

Society of Online Gamers and Another v. Union of Vidhistan and Another

1. The Republic of Vidhistan is the second most populous country in the world and seventh largest in terms of area. It has a diverse population divided on the lines of religion, ethnicity, caste, language and culture. Vidhistan, previously a British colony, gained independence around 75 years back and is governed by a written constitution, structured to suit a quasi-federal system. Vidhistan, a developing country, is an active member of the international community as well as the United Nations Organization.
2. In recent years, the online gaming industry has been buzzing with activity in the country. Given the increasing population of young people in Republic of Vidhistan and the widespread use of mobile phones and the internet, business has already grown tremendously and still has plenty of room for growth. Revenue is projected to grow at a CAGR of 22.1 percent from about USD 600 million in FY18 to USD 1.6 billion per FY 23. Local and foreign investors have shown great interest especially in dream sports and fantasy leagues.
3. There has been a lot of uproar amongst the masses about the regulation of such platforms and that many of these games are in the nature of betting as it involves chance more than skill.
4. Many State Governments have made an attempt to ban such online gaming activities. However, different High Courts, upon challenge, have declared such bans to be unconstitutional as violative of freedom of trade and profession as guaranteed under the Constitution of Vidhistan.
5. The Central Government, in order to facilitate the bringing in of the law regulating such online gaming platforms, introduced The Constitution 106th Amendment Act, 2021 which has made, *inter alia*, following changes, in the Entry 34 of List II of Schedule VII:
 - a. “34. Betting and gambling subject to the provisions of List I”

This Amendment received the assent of the President and came into force in the Month of September, 2021.

6. Pursuant to the Amendment, the central government has enacted “The Regulation of the Online Gaming Act, 2022” (**The Central Act**). The law has defined the terms, ‘online gambling,’ ‘online game’ and ‘online game of chance’. (See **Annexure I**). It covers online games such as poker, rummy and fantasy leagues and makes playing these games a punishable offence.
7. The government has relied on the report prepared by the Law Commission to study the effects of online gaming on youth. According to this report, Online games have affected the concentration of students, and that it leads to gaming disorders recognised as a disease by the World Health Organisation. The report also states that these games lead to financial distress and indebtedness amongst the masses.
8. The Society of Online Gamers (SOG), a private Association of members of the online gaming industry, has challenged the Constitutional Validity of the Central Act and also of the 106th Amendment Act, 2022.
9. The State of Harit Pradesh is situated southwest of Vidhistan on the coastlines of the Arabian sea. The State is bequeathed with vast ecological biodiversity, arable land, educated population and world class administrative system. Since 1700 Harit Pradesh was ruled by the Wadiyar dynasty, who as a part of their legacy have instituted transparency and democratic ethos into the population. The systems set up helped harness the technological advancement of the 21st century.
10. The State legislature of Harit Pradesh enacted a law regulating online gaming in the state in the Month of October 2021 (**the State Act**). After the enactment of the Central Act, many provisions of the State Act became repugnant to the former. However, the Central Government has not extended the application of the Central Act as per Section 1. The State

Government, pending the application of the Central Act in the State, continued with the application of the State Act.

11. Nvideon Games, an online gaming platform challenged the validity of the State Act before the High Court, State of Harit Pradesh by relying on the findings of the Supreme Court of Republic of Vidhistan judgment of *State of Anamudi v. Mass Media Community Inc. (2012) (Annexure II)*. The High Court applied the reasoning of the Supreme Court in the above case and decided in the favour of the Petitioner.

12. The State approached the Supreme Court in order to review its ruling in the *State of Anamudi* case. The State submitted that the Supreme Court erred in interpretation of the doctrine of repugnancy under Article 254 and has conflated it with the doctrine of occupied field. Hence the decision should be reviewed.

13. The Supreme Court has clubbed both the petitions (one filed by Society of Online Gamers and one filed by Nvideon games) and listed them for final hearing.

14. Following issues are for the consideration:

- I. Whether the Constitution 106th Amendment Act, 2021 is constitutionally valid?
- II. Whether The Regulation of the Online Gaming Act, 2022 violates Fundamental rights?
- III. Whether the Supreme Court with regards to interpretation of the doctrine of repugnancy under Article 254 had rightly decided the same in the case of *State of Anamudi v. Mass Media Community Inc. (2012)*.

NOTE: The laws of Republic of Vidhistan are in *pari materia* with the laws of India.

