

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 4

2023

© 2023 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Legal Lacuna of ‘Skins Betting’: An Indian Overview

TEJASWI D. SHETTY¹ AND KAUSHIK S. RAO²

ABSTRACT

All bets must have an item of value to offer as a bet. On winning a game, the value of such stake increases and the winner enjoys the money made from it. Traditional gambling has undergone numerous changes in terms of legislation and judicial decisions. India has outdated central legislation and since gambling is a subject of State Lists, few of the states have taken up the initiative to draft rules about gambling. Online gambling with virtual items having a monetary value has recently been highly appraised. This article analyses 'skins', which are cosmetic virtual in-game items that can enhance and customize a player's avatar or a weapon, as an item of value to place the bet. Further, the author has analyzed skins betting on esports tournaments and games of chance and how it is important to bifurcate the legitimacy of these two categories when betting skins. The whole analysis is limited to India's existing legislations and the newly updated notifications which have given recognition to esports and online gaming or online gambling culture.

Keywords: Online gaming, skins betting, skins, gambling, regulation.

I. INTRODUCTION

Esports, short for “electronic sports”, is thriving internationally wherein skilled video gamers play competitively in an online tournament. The experience is comparable to attending a professional athletic event, with the exception that viewer's watch gamers play against one another in an online setting. In this sector, gamers compete against one another in video games like Dota 2, Valorant, Rocket League, PubG, League of Legends, or CS: GO. Strategic planning, intense analytical thinking, and desirable managerial qualities are required for these competitions.

Esports originally arose from the LAN-Party (local area network) setting, which consisted of gatherings of video game aficionados on the weekends to play with and against one another when access to the Internet was scarce and frequently too slow³. Esports commonly refer to multiplayer-competitive (pro and amateur) video gaming that is often coordinated by

¹ Author is a student at SDM Law College, Mangalore, India.

² Author is an Engineer at Maruthi Suzuki, India.

³ *ESPORTS VS GAMING – KEY DIFFERENCES BETWEEN ESPORTS AND GAMING*, ESPORTS.NET, <https://www.Esports.net/wiki/Esports-vs-gaming/> (Last visited on April 2, 2023)

different leagues, ladders and tournaments, and where players customarily belong to teams or other 'sporting' organizations who are sponsored by various business organizations⁴. Esports are different from video games because they involve competition with teams involving highly skilled professional players, a larger audience and high prize pools.

The law pertaining to esports are barely recognized and for the purpose of this article, it will be analyzed further. Depending on the gameplay, these video games offer materials which are valuable to individual players. It may range from weapons to character's powers. Skins are one such material offered for the purpose of cosmetic only but have emerged as highly valuable asset in recent times.

II. WHAT ARE SKINS IN ONLINE GAMING?

Skins are in-game or virtual items that players can buy, acquire, or earn in-game. They are merely decorative and have no bearing on how the game is played. Players typically buy skins as they are a digital reflection of their personality and external identity. Skins being for aesthetics do not affect the player's chances to win. Skins can either be purchased or earned as rewards by playing the game through loot boxes.

Though being for aesthetics, not all skins are easily accessible. As some are harder to get than others due to which the gamers spend and invest their time and real-world money in this. The author of "The Economics of Online Gaming: A Player's Introduction to Economic Thinking", Andrew Wagner said, "*From my experience, what a lot of people do online is, when they're playing a game, they're either who they are in the real world or they're the type of person they wish to be in the real world. They are making a statement. This is who I am. I'm part of this group. This is the way I want to be seen.*"⁵

Valve, an established video game developer company, developed a pioneering software distribution platform 'Steam,' which allows users to purchase games and other software aimed at gamers all around the world. Steam allows to purchase or sell the skins in its Steam Community market through Steam Wallet Funds. To make a purchase, the user has to log in to his Steam account and enter the amount he wants to add to his Steam Wallet. With the funds now available in the Steam wallet, he can make the purchase. Every penny earned from selling skins on the Steam Community Market remains in Steam Wallet and cannot be encashed. It can

⁴ Hamari J, Sjöblom M (2017) What is Esports and why do people watch it? *Internet Res* 27(2):211–232. <https://doi.org/10.1108/IntR-04-2016-0085> (Last visited on April 2, 2023)

⁵ Neomarche, *Virtual Fashion Making A Statement With Game Skins*, June 18, 2022, available at <https://neomarche.co.uk/2022/06/18/virtual-fashion-making-a-statement-with-game-skins%EF%BF%BC/> (Last visited on April 2, 2023).

only be used for the purchase of games, software and any other item available on Steam.

