



**“APPLICATION OF MISCHIEF  
RULE OF INTERPRETATION  
TO  
CHECK THE LEGALITY OF  
FANTASY SPORTS IN INDIA  
WITH RELEVANT  
JUDICIAL  
PRONOUNCEMENTS”**

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**INTRODUCTION**

Online gaming, especially fantasy sports have advanced and grown much in India in recent years. This advancement of fantasy sports in India is due to easy internet access and a new era of digitalization which emerge as an increase of the individual’s interest in online games. Fantasy sports refer to the online predictions where you create your team of the real sports player and based on your predictions you earn some points. Generally, fantasy sports can be defined as the creation of virtual teams of real world players based on certain terms and conditions who are going to play live games. Fantasy sports have been legally recognized and established in different foreign countries such as the U.K., Spain, and most of the States of the U.S.A. Fantasy sports in India have figure out their validity through various Judicial Pronouncements. Many online platforms in India provide for fantasy sports but the leading company among the other companies in India is Dream 11. Dream 11 has earned much revenue by providing a platform for fantasy sports in India in the past few years. The Court has applied the Mischief Rule of

Interpretation at various instances for curbing the mischief of the Acts passed by the Parliament. Subsequently, the courts have also applied the Mischief Rule on various occasions when the question was raised regarding the legality of fantasy sports.

**MISCHIEF RULE OF  
INTERPRETATION**

The Mischief Rule of Interpretation is applied by the Courts in various cases for ruling out what Parliament ‘meant’ by passing any particular Act. It helps to discover the true intention of the Parliament. There are many other rules of interpretation but the Mischief Rule of Interpretation is one of the oldest rules. The main focus of this rule is to cure the mischief and advance the remedy. Mischief Rule was originated in “*Heydon’s Case*”<sup>1</sup> in 1584. This rule is also known as the Rule of Purposive Construction or Heydon’s Rule. It was called as Rule of Purposive Construction because knowing the purpose of this Statute is most essential while applying this rule and this is known as Heydon’s rule because it was given by Lord Porke in Heydon’s Case in 1584. It is called the Mischief Rule because its main aim is to cure the mischief. The rule was explained in the *Bengal Immunity Co v State of Bihar*<sup>2</sup> by SR Das CJI as follows, "It is a sound rule of construction of a statute firmly established in England as far back as 1584 when Heydon's case was decided that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered:

1. What was the common law before the making of the Act,

<sup>1</sup> Heydon's Case, (1584) 3 Co Rep. 7a, P 7b: 76 ER 637.

<sup>2</sup> Bengal Immunity Co V State of Bihar, AIR 1955 SC 661, P 674



2. What was the mischief and defect for which the common law did not provide,
3. What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, and
4. The true reason of the remedy;

and then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*."

### FANTASY SPORTS – A GAME OF MERE SKILL OR CHANCE?

The gaming field in India is governed by two central legislation- Public Gambling Act, 1867,<sup>3</sup> and Prize Competition Act, 1955.<sup>4</sup> The laws in India prohibit the games whose winning outcomes are based on mere luck i.e. where the games involved the element of Chance however the Indian laws permit the games which are based on mere skills and knowledge. The laws regarding betting and gambling are part of the state list and the Central Act shall not be effective over those states who have adopted their respective gambling laws.<sup>5</sup> Gambling can be defined as the act of wagering for money or similar to it's worth. Section 12<sup>6</sup> of the Public Gambling Act exempts the competition which involves any skill or knowledge. The games based on skills require supreme knowledge, judgment and attention. This

does not come under the scope of gambling and is considered as a business activity.

### ➤ INTRODUCTION ABOUT DREAM 11 AND REQUIREMENT OF SKILLS IN MAKING OF VIRTUAL TEAM

Dream 11 is one of the foremost companies in India for online fantasy sports. Dream 11 offers many fantasy sports such as fantasy cricket, fantasy kabaddi, and fantasy football. Dream 11 is a company that has registered and incorporated itself under the Companies Act, 2013. Central Excise Department has also issued a Service tax Registration in favour of Dream 11. Dream 11 accounts have been assessed for many years based on PAN no. which have been granted to them by Income Tax Department. They are not only paying the service tax and income tax applicable to them but they also deduct and remit applicable withholding tax on customer winnings to the respective authority. Dream 11 partners list includes reputed financial institutions, payment gateway service providers, websites and social media portals, website/hosting services providers, and other service providers, which engagement reflects their standing and reputation. Fantasy sports offered by Dream 11 is a game where a fixed number of rounds are played by the participating users which create their virtual team and act as managers for the created team which compete against other virtual teams created by the other participants. The points are calculated based on statistics, scores,

<sup>3</sup> Public Gambling Act, 1867, No. 3, Acts of Parliament, 1867 (India).