Annexure I

The Regulation of the Online Gaming Act, 2022

(the relevant excerpts of the Central Act are reproduced below)

WHEREAS during the recent years online gaming addiction has led many persons to incur unsustainable debt resulting in suicides;

AND WHEREAS addiction to online games have caused financial distress and ruined many families;

AND WHEREAS gaming disorder, predominantly online, has been recognized and included by the World Health Organisation (WHO), in its International Classification of Diseases (11th Revision), which is characterised by a pattern of persistent or recurrent gaming behaviour and is, manifested by impaired control over gaming, increasing priority given to gaming over other activities and continuation of gaming despite the occurrence of negative consequences in personal, family, social, educational, occupational or other important areas of functioning;

AND WHEREAS it is considered that the issues of online gaming and gambling cannot be dealt with by the old binary of game of chance versus game of skill and a new conceptual framework is needed which incorporates understanding of how information technology operates at basic level, which is the critical difference between physical and online in general and also between physical and online versions of games;

BE it enacted by Parliament in the Seventy-third Year of the Republic of Vidhistan as follows:—

Chapter-I

PRELIMINARY

1. Short title and Commencement- (1) This Act may be called The Regulation of the Online Gaming Act, 2022.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different States.

2. Definitions- In this Act, unless the context otherwise requires-

(h) “other stakes” means anything recognised as equivalent to money and includes virtual credits, virtual coins, virtual tokens, virtual objects or any similar thing that is purchased within, or as part of, or in relation to, an online game;

(i) “online gambling” means online wagering or betting and includes playing of any online game of chance for money or other stakes, in any manner.

Explanation.— For the purpose of this clause, wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt, or distribution;

(j) “online gambling service” means a service, for online wagering or betting or for any online game of chance and the customer of the service gives or agrees to give money or put up any other stake for the purpose;

(k) “online game” means any game, whether or not there are other participants in the game, that is played on an electronic or a digital device and is managed and operated as a software through the internet or any other kind of electronic or other technology for facilitating communication;

(l) “online game of chance” includes any online game which,— (i) involves both an element of chance and an element of skill and the element of chance dominates over the element of skill; or (ii) involves an element of chance that can be eliminated only by superlative skill; or (iii) is a game that is presented as involving an element of chance; or (iv) involves cards, dice, wheel or such other device, which works on random or event generator;

(m) “online games provider” means any person who provides a service for the conduct of any online game;

XXXXXXXXXX

CHAPTER-III

GENERAL PROHIBITIONS

7. Prohibition of online gambling and of online games of chance- (1) Online gambling is prohibited.

(2) Playing of online games of chance specified in the Schedule-I, with money or other stakes is prohibited.

(3) No online games provider shall provide online gambling service or allow playing of any online game of chance specified in the Schedule-I, with money or other stakes or playing of any other online game in contravention of the regulations, in any form.

XXXXXXXXXX

CHAPTER-VII

MISCELLANEOUS

23. Presumption as to online game of chance and power to amend Schedule- (1) For the purposes of this Act, any online game specified in the Schedule-I shall be presumed to be an online game of chance.

(2) The Central Government may, by notification, omit or add any online game in the Schedule-I, on the recommendation of the Authority and upon issue of such notification, the Schedule-I shall be deemed to be amended accordingly

XXXXXXXXXX

SCHEDULE-I

Online Games of Chance

(1) Rummy

(2) Poker

(3) Fantasy Leagues

Annexure II

Relevant excerpts of the Supreme Court of Union of Vidhasthan judgment in **State of Anamudi v. Mass Media Community Inc. (2012)** are reproduced below

28. To sum up, our conclusions are as follows :-

- i) On timing, we hold that, repugnancy arises on the making and not commencement of the law,....
- ii) Applying the above test, we hold that, on the enactment of the Central Chit Funds Act, 1982, on 19.08.1982, which covered the entire field of “chits” under entry 7 of List III of the Constitution, the Chit Fund Act, 1975, on account of repugnancy as enshrined in Article 254(1), became void and stood impliedly repealed. That, on the occupation of the entire field of “chits”, the Harit Pradesh Legislature could not have enacted the State Finance Act No. 7 of 2002, inserting Section 4(1a) into the Harit Pradesh Chitties Act, 1975, particularly on the failure of the State in obtaining Presidential assent under Article 254(2).
- iii) That, the Central Chit Funds Act, 1982 though not brought in force in the State of Harit Pradesh is still a law made, which is alive as an existing law....

NOTE: The State of Anamudi’s judgment is *pari materia* to the judgment of the Supreme Court of India in the case *State of Kerala & Ors v. M/S. Mar Appraem Kuri Co.Ltd. & Anr* (2012) 7 SCC 106.