

BETTING OR WAGERING ON GAMES OF SKILL DOES NOT ENJOY CONSTITUTIONAL PROTECTION UNDER ARTICLE 19(1)(g).

I. BACKGROUND AND CONTEXT

The Hon'ble Supreme Court, in *State of Tamil Nadu & Ors. v. Junglee Games India Pvt. Ltd. & Ors.*, considered a batch of appeals arising from judgments of the Madras High Court and the Karnataka High Court striking down amendments enacted by the States of Tamil Nadu and Karnataka regulating online gaming played with stakes. The principal controversy before the Court was not whether games such as rummy or poker are games of skill, but whether **betting or wagering on such games constitutes a constitutionally protected business activity** and whether the States possess legislative competence to regulate or prohibit such activities.

The appeals arose from two sets of legislative measures enacted by the States to address the increasing prevalence of online betting and wagering through digital platforms. The State of Tamil Nadu and the State of Karnataka (hereinafter collectively referred to as the “Appellants”) enacted amendments to their respective gaming legislations with the object of regulating online gaming involving wagers or stakes, extending the statutory framework to cyberspace and penalising betting or wagering conducted through electronic platforms. The legislative measures were introduced against the backdrop of concerns regarding online gaming addiction, financial exploitation, indebtedness and incidents of suicide allegedly linked to online betting activities.

These enactments were challenged before the respective High Courts by various online gaming companies, including Junglee Games India Pvt. Ltd., Play Games24x7 Pvt. Ltd., Head Digital Works Pvt. Ltd., All India Gaming Federation and other gaming operators (hereinafter collectively referred to as the “Respondents”). The Respondents contended that the impugned enactments impermissibly treated games of skill and games of chance alike, infringed their fundamental right to carry on business under Article 19(1)(g) of the Constitution, and exceeded the legislative competence of the States under the Seventh Schedule.

The Madras High Court struck down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, holding that Entry 34 of List II (“Betting and gambling”) could not be interpreted to include betting on games of skill and that the legislation disproportionately restricted constitutionally protected business activities. Subsequently, portions of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022/2023 were also invalidated. Similarly, the Karnataka High Court declared key provisions of the Karnataka Police (Amendment) Act, 2021 unconstitutional, holding that games predominantly involving skill remain protected under Article 19(1)(g) even when played online with stakes.

Aggrieved by these decisions, the Appellants preferred appeals before the Supreme Court.

The principal controversy before the Supreme Court centred on the constitutional distinction between games of skill and betting or wagering on games of skill. While earlier judicial decisions had consistently recognised that games predominantly involving skill fall outside the ambit of gambling, the present appeals required the Court to determine whether the activity of staking money on the outcome of such games continues to enjoy the same constitutional protection. The Court was further required to examine the scope of the legislative entries relating to betting and gambling, the extent of State legislative competence, and the continued applicability of earlier constitutional precedents to contemporary online gaming platforms. The judgment therefore represents one of the most comprehensive examinations of the constitutional framework governing online gaming, betting and gambling in India.

II. LEGAL FRAMEWORK

The Supreme Court examined the constitutional and statutory framework governing the validity of the impugned enactments, including:

- a. Article 19(1)(g) of the Constitution, guaranteeing the freedom to practise any profession or carry on any occupation, trade or business;
- b. Article 19(6), permitting reasonable restrictions in the interests of the general public;
- c. Articles 245 and 246 of the Constitution governing legislative competence between the Union and the States;
- d. Entry 34 of List II relating to “Betting and gambling”;
- e. Entry 1 of List II relating to “Public order”;
- f. Entries 26 and 33 of List II concerning trade and commerce, sports, entertainments and amusements;
- g. The doctrine of pith and substance governing legislative competence; and
- h. The principles laid down in State of Bombay v. R.M.D. Chamarbaugwala, R.M.D. Chamarbaugwala v. Union of India, K.R. Lakshmanan v. State of Tamil Nadu and State of Andhra Pradesh v. K. Satyanarayana.

III. ISSUES BEFORE THE COURT

The Supreme Court considered the following principal question:

1. Whether betting or wagering on games of skill enjoys protection under Article 19(1)(g) of the Constitution.
2. Whether the impugned State enactments fall within the legislative competence of the States under Entry 34 of List II and other relevant constitutional entries.
3. Whether games of skill and betting or wagering on games of skill constitute the same legal activity for constitutional purposes.
4. Whether the Madras High Court and the Karnataka High Court were justified in striking down the impugned legislations.

IV. JUDICIAL ANALYSIS

A. Distinction between Games of Skill and Betting on Games of Skill

The Court reaffirmed that games predominantly involving skill remain legally distinct from games of chance. However, it clarified that this distinction does not automatically extend to betting or wagering conducted on such games. While the underlying activity may involve skill, the act of staking money on an uncertain outcome constitutes a separate activity capable of legislative regulation. The Court therefore rejected the proposition that betting on games of skill necessarily inherits the same constitutional protection available to the underlying game itself. The Court further held that where the stakes are involved on the outcome of a game, the activity assumes the character of betting or wagering, irrespective of whether the underlying game is one of skill or chance.