<sup>4</sup> Prize Competition Act, 1955, No. 42, Acts of Parliament, 1955 (India).

<sup>5</sup> Constitution of India, 1950, Schedule 7, List II, Entry 34

<sup>6</sup> Section 12 - Act not to apply to certain games. — Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.



achievements, and results generated by the real individual sportspersons or teams in certain designated professional sporting events. The winner of the game is declared based on the participant whose virtual team accumulates the maximum number of points during the phase of the competition. The users while making a virtual team needs to apply a considerable amount of skill because they need to assess the worth of every player against the other players available for selection. There is a necessity that the users need to understand the rules for analyzing the strength and weaknesses of each player. There is an exception while making the virtual team i.e. the user cannot choose entirely the players from a single team. Dream 11 allows the user to choose only 7 players out of 11 players from a single team in the case of fantasy cricket. This exception makes sure that the user has to apply a greater skill for gathering the knowledge of the real world players of both teams and this act as a preventive measure to the user from creating the situation which is similar to the act of betting and gambling on the performance of a single team to win the match/league which is strictly prohibited in India. The users engaged in making the team assess the player's statistics and the selection of the players is based on those statistics. The user require to evaluate many factors i.e. batting average, total runs, number of half-centuries and centuries, catches, stumpings, bowling average and economy rate, 5 wicket-hauls and many more factors. The users evaluate the players based on their past performance and are selected on those performances. The users need to closely follow the sport and to assess the potential of every player before selecting in the virtual team. The online fantasy sports games offered by them through the Platform require material, considerable

and reasonable skills and knowledge in terms of 'drafting' and 'playing' which are the determinative aspect in the end result of the game and winning outcomes.

➤ **FUNDAMENTALS OF SKILLS REQUIRE THE USE OF HIGH KNOWLEDGE, JUDGMENT, ATTENTION AND FIRMNESS:**

After the virtual team is drafted the user needs to have a watch over the games on a regular basis by examining the score accumulated by the players added by him to his virtual team. The accomplishment in Dream 11 fantasy sports games is due to exercise of High Knowledge, Judgment, Attention and Firmness of the user by understanding the rules and regulation of Dream 11. For achieving success while playing the user needs to acquaint himself with the past performance, physical state and form of player available for selection across numerous categories, assessing the relative worth of an player and the predictable statistics arising out of the player's performance in the original real-world event and devising an overall strategy in selecting and playing the Dream11 game. As a result, the element of skill has a much superior and major influence on the result of the Dream11 fantasy sports game than any incidental chance. The users skills, experience and knowledge provides him with a better insight with how to create the teams and factors to be considered while making of the team and how to succeed and win by keeping in mind all factors. These things have direct influence over winning of the user in Dream 11. The users get to know about different strategies and how to play and win the game only after playing it on a regular basis and following the sport and applying his mind and skills in the game. The courts through its various judicial



pronouncements held that the game which involves a skill of the participants shall not act as a part of gambling and betting and it will be protected under Article 19(1) (g) of Constitution of India, 1950.<sup>7</sup>

### JUDICIAL JOURNEY OF LEGALITY OF FANTASY SPORTS

The Mischief Rule of Interpretation was applied by the court in the case of *RMD Chamarbaugwalla v UOI*,<sup>8</sup> for construction of section 2(d) of the Prize Competitions Act, 1955. This section defines "Prize Competition" as meaning "any competition in which prizes are offered for the solution of any puzzle based upon the building up arrangement, combination or permutation of letters, words or figures". The question was whether in view of this definition, the Act applies to competitions which involve substantial skill and are not in the nature of gambling. The Supreme Court, after referring to the previous state of the law, to the mischief that continued under that law and to the resolutions of various States under Article 252(1) authorising Parliament to pass the Act stated, "Having regard to the history of the legislation, the declared object thereof and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend on any substantial degree of skill".

