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MADRAS HIGH COURT EMPHASISES THAT LAWS TO REGULATE ONLINE GAMING ARE THE NEED OF THE HOUR

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Background

Globally, the COVID-19 pandemic and the consequent lockdowns have increased people's interest in exploring and participating in online games. Discretionary consumer spending which was otherwise used in vacations, dining out and other entertainment options, has been freed up. The digital and online gaming sector is less sensitive to recessionary pressures. The S&P 500 Index has declined by more than 9% since the beginning of this year whereas an index of western digital gaming companies has increased by more than 22% during the same time period. Historically (*ie*, in both 2001 and 2008), the digital gaming sector enjoyed healthy overall growth in both software and hardware sales despite a negative economic environment. (Source: BITKRAFT Esports Ventures Management LLC)

Introduction of affordable smartphones in the Indian market and rising penetration of internet across the country has helped boost the growth of online gaming space over the last few years in the country, and has made India a key online and virtual gaming market. It is estimated that by the end of financial year 2023, the Indian online gaming industry could record a whopping revenue of upwards of INR 118.8 billion. (KPMG, *The Evolving Landscape of Sports Gaming in India*, March 2019) However, despite the increasing number of start-ups and participants in the online gaming space, the lack of uniform regulatory framework has paved way for illegal activities to go unnoticed, which impacts legitimate gaming platforms the most.

Recent judgment of Madras High Court

In a recent judgment in *D Siluvai Venance v State* pronounced on 24 July 2020 (CrI OP (MD) No. 6568 of 2020), the Madurai Bench of the Madras High Court (High Court) has drawn the State government's attention to the lack of a regulatory framework and absence of laws to monitor and regulate online games.

This case primarily involved the issue in relation to determination of what constitutes gambling in a public place or a common gaming house. The petitioner in the present case was arrested by the local police for playing cards for stake with four other persons on a farm. The police accordingly registered a case against the petitioner for gambling under section 12 of the Tamil Nadu Gaming Act 1930 (Act). The petitioner challenged the allegations on the grounds that firstly, he did not participate in the game of cards and was merely a mute spectator of the game; and, secondly, the petitioner's friends were playing cards on farmland owned by one of the friends which neither constituted a common area under Section 3 of the Act nor did it fit the definition of a public street

or place as contemplated under section 12 of the Act. The High Court accepted the arguments raised by the petitioner based on its previously set out dictums wherein it was held that "...*pial of a private house, which has access to the public street cannot be termed as a public place...*" (*J Raghunadhu v Emperor*, 1933 Mad WN 1422); and "...*running of a common gaming house is a primordial requisite before a person could be convicted for an offence...gaming is not an offence per se but it is punishable only when it is carried on in a public place for commercialisation purpose and in a common gaming house with profit motive...*" (*Raman Nair v State*, 1990 (2) MWN Crime 195). Accordingly, the High Court quashed the proceedings against the petitioner and held that game of cards played by the petitioner on private farmland did not constitute a common gaming house and consequently is not gambling under the Act.

While hearing this case, the High Court posed a query to the Assistant Inspector General of Police as to how various online games are permitted in the State of Tamil Nadu despite the police being extremely particular in implementing the Act even in cases where a person is playing cards on private farmland. In response to this question, the Assistant General of Police filed a status report wherein it expressed concerns in relation to the growing addiction to online gaming amongst youngsters leading to financial crises in families. Further, the Assistant General of Police pointed out in its reply that at present there are no laws in the State to regulate and license online skill games such as rummy, bridge, poker, nap, fantasy sports, etc.

Observations of the HC

In light of the response from the Assistant General of Police, the High Court observed that most of the state legislations in this area are prior to the advent of virtual and online gaming (with the exceptions of Sikkim, Nagaland and Telangana where online gaming is also covered). The High Court has also discussed most of the landmark decisions pertaining to games of skill and games of chance to highlight the existing jurisprudence on gaming and gambling. Further, the High Court has noted that there are no judicial precedents in respect of online gaming which specifically refer to games existing in the virtual space, ie the internet, except for *Varun Gumber v Union Territory of Chandigarh* (2017 CrI. LJ 3836), *Gurdeep Singh Sachar v Union of India* (PIL Stamp No. 22 of 2019) and *Chandresh Sankhla v State of Rajasthan* (DB Civil WP No. 6653 of 2019), which deal with the legality of fantasy sports.

Given the regulatory void in online and virtual gaming space, the High Court has observed that: "...*having such a [regulatory] set up to deal with the emerging online games/virtual games is the need of the hour. A comprehensive regulatory framework by a regulatory body is necessary to regulate the online sports and to curb any illegal activities as well. In fact, such regulation of online sports would encourage investment in the sector, which could lead to technological advancements as well as generation of revenue and employment.*"

The High Court has made various observations around the impact online and virtual gaming has on the society at large. While the High Court has clarified that it is not against online or virtual games; it has expressed its anguish in relation to the absence of a regulatory body to monitor and regulate legitimate gaming activities both in the real-world and in the online and virtual space.

Comment

It has been a long standing appeal of various stakeholders in the industry to introduce a comprehensive and robust regulatory regime to govern online and virtual gaming, regulate the participation of individuals in such games and curb illegal gambling, betting and wagering activities. Absence of a robust and comprehensive legal and regulatory framework hurts legitimate operators more than the illegitimate ones; discourages investment and stifles growth and awareness. Most of the enforcement action is faced by the legitimate operators who want to serve this vast (and growing)

market responsibly within the bounds of law; whereas, the fly-by-night operators exploit the legal and regulatory void, make quick gains and vanish. This order of the High Court will, hopefully, give some further push to a larger discourse on this subject matter, which could evolve into a comprehensive legislative and regulatory framework for online and virtual gaming industry in the country.

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