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## Comparative Analysis: Fantasy Sports Apps in British and Indian Legal Contexts

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*This paper undertakes a comparative study of the legalities associated with the process to run fantasy sports applications and their ambit, as understood in the United Kingdom and India. The elements of skill and chance, but more so the issues about legality that crop up in the bet and gambling case laws, will be elaborately looked into as far as fantasy sports are concerned. This paper focuses on the essential aspects of the type of contract, enforceability, and regulatory implications in each jurisdiction. Therefore, complex regulation of fantasy sports, in general, as well as regulation related to contests and promotions, is a focus of the thesis study against the legal frameworks of British and Indian contract law. It is presumed that this will bring forth the nuances indexing these approaches, as well as suggest the most likely areas of the two legal systems, fitting in and disagreeing with one another. Concerning users, developers, and policymakers, the implications have been recommended to take care of in this respect specifically for making the app compliant with the law. Finally, it is succeeded by the general discussion on the legal aspects of buying a jump rope in the UK and India. It further sought to understand all the opportunities and challenges within the legal framework and status of such a dynamic developing industry. Panelists further sought a better understanding of opportunities and challenges within the legal framework and status of such a dynamic developing industry.*

**Keywords:** *fantasy sports, gambling classification, legal tests.*

## **INTRODUCTION**

### **Object and Purpose of the Study**

This study compares the contract laws of British and Indian countries in fantasy sports apps relevant to skill, chance, and the legality of betting. This paper seeks to provide insight by analyzing how each jurisdiction addresses the complexities of fantasy sports in regard to contract formation, enforceability, and regulatory implications. This is meant to describe the stakeholders, users, developers, and policy-makers by informing them of the legal landscape that outlines the fantasy sports apps. Therefore, it intends to recommend compliance and note some of the areas that probably need further research in this field to enable better knowledge of the legal challenges facing this fast-growing industry.

### **RESEARCH QUESTIONS**

1. How do British and Indian contract laws compare in relation to regulating the legality of the elements of skill, chance, and betting regarding fantasy sports apps?
2. In respect of the formation of a contract and its enforceability, what will be the major legal issues in both the jurisdictions in case of the following: Fantasy sports apps
3. How does British jurisdiction differ from Indian law in resolving this distinction between fantasy sports games—a game based mostly on skill from a chance-based game?
4. What are the landscape implications of various fantasy sports laws on stakeholders, particularly users of this service, developers of the product, and policymakers regarding fantasy sports?
5. How to ensure due compliance with the relevant contract laws and seek ways through which legal uncertainties are removed in both the British and Indian markets for fantasy sports apps.

### **LITERATURE REVIEW**

The gambling regulations of fantasy sports are provided in legal sources, such as the Contracts (Rights of Third Parties) Act 1999<sup>1</sup> and the Gambling Act 2005<sup>2</sup>. Works of leading legal personalities such as Allen & Overy and Gokhale et al. give insights into English and Indian

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<sup>1</sup> The Contracts (Rights of Third Parties) Act 1999

<sup>2</sup> Gambling Act 2005

contract laws. Court cases like the *State of Andhra Pradesh v K. Satyanarayana & Ors*<sup>3</sup> and *Varun Gumber v Union Territory of Chandigarh*<sup>4</sup> tell us the exact idea of the meaning. Statutes, like The Indian Contract Act 1872<sup>5</sup> and The Public Gambling Act 1867<sup>6</sup>, provide base for the framework. Some of these acts and analysis are very crucial to understand the real and critical regulatory environment that surrounds these fantasy sports apps.

## **RESEARCH METHODOLOGY**

The paper follows with a comparative legal analysis based on the examination of relevant statutes, case law, and scholarly literature in the area of law on contracts, gaming regulations, and fantasy sports. In the collection of the data, this work is qualitative, henceforth the reasoning behind the similarities, differences, and concerns in both jurisdictions.

### **Hypothesis Formed**

Variability in contract laws between the UK and India, especially on the subject of skill, chance, and betting legality, will bring divergent regulatory approaches in governing fantasy sports apps. These differences will likely shape contract formation, enforcement, and compliance standards and thereby structure the experience of a user, developer, or even a policymaker may have in these two jurisdictions.

### **Research Gap**

The study lays emphasis on the fact that there is no comparative analysis available in full throttle in lieu of managing the in-applications of Fantasy Sports for Cricket vis-à-vis British and Indian Contract Acts. Most of the literature so far has been targeted at each jurisdiction separately, not providing a view holistically for stakeholders operating across both markets on legal implications or regulatory challenges.