Third-party websites or markets that are not linked with Steam have developed sites for gamers to sell skins in exchange for real-world currency. These purchases are marked at a lesser price than on Steam, but transactions often end in fraud if the host website is a sham or the acquired skin does not match the description of the sale.

Skins as a virtual currency to bet is logically sane, even though these skins aims at pure aesthetics purpose. An example of crypto currencies, which are used as a stake in online sports betting. Crypto was the first currency to accept esports betting as a viable business model, and it has led the way to its prosperity ever since. Furthermore, the emergence of crypto currency as a method of payment for gambling has had an impact on the gambling industry as a whole⁶. Bitcoin is a worldwide currency not bound by borders or time zones (unlike fiat currencies). It provides players from all over the world with access to betting chances regardless of where they are physically situated at any one time⁷. Crypto currency as virtual currency has a binding value and legislations regulating it are emerging. However, skins as a virtual good has neither received any legal recognition in India nor it has established itself majorly within the common knowledge of a layman other than gamers.

III. BETTING SKINS ON THIRD-PARTY WEBSITES

During skins gambling, third-party websites use skins as a bet without which there can be no wager. Third-party websites allow the user to transfer skins to the site, wherein they can bet skins on the outcomes of the match. Since the advent of transferable and purchased skins on popular games such as CSGO, Dota 2, H1Z1, and others, skin gambling has expanded. Steam provides various skins for these games but since there is no encashment for the trade of skins, many users resort to third-party websites for selling and purchasing of skins.

Considering the wagering fad among gamers, third-party websites host skins gambling wherein users have to simply submit and transfer their skins to these websites. Once the items are submitted, he gets the 'value' for their skins. Rare or expensive skins are directly proportional to the higher value of a bet. Once the bet is locked in, the user then waits until the end of the match⁸. If the user's team wins the match, the user gets his skin back with additional random

⁶ *Esports Cryptocurrency Betting Sites: What to Look For*, April 11, 2023, available at: <https://www.spieltimes.com/sponsored/esports-cryptocurrency-betting-sites-what-to-look-for/#.ZFTByXZBzIU> (Last visited on April 22, 2023).

⁷ Josh William, *WHY YOU MUST TRY ESPORTS BETTING WITH BITCOIN*, February 6, 2023, available at: <https://www.dynastynerd.com/sports/why-you-must-try-esports-betting-with-bitcoin/> (Last visited on April 22, 2023).

⁸ *Beginners Guide to Betting on CS:GO, COUNTER STRIKE: GLOBAL OFFENSIVE BETTING SUGGESTIONS*, available at <http://csgobettingsuggestions.weebly.com/beginners-guide-to-betting-on-csgo.html> (Last visited

skins valued at potential return value⁹. Once the user accepts his winnings, he can withdraw the skins to his Steam inventory¹⁰. The user can then transfer the winnings (skins) to third party websites and exchange it for real-world currencies¹¹.

IV. CAN SKINS BE CONSIDERED AS AN ITEM OF VALUE IN TRADITIONAL GAMBLING SETUP?

Once it was possible to turn skins into currency that could be used to purchase real-world items, the foundation was laid for the launch of a full-blown online gambling industry¹². Skins are emerging as a means of virtual currency due to third-party websites. They act as currency for wagering¹³ or betting. Similar to a casino chip, a skin can be used as a "de facto currency" that can be used to place bets on the outcome of "Esports" matches, roulette games, virtual coin flips, and their casino-style games, completely online¹⁴. In traditional gambling, the premise of keeping something at stake for wagering or betting involves a 'thing of value' or a tangible object. Skins are a merely decorative virtual item which doesn't have any effect on the gameplay. The question of law is that can skins gambling be considered traditional gambling.