The question regarding legality of fantasy sports offered by dream was firstly raised before the Punjab and Haryana High Court where the issued was regarding that the fantasy sports are game of skills or chance

and whether it amounts to gambling. The court in the case of *Varun Gumber v. Union Territory of Chandigarh and Others*<sup>9</sup> referred to RMDC case which is mentioned above in which the court applied the Mischief Rule of Interpretation to suppress the mischief. The court in the present case held that The respondent company's website and success in Dream 11's fantasy sports basically arises out of users exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent-company cannot said to be falling within the gambling activities as the same involves the substantial skills which is nothing but is a business activity with due registration and paying the service tax and income tax, thus, they have protection granted by Article 19 (1)(g) of Constitution of India. The appeal was made to Supreme Court to challenge the order passed by Punjab and Haryana High Court in Varun Gumber's case. The Supreme Court has dismissed the SLP filed against the order.

<sup>7</sup> Article 19 (1) (g) - to practise any profession, or to carry on any occupation, trade or business

<sup>8</sup> AIR 1957 SC 628, p 632

<sup>9</sup> 2017 SCC OnLine P&H 5372



The contention regarding the legality of the Dream 11 app was again raised before the Hon'ble High Court of Bombay in the case of ***Gurdeep Singh Sachar v. Union of India Through Ministry of Finance and Others***<sup>10</sup> where the court relied upon the judgement passed by the Punjab and Haryana High Court in the case of Varun Gumber v. Union Territory of Chandigarh and Others, the Court held that The authorities have therefore not taken any coercive steps against the respondent No. 3, and rightly so. No case for issuing any directions is made out. It is seen that the entire case of the Petitioner is wholly untenable, misconceived and without any merit. It can be seen that success in Dream 11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team in the real world game on any particular day. It is undoubtedly a game of skill and not a game of chance. The attempt to reopen the issues decided by the Punjab and Haryana High Court in respect of the same online gaming activities, which are backed by a judgment of the three judges bench of the Apex Court in ***K.R. Lakshmanan***<sup>11</sup> that too, after dismissal of SLP by the Apex Court is wholly misconceived. The order of Division Bench of Bombay High Court in Gurdeep Singh Sachar, was challenged before the Supreme Court and the Hon'ble Supreme Court has dismissed the said Special Leave Petition vide order dated 04.10.2019.<sup>12</sup>

The PIL was filed before the Hon'ble High Court of Rajasthan where the question was

similar to that raised in above mentioned cases. The Hon'ble Court in case of ***Chandresh Sankhla v. State of Rajasthan and Others***<sup>13</sup> the court held that This Court finds that the issue of treating the game "Dream 11" as having any element of betting/gambling is no more res integra in view of the pronouncements by the Punjab and Haryana High Court and Bombay High Court and further the SLPs have also been dismissed against the orders of these High Courts. Consequently, this Court finds no merit in the present Public Interest Litigation petition and the same is accordingly dismissed.

On March 6 2020, the Supreme Court in the case of ***The State of Maharashtra & Ors. V. Gurdeep Singh Sachar & Ors.***<sup>14</sup> the Supreme Court passed a stay order on the impugned judgement and order passed by the Bombay High Court in the case of Gurdeep Singh Sachar v. Union of India through Ministry of Finance and Others. And furthermore there is no order passed by the Supreme Court till date and the hearing is pending before the Hon'ble Apex court.

## CONCLUSION

The online fantasy sports have grown much in the past few years in India. Fantasy sports are considered legal in foreign countries. In India, fantasy sports derived their legality through various judicial pronouncements. The competition where the winning is based on chance is considered gambling and is prohibited under Indian Legislation. However, where the competition which

<sup>10</sup> 2019 SCC OnLine Bom 13059

<sup>11</sup> (1996) 2 SCC 226

<sup>12</sup> Special Leave Petition (Criminal) Diary No. 35191/2019

<sup>13</sup> 2020 SCC OnLine Raj 264

<sup>14</sup> Special Leave Petition (Criminal), Diary No(S). 42282/2019



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involves substantial skills and knowledge of the participants does not come under the purview of gambling and is exempted from it as given under section 12 of the Public Gambling act. Thus these types of competition are protected under Article 19(1)(g) of the Indian Constitution as well as it is regarded as a business activity that is taxable and every Indian is free to profess such business activities.

Accordingly, Dream 11 offers a platform for its users to play fantasy sports. There were several instances where the question was raised regarding that Dream 11 which provides fantasy sports amounts to gambling. However, the court by applying the Mischief Rule of Interpretation held that such fantasy sports require the superior skill of knowledge, judgment, and attention and these fantasy sports involve substantial skill which is exempted from the scope of gambling. Thus the courts in this way legalised the fantasy sports in India and held that the winning of such competition is completely based on the substantial skills of the user and not on any chance and will not be considered as gambling.

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