## **OVERVIEW OF FANTASY SPORTS APPS**

### **Definition and operation of fantasy sports apps**

In fantasy sports, players construct virtual teams from real players and receive points according to how well they perform in live matches. It began in the 1960s and has become increasingly

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<sup>3</sup> *State of Andhra Pradesh v K Satyanarayana & Ors* (1967) 2 SCJ 325

<sup>4</sup> *Varun Gumber v Union Territory of Chandigarh* (2017) 5 RCR (Civ) 842

<sup>5</sup> Indian Contract Act 1872

<sup>6</sup> Public Gambling Act 1867

popular as participation has become easier thanks to the internet. Participants select players based on their sports knowledge or for fun, competing against others in leagues. With millions of players and a multi-billion-dollar industry, fantasy sports offer both casual and competitive play. Online platforms offer various formats, with rules governing player selection, scoring, and prize distribution. Regular updates and the ability to adjust teams enhance engagement, making fantasy sports accessible and enjoyable for enthusiasts worldwide.<sup>7</sup>

### **The distinction between games of skill and games of chance**

A game of skill stresses success based on the psychological or physical ability of the player in testing prowess in making strategies through knowledge of the game and techniques derived from practice. The skill of an individual would thus largely determine the competitiveness of the outcome in such an environment that continuous improvement characterizes. Examples of games of skills regarded as a mental sport could be chess or carrom. On the other hand in a game of chance, randomness prevails over events with the outcomes largely independent of player skills. For all practical purposes, the influence of chance on performance is so minimal that chance only determines whether the skills of participants will win in games such as card games and roulette; hence, the most outstanding difference comes in the dominance of skill or chance in the determination of the outcome of the game at question.<sup>8</sup>

### **Legal Considerations in Fantasy Sports' Skill-Chance Dichotomy**

The balance of skill against chance plays one of the most crucial things, lending way to the formation and any rate enforcement of contracts on fantasy sports apps. At a basic level, a contract structured in skill has a much better footing in general contract law for it to stand than one structured deeply in luck. Regulation thus lies in the knowledge of the balance, the correct categorization of sports fantasy as a skills game or gambling laying under what legal framework. More importantly, the skill-chance dichotomy will in a way affect the consumer protection laws so that there will be more of a chance hosting within the games that the law will strictly regulate in its protection of the users. This change in turn directly and automatically changes the nature

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<sup>7</sup> 'What Is Fantasy Sports? A Beginner's Guide' (*oval3.game*, 29 Novemembr 2023)

<<https://www.oval3.game/news/what-is-fantasy-sports-a-beginners-guide>> accessed 25 April 2024

<sup>8</sup> 'Difference between Game of Chance and Skill' (*Legalkart*, 08 February 2024)

<<https://www.legalkart.com/legal-blog/game-of-skill-vs-chance-explained>> accessed 25 April 2024

of licensing, advertising, and risks of litigation with respect to this balance in the legal environment and user experiences in this industry of fantasy sports apps.

## **BRITISH CONTRACT LAW**

### **Principles of contract law in the UK**

The contract law system of English law is founded on common law doctrines as well as statutory provisions. The Indian law, which is on the codified statute, is in sharp contrast to this English contract law. The UK courts also lay down the foundation of principles like offer, acceptance, consideration, intention, and certainty to create legal relations with capacitated parties. While offer and acceptance create a mutual agreement between the two parties, consideration is a promise of exchanging something of value. The intention of creating legal relations makes the parties show they want their agreement to be binding legally, while certainty means that the terms and the agreements must be clearly stipulated. Contractual capacity stipulates how the parties involved must be legally capable of getting into a contract often based on the attainment of a majority and being of sound mind. Even though statutes such as the Contracts (Rights of Third Parties) Act 1999<sup>9</sup> provide a few more rules, much of it is based on judicial decisions where, in effect, case law comes into play. All of these common law principles and statutory amalgamations do provide a sound bedrock for contract law in the UK and further support the parties that may be bound by a contractual agreement.<sup>10</sup>

### **Legal Framework under British Law for Fantasy Sports Contracts**

Under British law, the examination of contracts formed on fantasy sports apps necessitates looking at provisions contained in the Contracts (Rights of Third Parties) Act 1999 and the Gambling Act 2005, which both contain implications for operators and users of the said fantasy sports apps. 1999 Act protects third-party rights to enforce the terms of a contract under Section 2.<sup>11</sup> This ensures that in case of any third party, if the involvement of third parties is there, that agreement has to be made within fantasy apps. This is more particularly applicable in the case of apps for fantasy sports where the user may form a league and competition involving many

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<sup>9</sup> The Contracts (Rights of Third Parties) Act 1999

<sup>10</sup> 'Basic Principles Of English Contract Laws' (*Advocates For International Development*, 24 October 2016) <<https://www.a4id.org/wp-content/uploads/2016/10/A4ID-english-contract-law-at-a-glance.pdf>> accessed 25 April 2024

<sup>11</sup> The Contracts (Rights of Third Parties) Act 1999, s 2

parties. The 2005 Act (Section-1)<sup>12</sup> identifies licensing objectives to aim at regulating the activities of gambling, including those offered through a fantasy sports app. This then ensures that such applications operate fairly and with responsibility, shielding the consumers from getting hurt. Lastly, there is Section 7 of the Electronic Communications Act 2000<sup>13</sup>, which ensures electronic signatures are legally recognized in contracts made through the Internet. This provision establishes the permissibility of electronic signatures in electronic communications and data as evidence with respect to its genuineness and integrity, providing a secured platform for the formation of contracts within the digital environment of fantasy sports apps. Taken together, these statutes and precedent cases provide a legal framework within which one can take into account and understand the contracts formed on the fantasy sports apps used in the UK.