Understanding the nuance of online gambling

Traditionally, gambling is the wagering of money or something of value on an event with an uncertain outcome with the primary intent of winning money or material goods¹⁵. According to Black's Law Dictionary¹⁶, "*gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward.*"... The three essential elements of gambling are:

1. Consideration,
2. Prize and,

April 2, 2023).

⁹ Pedro Lima, *Should You Bet on CSGOLounge or FanoBet?*, available at <https://csgobook.com/csgolounge-or-fanobet/> (Last visited April 2, 2023).

¹⁰ *Id.*

¹¹ *How Do I Sell Skins on SkinXchange?*, November 14, 2016, available at <https://skinxchange.com/article/259-how-do-i-sell-skins-onskinxchange?auth=true>. (Last visited on April 2, 2023).

¹² John T. Holden, Sam C. Ehrlich, *ESPORTS, SKINS BETTING, AND WIRE F RAUD VULNERABILITY*, 21 GLR 568 (2017) available at <https://doi.org/10.1089/gr2.2017.2183>

¹³ Taylor Stanton Hardenstein, "*SKINS*" IN *THE GAME: COUNTER-STRIKE, ESPORTS, AND THE SHADY WORLD OF ONLINE GAMBLING*, 7:117 UNLV GLJ 122, (2017), available at <https://scholars.law.unlv.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1118&context=glj>

¹⁴ John Vrooman Haskell, *MORE THAN JUST SKIN(S) IN THE GAME: How ONE DIGITAL VIDEO GAME ITEM IS BEING USED FOR UNREGULATED GAMBLING PURPOSES ONLINE*, 18 JHTL 127 (2017), available at <file:///C:/Users/win10/Downloads/18JHHighTechL125.pdf>

¹⁵ Aditya Suresh, Asif Pasha Arief Batcha, *A Legal Conundrum On Internet Gambling*, 3 NJLR II 65, (2022), available at <https://www.njlrrii.com/2022/12/a-legal-conundrum-on-internet-gambling.html>

¹⁶ BLACK'S LAW DICTIONARY 701 (8th ed., 2004)

3. Chance.

Firstly, Consideration is an important part of law of Contracts. Generally, without consideration, agreements are unenforceable¹⁷ however, there are certain exceptions. The main reason cited for making consideration a necessary element in a contract is to put legal limits on the enforceability of promises¹⁸. Consideration can be any valuable benefit, tangible or intangible, which is transferred from transferor to transferee in exchange for something else of value to legally enforce the contract. It is very modern to consider Skins as consideration, as it is merely decorative item with no physical essence and which is not a derivative of extraordinary powers to the gameplay. By looking into the meaning and definition of the term ‘consideration’ in terms of law of contracts, in the case of *Currie v. Misa*¹⁹, LUSH, J opined “A *valuable consideration, in the sense of the law, may consist either in some right, interest, profit, or benefit accruing to the one party, or some forbearance, detriment, loss, or responsibility, given, suffered, or undertaken by the other.*” If we consider skins as a consideration, it fits the definition given in the above case. Associating skins to some interest or benefit accrued to one party when kept as a stake, skins hit the purpose of consideration. The rewards of a wagered match are simply the user's skins and random skins of a considerable value return, which are subsequently exchanged for actual money on third-party websites. Though skin is intangible and almost serves aesthetic purposes, it is estimated to have a high monetary return, making it a valid consideration.

Second, “prize” means the player can win something of value²⁰. The purpose of any game played is the reward or the prize. There are different genres of games, most of which are merely played for amusement. The reward in such games is advancing the gameplay. However, for skins gambling, the author is particularly focusing on esports games wherein the players devote time and application of mind. Professional gamers are finding their way into professional esports and compete against each other in competitions for sometimes high prize money²¹. Skins gambling rewards with the prize of additional skins or, money if the user decides to exchange the rewarded skins for real-world cash.

