations to protect data, such as the General Data Protection Regulation ('GDPR') of the European Union. The increase in complications and nuances through the interaction of gaming, technology, and society, necessitates lawmakers to recognize and regulate the field. The bridging of a gap between law and technology would involve questions regarding their acceptability within society, which has to be taken into consideration. Therefore, the present field is necessarily connected to multiple fields such as constitutional law, torts, intellectual property, data protection etc. which cannot be pinpointed or reduced as Gaming Law.

Nandan: I agree with Sakina. We are here trying to prove that there exists an intersection of many laws and issues. For instance, the Karnataka High Court judgment deals with issues involving constitutional law, contracts law, and criminal law. This intersection (and the related issues) arise because there does not exist any specific law related to gaming. The colonial government enacted the Public Gaming Law, but it was set up as a police law and not as a gaming law. These laws were enacted in a very different world and for a very different purpose, and they have been applied to the online gaming world mindlessly. The challenges faced by both worlds are very different and need to be dealt with separately. As a gaming lawyer, your job is to figure out what the law is and at the same time, the government is trying to figure out

what the regulations should be. How does an individual prove that I am playing and not gambling? There is a new landscape that is trying to figure out its identity within the existing legal framework.

Mr. Mainak: Technology predates law and regulatory efforts. We cannot try regulating something that does not exist. The laws and legislature shall follow suit once the domain is established and explored. For one, games are those interactive platforms where we don't know anyone, yet can communicate universally. Now, gaming is linked to the intersection of law and technology through new domains such as Web 3.0, cryptocurrency, and Non Fungible Tokens ('NFTs').

Earlier, our conversations surrounded Games of Skill and Games of Chance, yet now they have translated to new gamuts of work, such as payments for games using Cryptocurrency. Although the industry presents risks, these spaces have tremendous potential for lawyers to work in terms of exposure, given the lack of credible experts in the space. Further, since this is an innovation space and there exists less traditional competition, you, as a Digital Era Individual, can bring in a fresh perspective.

Ankit: A follow-up question for Mr. Mainak. What kind of task does your role entail in MPL?

Mr. Mainak - I work at the Public Policy and Government Affairs Department at MPL. For me, the importance and significance of this field are in handling the government and helping them decide what the law on the issue should be. The interpretative exercise of law is just one component of the field, but much beyond that there is the creation and moulding of law.

This process involves working with multiple stakeholders like those from the industry and the government, involving pan-Indian organizations like Federation of Indian Chambers of Commerce & Industry ('FICCI') to eventually put across the self-regulatory charters and the industry perspective in front of the government and its' bureaucrats. These efforts are essential for the sustainable growth of the industry. We have observed in bureaucratic negotiations that Indian bureaucrats were very sympathetic to our concerns. These negotiations involve extensive documentation and white papers as well.

The earlier part of the policy work was crisis management, which included management of the media perception of incidents like suicides of kids due to gaming. In pursuance of the same, we launched [Games for Future](#) to proclaim that grey areas do exist in most spaces. However, the approach towards the field should involve regulation rather than outright bans, to support the flourishing of the industry.

Ankit: This question is for Ms. Retiwala, what is the difference between Mr. Mainak's role and your role in Dream11?

Ms. Retiwala: In Dream11, there are dedicated legal teams which concentrate on Business (Product), Litigation and Policy. I usually work in Business, yet sometimes in Policy and Communications as well. For Communications, our job entails creating the right narrative and expertise in communication with the public and bureaucrats. This involves recognizing the difference between the government and public, which are two different audiences and thus, aligning with two different ways of communication. Communication is the key element and one of the most important functions of this field. This is because the central problem in this industry is one of perception, therefore Communications and Perceptions Management come to the forefront. The creation of regulations through charters is one such step toward communication. In such cases, the job of the Lawyer is to allow business engagement but also manage harm.

Ankit: How much pushback or resistance do you guys experience from the officials?

Mr. Mainak - I think it depends from person to person and there is no one-size-fits-all approach. There is an emergence of tech-savvy bureaucrats and they are passionate about the industry and its progress. They understand the gaming industry and know that careers and jobs can be generated through this industry. Similarly, there has been increasing acceptance from politicians and government bodies. For instance, NITI Aayog which has [published a paper](#) on guiding principles for the field. A lot of people now get the gaming industry and how it works.