### **Regulation of Fantasy Sports Operations Under British Law**

Fantasy sports betting operations are pool betting operations under Sections 12 and 93 of the Gambling Act 2005. Section 12<sup>14</sup> defines pool betting as any money that is staked or wagered for pool betting, where the winnings consist of sums paid by different persons making bets in respect of that particular race or event and are divided among the winners. Additionally, under Section 93<sup>15</sup>, certain limitations are attached to pool betting operating licenses. It indicates that no other person shall accept bets except the licensee, any of its employees under written contracts, holders of other pool betting operating licenses, or in such other manner as the Secretary of State may by order prescribe. Subsection (2)<sup>16</sup> lays down the conditions under which bets are accepted for and on behalf of the licensee: in writing, with authorization from adulthood, being on the track at the time of acceptance, and observance of the occasional use notices. Subsection (3)<sup>17</sup> provides that a license authorizes the licensee to permit other persons to engage in activities related to football pool betting subject to conditions as may be specified. Further, the section provides that pool betting operating licenses include permission for the use of postal services for betting purposes. In addition, this regulation requires the operators of fantasy sports betting to hold a pool betting operating license and a gambling software license, both of which will be issued by

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<sup>12</sup> Gambling Act 2005, s 1

<sup>13</sup> Electronic Communications Act 2000, s 7

<sup>14</sup> Gambling Act 2005, s 12

<sup>15</sup> Gambling Act 2005, s 93

<sup>16</sup> Gambling Act 2005, s 93(2)

<sup>17</sup> Gambling Act 2005, s 93(3)

the Gambling Commission. Additionally, the operators are supposed to pay gaming duty as per the requirements of the law. British law states its regulation for the operations of fantasy sports, including the Contracts (Rights of Third Parties) Act 1999<sup>18</sup> and the Gambling Act of 2005<sup>19</sup>. This ensures that the contracts formed with the involved parties while playing fantasy sports apps, are well protected under law and hence, oversee fair gambling practice. Adherence to these laws, together with the Electronic Communications Act 2000<sup>20</sup>, would form the code for the operator and user to display transparency and responsibility of service within the fantasy sports industry.<sup>21</sup>

## **INDIAN CONTRACT LAW**

### **Principles of a Contract in India**

The ICA lays down directions for a valid and enforceable contract. Sections 3 to 6 of the ICA<sup>22</sup> lay down important requirements with regard to communication, acceptance, and revocation. All these sections stress that in order to be enforceable, a proposal, acceptance, and revocation have to be received by the respective parties. For example, under Section 3, a sending of proposals, acceptances, and revocations shall be deemed complete when it comes to the knowledge of the proposer. Further, Section 10<sup>23</sup> lays down the conditions necessary for making a contract. Section 10 requires lawful consideration that every contract should involve lawful exchange under making a contract. Section 11<sup>24</sup> requires competency of the parties that is individuals must be of the age of majority, must be of sound mind and not be disqualified by any law to enter into contracts. Section 12 of the ICA<sup>25</sup> lays down the next condition for the validity of a contract as soundness of mind. It states that a person is legally competent to contract if, at the time he should know what he is doing, and he is in a mental condition to understand what he is doing when he enters into that contract. The other two conditions—that of free consent—along with the soundness of the mind, are expressly dealt with in Sections 13<sup>26</sup> and 14<sup>27</sup>. Except

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<sup>18</sup> The Contracts (Rights of Third Parties) Act 1999

<sup>19</sup> Gambling Act 2005

<sup>20</sup> The Electronic Communications Act 2000

<sup>21</sup> ‘Regulation of Fantasy Sports in the US and UK’ (iGB, 13 January 2016) <<https://igamingbusiness.com/legal-compliance/regulation-of-fantasy-sports-in-the-us-and-uk/>> accessed 25 April 2024

<sup>22</sup> Indian Contract Act 1867

<sup>23</sup> Indian Contract Act 1872, s 10

<sup>24</sup> Indian Contract Act 1872, s 11

<sup>25</sup> Indian Contract Act 1872, s 12

<sup>26</sup> Indian Contract Act 1872, s 13

<sup>27</sup> Indian Contract Act 1872, s 14

for undue influence, fraud, misrepresentation, or mistake, free consent is when a person so consents with a mind unforced. The provision is the basis of all contracts in India, ensuring that agreements are entered into with free consent, in a fair way, with mutual understanding, and to guard against unfairness and to maintain justice in contractual transactions.<sup>28</sup>