Third, in games of pure chance, outcome is determined by chance alone and no decision,

¹⁷ The Indian Contract Act, 1872, § 25.

¹⁸ POLLOCK & SIR DINSHAW FARDUNJI MULLA, *THE INDIAN CONTRACT AND SPECIFIC RELIEF ACTS* 46 (14th ed., 2012).

¹⁹ *Currie v. Misa*, (1875-76) LR 1 App Cas 554, p. 162 (per Lush J.).

²⁰ Nelson Rose, *Gambling and the Law®: An Introduction to the Law of Internet Gambling*, 10 UNLV GR&RJ 2 (2006), available at <https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1146&context=grrj>

²¹ Dominik Petermeier, *Most Popular Esports Games 2023*, December 8, 2022, available at <https://www.ispo.com/en/trends/most-popular-Esports-games-2023> (Last visited on April 5, 2023)

strategy, or skill can be used by the player to affect the outcome, expectation, or percentage of money won or lost²². The subject of whether to play a skill-based or chance-based game remains open to debate. A game of chance plays a trivial part in traditional gambling because the outcome is irrelevant to the players' abilities. In a game of chance, the players place their bets based on a future contingent event that, depending on luck, could end in a win or a loss. As skins betting contains two distinct components where both games of skills and games of chance are included, the topic of the game of skill and the game of chance concerning skins shall be examined further in this paper. Thus, to truly understand if skin-betting amounts to illegal gambling, it is important to understand the game of skills and the game of chance.

V. UNDERSTANDING GAME OF SKILL V. GAME OF CHANCE FROM THE STANDPOINT OF INDIAN LAWS

Determining whether a game is a 'game of skill' or a 'game of chance' depends on various factors²³. A player's capacity to apply his intellectual abilities to the situation greatly influences the outcome of the game of skill. The player has a significant role in how the game is played and can influence it. A skilled player can achieve much better outcomes and winnings than a beginner under comparable conditions. In the game of chance, the result of an outcome is based on a future uncertain event which cannot be influenced by a player's ability. In general terms, it can be devoted to sheer luck. The player does not influence any outcomes of the match.

In the landmark case of *Dr. KR Lakshman v. State of Tamil Nadu*²⁴, it was held, “A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. In these games the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill, on the other hand - although the element of chance necessarily cannot be entirely eliminated.” The distinction between games of skill versus games of chance is purely based on how the game is played. However, all games, even those that are skill-based, have a degree of chance²⁵. For example, when two players with equal abilities compete, the result can often be determined by

²² Robert C. Hannum, Anthony N. Cabot, *Toward Legalization of Poker: The Skill vs. Chance Debate*, 13 UNLV GR&RJ 4, (2009), available at <https://digitalscholarship.unlv.edu/cgi/viewcontent.cgi?article=1114&context=grrj>

²³ Sachin Garg, Sidharth Sipani, Akash Garg, *ONLINE GAMING/FANTASY SPORTS – A ‘GAME OF CHANCE’ OR ‘GAME OF SKILL’*, January 27, 2023, available at <https://www.taxmann.com/budget/budget-story/408/online-gamingfantasy-sports-%E2%80%93-a-%E2%80%98game-of-chance%E2%80%99-or-%E2%80%98game-of-skill%E2%80%99> (Last visited on April 8, 2023)

²⁴ *Dr. KR Lakshman v. State of Tamil Nadu*, 1996 2 SCC 226, ¶ 3 (per Kuldip Singh, J.).

²⁵ Michael Orkin, *Games of Chance and Games of Skill*, <https://chance.amstat.org/2021/11/games/> (Last visited on April 9, 2023).

chance. No established law applies in these circumstances. The judiciary is at the forefront of interpreting findings in light of the particulars of each case.

Judicial Decisions on Games of skill v. Games of chance:

There have been varying decisions regarding the game of skills and gambling, but predominantly, it has been established by many High Courts and Apex Courts that the game of skill does not amount to gambling. A change can be seen, keeping in mind the decision rendered by the Punjab & Haryana and the Bombay High Court, which has recognized 'game of skill' as distinct from gambling²⁶.