However, there is a difference in perception between online and offline gaming. Nobody calls physical sports an addiction, but when it comes to online gaming people start calling it such. This difference in approach does not make sense to me. Further, there is also a difference in how different departments, within the government, see the same issues differently. For example, the Home Department would treat an issue differently than the Information

Technology department. The Home Department tends to see the issues by keeping in mind public order, thus it becomes important for us to communicate and address the same issues differently to the different departments while retaining some core consistency.

Ankit (to Nandan): What are the kinds of opportunities that exist in this space?

Nandan: Although these businesses exist in the virtual world, much of their engagement exists in the real world. Therefore, one must take multiple factors into account to smell out what's happening, and how things have changed. Regulators are quite sophisticated and there are opportunities for them to regulate early and late. If we regulate early, we might stop the growth of the technology, and if regulated late, the field already has become highly developed. The window of opportunity is right in-between (these two phases). If regulation is not done at the right time, the same would cause harm, loss of innovation and efficiency to the industry. Regulation should not provide restrictions, but rather a space to flourish. Now, since this regulation arises due to a private interest, the main thing is convincing officials how that private interest is aligned with the overarching public interest.

Although, Public Policy space is a flourishing field, there are other fields too. For instance, some transactional lawyers are also involved in gaming law. They engage in contracts, endorsements, cloud networking, negotiations, etc. These transactions are to be done while being cognizant of their risks. This has to be understood by the transacting lawyer. The question that persists is that 'what special skill does a transactional lawyer bring in'? They bring in a deep understanding of multiple fields, how business works and where do these people and stakeholders come from.

There is no existing litigating gaming lawyer, their job entails immersing themselves in the broader public landscape.

Another job profile is teaching Gaming Law, which involves bringing everything together in an interdisciplinary sense: how political, social, and foreign discourse creates and affects the law and the stand of stakeholders on the different concepts in Law. This is almost like being a Sociologist in Lawyers' Clothing, yet it's interesting to immerse oneself in this space.

Ankit (To Nandan): Can you provide a general overview of the fields and opportunities within policy and research organizations like Sports Law and Policy Centre ('SLPC')?

Nandan: The aim is to build a greater education and spread awareness about the gaming industry. The issue is that we need common spaces for neutral dialogue where different people from different backgrounds would come and present their perspectives on these multi-disciplinary dialogues. This is to address the concern that people's perspectives are not being heard. What goes into the formulation of the law is still a grey area. Having a private interest is not a wrong thing and in these common spaces, a variety of private interests come together and discuss ideas and interests. However, this is the right time to decide on common grounds than on collectives, which involves moderating and resolving contentions.

Ankit: - So there is not a gaming law *per se*. What if a senior student wants to pursue this as a career option? What specific things should they be looking out for?

Mr. Mainak: Nowadays, for example, gaming companies are looking for a gaming lawyer in Bangalore. I have generally been interested in innovation and gaming, and I love being in there with people of different backgrounds. No class (or course) can teach you what you can do in this field. Although it's great to have an interest, there is no need in pressurizing yourself, take these calls later or build it organically.

Ms. Retiwala - I come from an insurance background, where there is heavy regulation. One is just following the rule book and the room for innovation is minimal, given the boundaries are set. For the gaming industry, the sky is the limit. There is scope to innovate, learn and excel. It is the right time to decide on which side of the industry one wants to be in: for instance, the regulatory side or the innovation side. So much to think of and innovate in this sector such as Intellectual Property, Competition, data engineering and engagement, etc. I don't think there is a set particular answer to this question. Just read up on technology in general, there are newer games and technologies coming up everyday that nobody has heard of. Analyse them, and see if they interests you.

Ankit: Following up on the specialists v. generalists debate, what do you think is the better approach?

Ms. Retiwala: It is essential to understand that specializing in one skill-set would be limiting. There is a need to wear multiple hats and be at the top of the game as a generalist. It is only when we grow that we specialize. I come from a background in Insurance, which helped me in Dream11 to help the teams understand the importance of securing their business interest by

taking the correct insurance for the business, implementing processes that give easy access to information to departments of their various legal dealings, etc. It is not that I can choose what to specialize in, but while starting, keep your mind as open as possible.

Nandan: Lawyers don't decide if they are specialists, it is decided for them by the clients. (You should) just focus on becoming a person that understands the field. An essential question is how to enter the field in this Digital Frontier Era, where you try to understand as many dynamics as possible in a constantly expanding place. Gaming is the field of digital expression and interaction. If you understand this fundamental proposition, this shall help you understand where the action is and how the businesses and government work. It is when we don't think of the field of gaming law as merely involving MPL or Dream11, but rather the sophistication of it where through gamification every company is both an operator and a player, that we can realize the potential of this field.