### **APPLICATION OF INDIAN CONTRACT LAW TO FANTASY SPORTS APP**

The increasing popularity of fantasy sports apps has led to a spike in legal scrutiny of the contractual underpinnings under Indian law. In this context, any agreement would be covered under Indian contract law and subjected to due legal scrutiny to ensure its compliance with legal principles. Such a contract generally includes the terms of the user's participation, financial transactions, and the methods of dispute resolution. In any case, the enforceability of such a contract depends upon lawful considerations, free consent, and an object which is at least not unlawful.<sup>29</sup> Indian courts see to it that these agreements meet statutory requirements with stress on fairness and transparency. Though the element of chance cannot be eliminated in sports results, very often legal perspectives seem to turn on whether there is skill in determining the outcome. Although the debate on skill versus chance may have some effect on the legal landscape, there are no categorical pronouncements by Indian courts relevant to the subject of contracts emanating from fantasy sports. Still, adherence to legal norms and principles is paramount to the enforceability of contracts made on the app of fantasy sports under Indian law.<sup>30</sup>

### **BETTING LEGALITY IN INDIA AND ITS RELATION TO FANTASY SPORTS APPS**

Legality in betting in India law squarely makes Section 23<sup>31</sup> and Section 30 of the ICA<sup>32</sup> together with other IPC Section 294A<sup>33</sup> relevant in relation to these fantasy sports apps. Under the law of agreements, according to Section 23 of ICA, agreements are only enforceable, provided that they

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<sup>28</sup> Aryan Gupta, 'Essentials of a Contract: Under The Indian Contract Act, 1872' (*The Legal Quorum*, 18 April 2024) <[https://thelegalquorum.com/essentials-of-a-contract-under-the-indian-contract-act-1872/#google\\_vignette](https://thelegalquorum.com/essentials-of-a-contract-under-the-indian-contract-act-1872/#google_vignette)> accessed 25 April 2024

<sup>29</sup> Gokhale G et. al., 'The Laws Relating to Fantasy Sports Games in India' (*The Sports Law and Policy Centre*, February 2018) <[https://fifs.in/wp-content/uploads/2020/07/Fantasy-Sports\\_Legality\\_India\\_Report.pdf](https://fifs.in/wp-content/uploads/2020/07/Fantasy-Sports_Legality_India_Report.pdf)> accessed 25 April 2024

<sup>30</sup> Maheshwari, 'Fantasy Sports In India: A Game Of Skill V. Chance' (*Maheshwari & Co Advocates And Legal Consultants*, 07 February 2023) <<https://www.maheshwariandco.com/2023/02/07/fantasy-sports-in-india-a-game-of-skill-v-chance/>> accessed 25 April 2024

<sup>31</sup> Indian Contract Act 1872, s 23

<sup>32</sup> Indian Contract Act 1872, s 30

<sup>33</sup> Indian Penal Code 1860, s 294(A)



have been executed in a manner provided by law. Agreements having unlawful considerations or objects, such as betting or gambling, are invalid. In section 30, ICA<sup>34</sup> strengthens this stand by factoring the types of agreements by expressly terming them void under wager. Legally, the implication is directly drawn down to the issue of betting in that wagers are merely bets or stakes on games or events about which the bet is made that is in dispute. In addition to that, IPC Section 294A<sup>35</sup> also punishes acts concerning lotteries, which can be almost the same as betting since it punishes the keeping of lottery offices unless keeping is authorized by the government. Though not squarely hitting on fantasy sports, this section forms part of a broader legal framework under which all betting is prohibited. In the context of fantasy sports apps, these legal provisions play a pivotal role. Though there is some debate over exactly what the disposition of the money from fantasy sports is, the courts can in general construe that fantasy sports fit within being contests of skill, putting it on the level with other wagers or bets. In consonance with Section 23 of the ICA<sup>36</sup>, such a construction, however, will be that fantasy sport involves lawful consideration and skill and is not only based on chance. Properly configured under proper regulation, fantasy sports application is considered legal under Indian Law, sans the elements of the episodic events which may otherwise leave it to be taken for betting.