To differentiate between the concept of skill and betting related to sports in India, the Indian judiciary had introduced the words 'mere skill' to identify games of skill preponderantly, where success in the game depends on skill and does not classify it to be 'gambling'²⁷. In *State of Bombay v. RMD Chamarbaugwala*²⁸, the Apex Court opined that a prize competition which did not, to a substantial degree, depend upon the exercise of skill for its solution would be of a gambling nature. The decision solely revolved around the importance of skill and its predominance in a game to determine whether the gameplay amounted to betting or a game of skill.

In *State of Andhra Pradesh v. K. Satyanarayana & Ors*²⁹, whether rummy amounted to game of skill or game of chance was questioned. It was held, "*The game of Rummy is not a game entirely of chance like the 'three-card' game mentioned in the Madras case to which we were referred. The 'three card' game which goes under different names such as 'flush', 'brag' etc. is a game of pure chance. Rummy, on the other hand, requires certain amount of skill because the fall of the cards has to be memorised and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill.*"

Further, it was held "*In fact in all games in which cards are shuffled and dealt out, there is an element of chance, because the distribution of the cards is not according to any set pattern but is dependent upon how the cards find their place in the shuffled pack. From this alone it cannot*

²⁶ Nandan Kamath & R Sheshank Shekar, *Paid Fantasy Sports Games – Recent Developments under Indian Law in THE LAWS RELATING TO FANTASY SPORTS GAMES IN INDIA*, (The Sports L. and Pol’y. Ctr., ed., 2018) available at: http://www.sportslaw.in/reports/Fantasy_SportsPublication-Web.pdf.

²⁷ Urvi Gupta, Uday Mathur, *GAME OF SKILL VS. GAME OF CHANCE: The Legal Dimensions of Online Games with special reference to Dream11*, 3 *SLR* 119 (2020), available at: <https://hpnlu.ac.in/journal-level-3.aspx?ref-id=12>

²⁸ *State of Bombay v. RMD Chamarbaugwala*, AIR 1957 SC 699.

²⁹ *State of Andhra Pradesh v. K. Satyanarayana & Ors*, AIR 1968 SC 825, ¶ 12 (per M Hidayatullah, J).

be said that Rummy is a game of chance and there is, no skill involved in it.”³⁰ When the game of skill is played there can still be an element of chance if the players have equal skills as mentioned in the earlier illustration. This particular case emphasizes the fact that, although chance will always play a part in games, the focus should be given to the way factors like strategy, practice, and understanding affect a match's outcome.

In *M.J. Sivani v. State of Karnataka*³¹, it had been held “...In any game in which even great skill is required, chance must play a certain part. Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill. When in a game the element of chance strongly preponderates, it cannot be a game of mere skill. Therefore, it is not practicable to decide whether a particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case.” The categorizing of skill and chance that had previously been established in decisions by courts was disrupted by this verdict, which instead encouraged the idea that since chance is unpredictable, it should be included in games of skill. The distinction between a game of skill and a game of chance was made more difficult for courts to interpret in the future.

With respect to online gambling via online games, in the case of Kerala High Court³², the Court stressed on that aspect that how the games are conducted and how it is being conducted through online methods and, what are the stakes involved in the matter are all issues which may arise for consideration. The Rajasthan High Court³³ held that providing online gaming services are games of skill and would not be considered as gaming of chance or betting or gambling. In *Shri Varun Gumber v. UT of Chandigarh & Ors*³⁴, the High Court of Punjab and Haryana acknowledged that fantasy sports are games of skill. The Bombay High Court affirmed this in the case of *Gurdeep Singh Sachar v. Union of India*³⁵.

Through judicial decisions, India's growing tolerance for fantasy sports or online gaming has been acknowledged. But for the purposes of this essay, esports platforms are where skins betting happens. Given that esports is a relatively new industry, there hasn't been much judiciary acceptance for it. In skins betting, the forefront application to determine the outcome of a match

³⁰ *Id.*

³¹ *M.J. Sivani v. State of Karnataka*, (1995) 6 SCC 289, ¶ 11, (per K. Ramaswamy, J).