Mr. Mainak: Look up Jay Sayta of GLaws. He loved poker, and engaged in gambling, even running a legal blog on the same. For him, it is his specialization in gambling that bought him to the field. He is now working on what he loves to do. It depends on what one finds interesting and what one does not. (You need to) figure out what catches your interest. What is true for business is also true for humans.

Ankit: **If I understand this correctly, being a generalist is a necessity and a specialist is a reward. What does one look forward to while pursuing post-graduation and special credit degrees?**

Mr. Mainak: There are no courses on gaming law available as the industry is in a nascent stage. Therefore, one has to work with organizations, and the industries will teach you themselves. An immense amount of exploration and innovation is possible within the industry itself. Universities and colleges will take their own time to catch up to the pace of the industry and offer courses on this.

Mr. Kamath: Even though college courses are not available, various certificate courses are available on NFTs, Cryptos, and coding. One needs to understand how the technology works, and this is what is needed to be done to get a head start.

Ms. Retiwala: Understanding the nuances of technologies will help you get jobs in this industry. If one does not know basic technology and how all this works, it's difficult to enter this industry. One has to know what the tech company does if one wants to protect them in the future in courts. If we know the technology, the product, we know what the problems are, where the problems are, and how to solve them, it would help us a lot in the job.

Question and Answer Session

Ankit: Opening the floor to questions.

Shikhar: There's a certain path dependence that comes in once an individual chooses his career, not just within gaming law, but any career in general. For instance, an individual starting in the policy sector of the gaming industry would later find it difficult to switch to the transactional side. In lieu of this, what sort of learning should we follow around the latter end of law school/early end of the professional life, so as to ensure that one can smoothly transition between these roles if one were to wish so?

Mr. Kamath: Follow your interests and make the groundwork for your career. Think on the following lines: What is my side hustle? How can I pick up new skills? Are we ready with the skills when the time comes? Preparation is the question rather than specialization. Pursuing different works and learning will come to your use in the future. Going deep into the topic and the field would give you insights. Therefore, follow your interests, but don't hang upon them.

Shivangi: Is the nature of the work more protectionist or is it more osmotic?

Sakina: It is not just protectionist; it is also about adding values. It is a two-way dialogue and is about guiding the engineers. It is always a dialogue, which involves keeping a legal framework in the back of the mind and questioning how we implement this. Legal departments have to be enablers for the business.

Sidhant: In India, laws are restricted to Fantasy Leagues and Gambling. How does the development of jurisprudence affect the people as well as the developers, for e.g. [Epic Games v. Apple?](#)

Mr. Mainak: This matter truly affects developers as well, and I fully resonate with you. This is evident when, on one hand, Google removes MPL from the Play Store, maintaining skill

gaming in India is not legal while App Store retains it, with the government not seeming to mind the situation. These are the issues we face with the Big Tech companies. These companies are bigger regulators than the official regulators. PUBG is an e-sports event and even has official gaming competitions, but Indian gaming developers have had it bad on other issues as well like funding and distribution. The games are amazing but there are not enough funds for funding the marketing and expanding the games. There are many challenges like Google ads and statutory infringements. In all these cases, Indian game developers are negatively affected, and we are also being cornered by Big Tech Companies at the same time.

Mr. Kamath: Extra-sovereign entities like the Big Tech companies are making big decisions. What is lacking is a competition law in this field, and it is not being addressed meaningfully. We need to make our regulators understand our positions, or else other extra-sovereign entities would make the decisions on their behalf. There are much broader questions that need to be looked upon and the regulators should not be blindsided by them. In my opinion, regulation should be enabling and not restrictive.

Concluding Remarks

Ankit: This would be the end of our questions round. What would be your concluding remarks from this discussion? Moreover, could you mention one favourite game of yours?

Ms. Retiwala: Thank you for having me! I've had great fun throughout these discussions. My favourite game would no doubt be 2048.

Mr. Mainak: It has been an absolute honour to be part of these panel discussions. There is a boom happening presently in India, and the potential for Gaming Law is tremendous. It is a great time to be in the innovation industry. My favourite game would be Age of Empires.

Mr. Kamath: Most of the things I've wanted to mention have been covered. My favourite game would be NYT Wordle and the Spelling Bee. However, in the offline setting, 'I Spy' would be the best.

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