### **CASE LAWS CONCERNING THE LEGALITY OF FANTASY SPORTS APPS**

The legality of the fantasy sports app in India has been put under legal scrutiny, and quite a few cases of landmark have thrown light on this aspect. In the case of the State of Andhra Pradesh v K. Satyanarayana & Ors<sup>37</sup>, the court addressed the issue of whether playing Rummy for stakes in a club constituted gambling. On the other hand, the court ruled in favour of the respondent, who argued that Rummy was a game of skill and that the fees charged were worth the services being offered in the club, despite the submission of the prosecution to the effect that the fees were evidently showing out a motive for making profits. In this case, however, the difference was drawn between the game of skill and chance, wherefore the benchmark was laid down for future judgments to test the legality of gaming activities. Similarly, in Varun Gumber v Union Territory of Chandigarh<sup>38</sup>, the division bench of the Punjab and Haryana High Court decided the issue of whether the Dream11 fantasy sports platform was a game of chance and, therefore, gambling

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<sup>34</sup> Indian Contract Act 1872, s 30

<sup>35</sup> Indian Penal Code 1860, s 294(A)

<sup>36</sup> Indian Contract Act 1872, s 23

<sup>37</sup> *State of Andhra Pradesh v K Satyanarayana & Ors* (1967) 2 SCJ 325

<sup>38</sup> *Varun Gumber v Union Territory of Chandigarh* (2017) 5 RCR (Civil) 842

under the Public Gambling Act, 1867<sup>39</sup>. Despite the allegations of huge financial loss and the fact that the business of the petitioner was illegal gambling, the court pronounced a soft corner for Dream11, appearing to be assuming the kind of skill and judgment that a user needed to exercise to play profitably. The court had admitted the financial transactions but finally held down that the activities of Dream11 involved predominating skill rather than chance. This case has set a framework for the assessment of the legality of fantasy sports platforms based on the belief that skill-based elements were important. Further clarity of the legality of the fantasy sports apps in India was given in *Gurdeep Singh Sachar v Union of India*.<sup>40</sup> The Supreme Court has held that with the majority of stakes since online fantasy sports gaming is operated by certain companies, it has now constituted games of skill and is not gambling. The judgment went on to reiterate that unless it pertains to the GST implications, the issue may be considered closed and identified skill and knowledge as key to the gaming of fantasy sports. But there were hitches. The Supreme Court, in some cases, has granted a stay—delaying the resolution of related review petitions. On the face of it, these cases establish the trend of Indian jurisprudence as applications of fantasy sports are recognized as legal entities when predominantly drawing upon the skill-based element. The court also emphasized that there is an element of skill, strategy, and judgment involved in these games, unlike games of pure chance. However, it recognized that the involvement of money and associated risks may be classified as a loss under Indian law; the court ruled out any consideration that would make the issuance of prizes and involvement of money enough to classify fantasy sports apps as gambling activities. The first of the three cases has provided a legal environment for fantasy sports platforms in India, which ensures consistency and clarity of regulation.

## **GAME OF SKILL AND GAME OF CHANCE**

### **Skill and chance in the context of fantasy sports**

What is interpreted within the fantasy sports world, then, is a unique blend of skill and chance. ‘skill’ is included in the person’s strategic reasoning and analytic intelligence exercised in the building and handling of the rosters of his team. That includes having an understanding of the statistics the players have, the dynamics of the game, and the insight to make a decision that carries long-term success. On the other hand, chance incorporates those things in the game that

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<sup>39</sup> The Public Gambling Act 1867

<sup>40</sup> *Gurdeep Singh Sachar v Union of India* (2019) 5 AIR Bom R 685

are out of the jurisdiction of all the contenders, such as player injuries, conditions in the weather, and surprise performances, and through these undermines the fact that a predictable outcome will emerge. While skill normally assumes promontory, chance assumes an ever-lingering, omnipotent force in fantasy sports that in an instant can change individual matchups or whole seasons. This balance of skill and chance, key to keeping heightened excitement within the fantasy world of sports, poses challenges to participants. Others can be seriously aggrieved from the indifferent nature of chance, as the dashed variables going free always gulf the well-thought-out strategies of the aggrieved parties. The critical point to be taken across, to make regulatory considerations and recognize the dynamic in the nuanced interplay of skill and chance in the dynamic of fantasy sports, is borne through this recognition.

### **Legal Tests to Determine Skill or Chance**

The application of these legal tests to establish whether, in the context of fantasy sports apps, a game is based on skill or chance is paramount in assessing whether such apps can be deemed to be a form of gambling. The Dominant Factor test is often used to determine whether skill or chance is the dominant factor in the outcome of a game. Participants in the fantasy world of sports draft fantasy teams made up of real athletes from various leagues. A player is usually assessed based on how much knowledge one has in a sport, the performance trends of athletes, and the strategy employed in making teams. Though the effects of chance elements such as injuries or unexpected game results will play into the outcome, based on the Dominant Factor test, success is more closely decided by the application of skill in picking teams, in-game analysis, and making strategic choices rather than random chance. The Material Element test is a bit more general, in that it takes into account the inclusion of chance in any way, shape, or form within a game. While the decisions a player makes in fantasy sports are educated decisions, other variables such as athlete performance, weather, or the unpredictable nature of game day all add an element of chance. The above externalities further highlight the high level of skill that goes into selecting a championship-winning team, making these activities the third element of chance to potentially satisfy the third prong of the Material Element test. The most prohibitive test, the Any Chance test, considers that if any element of chance is present, the game involves gambling.<sup>41</sup> In fantasy sports, even as skill likely reduces the element of chance, the chance is