B. Constitutional Protection under Article 19(1)(g) and the Doctrine of Res Extra Commercium

The Court held that the constitutional protection recognised in earlier decisions applies to the business of offering or participating in games of skill. It does not extend to betting or wagering on such games. Once an activity assumes the character of betting by involving the staking of money on an uncertain outcome, it becomes res extra commercium i.e., outside the domain of trade or commerce, and no fundamental right under Article 19(1)(g) can be claimed in respect of such an activity.

Since betting and gambling are *res extra commercium*, the Court further held that the proportionality test has no application; a State imposing a blanket prohibition on staked gaming activities cannot be said to have exceeded constitutional limits when there is no underlying fundamental right to begin with.

The Court therefore distinguished the protected activity of conducting games of skill from the separate activity of wagering upon them.

The Court also distinguished its earlier decision in *K.R. Lakshmanan v. State of Tamil Nadu*. It observed that the said decision was rendered in the context of horse-racing conducted under a statutory framework that expressly exempted wagering on horse races and operated within a closely regulated physical environment. Such circumstances, according to the Court, could not be equated with online betting platforms characterised by unrestricted accessibility, anonymity and technological intervention. Consequently, the principles laid down in *K.R. Lakshmanan* did not govern the constitutional validity of the impugned enactments.

C. Legislative Competence of the States

The Supreme Court held that the State Legislatures possessed legislative competence to enact the impugned legislations. Entry 34 of List II is sufficiently broad to include betting or wagering on games of skill and is not confined only to betting associated with games of chance. The conjunction “and” in “betting and gambling” does not restrict the State’s power to legislate only upon betting on gambling activities. Rather both “betting” and “gambling” separately cover a wider field. The Court further held that competence was also independently available under Entry 1 of List II (“public order”), given that online betting and gambling, by generating addiction, indebtedness, social disorder and suicides, disturbs public tranquility and health at a societal level, satisfying the proximate nexus required to invoke public order jurisdiction.

The Court further observed that the legislative measures were also consistent with the States' constitutional obligation to protect public health and mental well-being. Referring to its recent decision in *Sukdeb Saha v. State of Andhra Pradesh*, the Court reiterated that mental health forms an integral part of the right to life under Article 21 of the Constitution. In view of the material placed before the legislatures demonstrating addiction, indebtedness and other harmful consequences associated with online betting, the impugned enactments constituted a legitimate exercise of the States' police powers.

D. Nomen Juris and the Fluid Nature of “Gaming”

The Court rejected the Respondents’ contention that the word “gaming” has acquired the status of *nomen juris*, i.e., a settled legal meaning and refers only to games of chance. Therefore, they contended that games of skill cannot be included within a statutory definition of gaming. The Court held that the relevant constitutional expression is “betting and gambling” in Entry 34, not the word “gaming.” The definition of “gaming” is a statutory matter, fluid and varying across States and legislations, and cannot be treated as having a fixed legal meaning determined by the courts. Each Legislature retains the power to define gaming as it sees fit, and there is no basis for treating the term as an immutable legal category.

E. Application of the Doctrine of Pith and Substance

Applying the doctrine of pith and substance, which requires a court to examine the true nature and primary purpose of a law, the Court held that the impugned enactments were essentially intended to regulate betting and wagering conducted through online platforms. Although the legislations incidentally affected games of skill played with stakes, their dominant purpose remained the regulation of betting activities and the prevention of harms associated with online wagering. The Court also noted that the Legislatures had relied on objective evidence, including the Justice K. Chandru Committee Report in Tamil Nadu and survey findings concerning the impact of online gaming on school students, which further demonstrated that the enactments were founded upon objective material and addressed identifiable social harms. The Court also recognised the unique characteristics of online betting platforms, observing that digital technology enables anonymous participation, instantaneous monetary transactions, algorithm-driven engagement, artificial intelligence, bots and pseudo-random generators, thereby creating risks fundamentally different from those associated with conventional physical gaming establishments. These features reinforced the legislative objective of regulating online betting and wagering in the interest of public welfare.

Accordingly, the enactments fell within the legislative field assigned to the States.

F. Validity of the Tamil Nadu and Karnataka Legislations

The Supreme Court concluded that the High Courts had adopted an unduly restrictive interpretation of Entry 34 and had incorrectly equated betting on games of skill with the games themselves. This was held to be an impermissible judicial rewriting of the constitutional text. The Court therefore upheld the validity of the Tamil Nadu and Karnataka laws regulating online betting and wagering, and declared the challenged provisions constitutional (*intra vires*). The Court consequently set aside the judgments of both High Courts.



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