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<sup>41</sup> Michael McDonald, 'The predominance test: A judicially manageable compactness standard for redistricting' (*The Yale Law Journal*, 19 August 2009) <<https://www.yalelawjournal.org/forum/the-predominance-test>> accessed 25 April 2024

always there to some degree, because the outcomes are determined from real events. Thus, for instance, the effect of some unexpected injury or the outcome of some unforeseen performance can change the outcome of the game beyond the control of the player, leading to a finding that under the Any Chance test, gambling may include fantasy sports because, by its nature, the chance is a factor. The classification of fantasy sports under the law varies based on the test applied. While it is possible that the Dominant Factor test might indicate that skills are the dominant factor in deciding the result, the Material Element and Any Chance tests do point toward the existence of, howsoever, small a chance. This subtle reading of the debate on the legal classification of fantasy sports indicates the clarity needed in regulatory guidelines that are commensurate with the need to differentiate between games of skill and games of chance in the digital environment.<sup>42</sup>

### **Implications of Skill and Chance on Contract Enforcement**

The Indian Contract Act of 1872, implies that games may solidify themselves either as games of skill or else as games of chance concerning the terms and conditions with which they are many times on offer. Accordingly, § 30 of the titled statute says that an agreement by way of wager is void and, therefore, oftentimes difficult to enforce to the contracts to the extent that those are substantially a matter of chance. But the same underpinning may get reprieve echoing the greater legal sanctity to the contract emphasizing competing on skill. Also, Section 11 ‘also impacts the Enforceability of gaming contracts as it provides that a person who is not capable of entering into such a contract’ cannot enforce it. Universal principles and sectional practices apply in the United Kingdom with reference to determining the legality or illegality of gaming contracts. For fantasy apps, since limits of betting as well as limits of prize competitions are given under sections 9, 11, and 14, of the Gambling Act, 2005,<sup>43</sup> contracts related to the same will have to first comply with these first legal frameworks to ensure they are made enforceable and compliant with gambling and prize quotas in both jurisdictions.

### **Consumer Protection Regulations Involving Varying Degrees of Skill and Chance**

The Gambling Act of 2005<sup>44</sup> prohibits access by children and young people to various types of gambling. In terms of the above Act, a ‘child’ is a person who has not yet reached the age of

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<sup>42</sup> David Klein, ‘Games of Skill v. Games of Chance – The Legal Analysis’ (*Klein Moynihan Turco*, 16 August 2018) <<https://kleinmoynihan.com/games-of-skill-v-games-of-chance-the-legal-analysis/>> accessed 25 April 2024

<sup>43</sup> Gambling Act 2005

<sup>44</sup> *Ibid*

sixteen years, and ‘young person’ refers to a person who has reached sixteen years and has not yet attained eighteen years of age. Section 46 of the Act provides a provision in relation to inviting a child to gamble, and therefore, under the Act, being convicted of the act of inviting a child or a young person is an offense by whatever method and by any relevant apps offering fantasy sports. Similarly, section 47<sup>45</sup> makes an offence of inviting or causing children or young persons to attend premises and take part in gambling activities or associated online rooms or halls of virtual fantasy games in such apps. Section 48 specifies that, except in relation to private gaming, betting, lotteries or participation in prize gaming at specified venues, there is no indecency offense in specified circumstances in the case of gambling by a young person. Section 49 criminalizes the entry of a young person into premises where his entry would have, apart from section 47, be an offense and seems thereby, in consequence, to capture certain elements of the virtual spaces accessed via fantasy sports apps. Thirdly, section 50 prohibits a young person from providing gambling facilities, which may cover duties related to fantasy sports apps like hosting private gaming leagues. These provisions made a demand that gaming activities being provided through fantasy sports apps should be made available in a manner that takes care of the welfare of individual children and young persons.

Unfair commercial practices are even more strictly prohibited by the Consumer Protection from Unfair Trading Regulations 2008,<sup>46</sup> as they could potentially occur within the enclave of fantasy sports applications. Section 3<sup>47</sup> provides that a commercial practice is unfair if it contravenes the requirements of professional diligence when it materially distorts, or is likely to materially distort, the economic behaviour of the average consumer taking into account the product or service offered in the app. In other words, a commercial practice will be unfair if first, in case the practice is a misleading action, a misleading omission, an aggressive practice, or listed in Schedule 1 with that last prohibition potentially covering deceptive practices within fantasy sports apps. Finally, section 4<sup>48</sup> bars the promotion of an unfair commercial practice according to the code owner in a code of conduct that could potentially include a provision regarding terms and conditions or advertising practices of operators of fantasy sports apps. Misleading actions, under Section 5<sup>49</sup>, are defined as false information or representations likely to deceive an average

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<sup>45</sup> Gambling Act 2005, s 47

<sup>46</sup> Consumer Protection from Unfair Trading Regulations 2008

<sup>47</sup> Consumer Protection from Unfair Trading Regulations 2008, s 3

<sup>48</sup> Consumer Protection from Unfair Trading Regulations 2008, s 4

<sup>49</sup> Consumer Protection from Unfair Trading Regulations 2008, s 5

consumer, leading him to form a transactional decision he would not have formed otherwise. This may probably affect user engagement and participation on the app of fantasy sports. Collectively, these sections protect consumers from being misled by such commercial practices that fantasy sports apps may bring and ensure transactions are carried out fairly in the market.

In the Indian setting, Section 3 of The Public Gambling Act, 1867,<sup>50</sup> prescribes punishment for keeping, occupying, or using a gaming house, with fines extending up to two hundred rupees along with imprisonment for three months. Here, a gaming house could refer to any business involved in the practice of fantasy sports gaming, which may extend to an online platform, and the penalties can very well be extended to the person or entity used for the operation of these. Section 4<sup>51</sup> carries penalties for being found in a gaming house, playing, or present for gaming purposes, with a fine of up to 100 rupees or imprisonment for a term that may extend to one month. This shall also be applicable to users who are engaging in fantasy sports apps for playing and using the same for indulging in gambling activities. The risk to users would entail the risk of being found in a common gaming house at the time of gaming activities, as in common gaming houses, people found there at the time of gaming activities would be assumed to be there for the purpose of gaming unless proved to the contrary. These provisions are designed to prohibit and penalize engagement in illegal gambling activities facilitated by fantasy sports apps under Indian law, thus affording protection to consumers from any deleterious effects related to unregulated gaming activities.

## **COMPARATIVE ANALYSIS**

### **Regulation of fantasy sports apps by British and Indian contract laws considering skill and chance**

In the UK, British contract law is based on the common law principle through statutes such as the Contracts (Rights of Third Parties) Act 1999 and even the Gambling Act 2005, guaranteeing that its structure right from the creation or making of contracts to enforcement is wider in scope within the fantasy sports apps. The accent on Objectives of ensuring third-party rights and licensing ensures the underwritten legality of the operation of such mediums, causing fairness and transparency. In contrast, Contract Law in India happens to be a matter of the Indian Contract Act 1872, the accent of which is on communication and acceptance, and revocation in

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<sup>50</sup> Public Gambling Act 1867, s 3

<sup>51</sup> Public Gambling Act 1867, s 4

that regard, also consideration of competency and free consent. While the Indian courts further ruled out the legality aspect of the fantasy sports app, the adaption to legal norms becomes the critical point for enforcing the contract. As such, it must be noted that the complexity of the fantasy sports contract was reduced further by the very position of betting in India ruled over as a sovereign territory by the Public Gambling Act 1867 demanding careful analysis involving a nexus to skill and chance. However, despite the difference, both systems agree that fairness, transparency, and consumer protection rank *pari passu* though under different regulatory mechanisms.

### **Legal Implications for users, developers, and stakeholders**

The impact of fantasy sports applications within the legal realm varies across different stakeholders, encompassing users, developers, and regulatory authorities, both in the UK and India. A clear legal framework ensures that rights are protected; which gives comfort to the users, especially for the safety of financial transactions and dispute resolution mechanisms. Users make use of the facility fully when they know that their engagement with that facility is legal. On the other hand, developers must struggle with complex legal considerations of how to make their services comply with such regulations and how to mitigate the subsequent legal risks. For instance, this workload comprises principles and requirements of contractual law, gambling regulations, and consumer protection laws, among other laws that regulate the making of an enforceable contract on the platform. Developers must further brace up for the changes in the upcoming standards courts and laws put in place in line with the developer's operation to remain compliant. The regulatory bodies overlook the legal landscape and ensure that the fantasy sports app operates within the laid regulations. Their work includes enforcement of the regulations, investigation of complaints, and addressing legal ambiguities and inconsistencies that tend to arise. The monitoring of industry developments and ensuring compliance with the same to ensure the fantasy sports ecosystem remains transparent, fair, and cosy to the consumer. That said, it makes clear and strong the legal framework within which developers can gain clarity and direction, and users can develop trust and assurance that indeed there is oversight and regulation through effective authorities in order to create an environment level for app operations. Overall, the trust and confidence of the users are attached to a clear and robust legal framework that avails clarity and direction for developers and oversight and regulation.

## **Challenges and Recommendations for Regulating Fantasy Sports Apps in the UK and India**

Both the UK and India encounter distinct challenges in regulating fantasy sports apps, rooted in their unique legal frameworks and societal norms. In the UK, while common law principles provide a solid foundation for contract enforcement, the evolving nature of fantasy sports and its intersection with gambling laws pose regulatory challenges. Ensuring compliance with the Gambling Act 2005, particularly regarding the distinction between games of skill and chance, remains a complex task. India faces similar challenges, exacerbated by the absence of specific legislation addressing fantasy sports. The Indian Contract Act 1872 offers guidelines, but the legal ambiguity surrounding the classification of fantasy sports as games of skill or chance complicates enforcement efforts. Additionally, the complex relationship between fantasy sports and betting legality adds another layer of complexity. Collectively, both countries grapple with reconciling traditional legal frameworks with the dynamic nature of fantasy sports, highlighting the need for comprehensive regulatory reforms and international collaboration to address emerging challenges effectively.

The above comparative analysis of the regulation over fantasy sports mobile applications points towards the necessity of specific recommendations that may address the implications identified for operators and users within these jurisdictions. Emphasis had to be given to the manners that may ensure proper compliance with the concerned contract laws. The agreements to be signed by the users should be made with specific terms regarding the nature of the game, the responsibility attached to the user, and mechanisms for dispute settlement. Legal defenses to such charges raised the skill-based nature of fantasy sports more so in jurisdictions such as that of India where the same activity still attracts ambiguity in law. Besides this, strong verification processes need to be in place to ascertain that the users meet the requirements around Contractual Capacity on all counts under respective Contract Laws. Processes that shall also include age and mental competency checks envisaged as a person's ability and suitably to enter into a binding agreement in such a way that result to unenforceable contracts don't get in the way. Also, the operators are on their own accord obligated to be open while disclosing about the financial dealings with users as well as on the terms of engagement and distribution of prizes or any risks pertaining to participation. Where policy recommendations are made to deal with the legal uncertainties and gaps in the regulations the call has to be for harmonization with what is in existence and currently incoherent so that the unique challenges played by the playing of



fantasy sports apps could be dealt with. Collaborative participation between the legal authorities, stakeholders in the industry, and the consumers' advocacy groups might also go a long way in the development of comprehensive guidelines for regulation in the sector. This might include specific legislation or regulatory authorities whose mandate will be to oversee the operation and ensure compliance with, in this case, fantasy sports apps, in areas touching on contract law. On the individual case, the UK might also amend athletics gambling legislation currently in operation to establish clear definitions as to skill or chance elements in fantasy sports. The above will give a high level of confidence to operators and users with a view of the legal standing of such apps, thus being able to conform easily to laws governing contracts. On the other hand, India is much better placed with special laws dealing with fantasy sports to have a bodacious mechanism designed to contravene these applications. The above will lead to easier enforcement and assured legal certainty. There is a need to develop international cooperation, information sharing, and relations for countries in the face of new legal challenges in the industry of fantasy sports. This meant engaging other jurisdictions that were already putting potential legislation into place for fantasy sports to help inform international best practice in the development of domestic policy. An approach that adopts clear collaboration and recommendations would to a large extent help both India and the UK in bettering legal clarity around consumer protection and innovation. This is most required as the fantasy sports applications-driven landscape is changing fast.

## **CONCLUSION**

In conclusion, applied to the regulation of fantasy sports apps, the varying legal treatments associated with statutes of skill, chance, and betting among British and Indian paradigms of contract laws will have paramount importance in influencing the regulatory approach governing fantasy sports apps. The assumption, in this case, would mean disparities in the law of contracts between the UK and India. Generally, common law principles and statutes provide the UK and India with a strong foundation for the interaction between actors under the law and policy provisions. The Indian sanction has its basic premise in the Indian Contract Act of 1872 and the Public Gambling Act of 1867. These draw from the epistemological dilemma explained through legal unclarity in categorizing fantasy sports and their relation to betting legality.

Such variations have a broad effect on users seeking assurance and legality, developers navigating complex legal considerations to ensure compliance, and regulatory authorities that

must enforce the regulations in an evolving legal landscape—constantly under technological dynamics. It is conceivable that differences in these legal infrastructures could play a significant role in shaping outcomes, but ‘different rules of the game determine how they are used.’ It is to be noted that such diversity in regulatory approaches arises from the unique qualities of each country, highlighting the need for personalized regulatory reforms.

It would be these complexities, among other strategies informed by international best practices, that will call for collaboration by stakeholders. Dialogues, amassing mutual insights, would ultimately lead to improvements in legal clarity, consumer protection, and promotional innovation in the dynamic field of fantasy sports apps. The entire regulatory environment offers complex interplays between the law, technology, and societal values, which will direct the future regulation of fantasy sports in the UK and India.