³² *Play Games 24*7 Pvt. Ltd. v. Ramachandran K & Anr.*, 4 KLT 542 (2019), (Ker. H.C.) (Unreported).

³³ *MyTeam11 Fantasy Sports (P) Ltd. v. Union of India*, 2023 TAXSCAN (HC) 215, (Raj. H.C.) (Unreported).

³⁴ *Varun Gumber v. UT of Chandigarh & Ors.*, Cri. L.J. 3827 (2017), (Pun & Har H.C.) (Unreported).

³⁵ *Gurdeep Singh Sachar v. Union of India*, 75 GST 258 (2019), (Bom. H.C.) (Unreported).

is that of game of skills, however, there has been elements of chance involved when third-party websites bet the skins on the games of chance³⁶.

VI. LEGISLATIONS PERTAINING TO ONLINE GAMBLING

In 2019, the Madras High Court suggested that a regulatory framework to monitor and regulate online gaming is the need of the hour³⁷. Online gaming, including esports, and online gambling are notions that have grown throughout time as technology has evolved. It is vital to review the older laws relating to gambling and sports before understanding the recent regulations regulating them. The earliest legislation regarding gambling is in the Public Gambling Act, 1867³⁸. This central legislation dates back to pre-independence era and is the only central legislation regarding gambling. The literal interpretation of this Act gives enough power to the police officer to harass people and to conduct raids at an illegal gambling place³⁹. According to this Act, any form of gambling is illegal in the country. This Act made it illegal to operate or visit a place where gambling was done⁴⁰. Thus, the Act prohibits game of chance. But it has no application towards online gambling or gaming, except wherein reference can be drawn to §.12 of the Act wherein it is mentioned that the provisions of the Act “*shall not apply to any game of mere skill wherever played.*” The reference to the game of skill and the game of chance was initially referred to in this legislation.

Pertinent to add that the matters of gambling and betting are provided in the State List under the Seventh Schedule of the Indian Constitution. Entry No. 34 of the State List deals with betting and gambling. Post-independence, due to the lack of uniform central legislation regarding online gaming and online betting, States are left with discretion to deal with such matters. Only certain states have adopted the central legislation, whereas few other States have enacted their own legislation. The Information Technology Act of 2000 is another piece of legislation that governs online activity in India. However, nothing concerning online gambling is included in this either.

(A) Sikkim Online Gaming (Regulation) Act, 2008.

Sikkim legalized online gaming and sports gaming through the enactment of this Act which resulted in legalizing games which included both games of skills and games of chance by issuing

³⁶ Shaun Assael, *Skin in the Game*, January 20, 2017, available at: http://www.espn.com/espn/feature/story/_/id/18510975/how-counter-strike-turned-teenager-compulsive-gambler (Last visited on April 15, 2023).

³⁷ D Siluvai Vanance v. States CrI OP, (MD) No. 6568 of 2020.(Mad. H.C) (Unreported).

³⁸ The Public Gambling Act, 1867.

³⁹ Sanjeev Kumar Singh, *Gambling in India: A Study from the Perspective of Law and Economy*, 4 IJLMH 2652, (2021), <https://www.ijlmh.com/paper/gambling-in-india-a-study-from-the-perspective-of-law-and-economy/>

⁴⁰ SURESH, BATCHA, supra note 9, 67.

a license to such game operators⁴¹. The Act intended that these licenses would render the games across India through websites and online services. However, upon the concerns over IT Act, 2000 and overarching legislation which would transverse into other state's jurisdiction⁴², the Act was amended in 2015 wherein the Government of Sikkim, however, has restricted the offering of "online games and sports games" to the physical premises of 'gaming parlours' through intranet gaming terminals within the geographical boundaries of the State.

(B) Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skills Act, 2016 and the Meghalaya Regulation of Gaming Act, 2021

This legislation recognizes, regulates and promotes online gaming based on the 'game of skills' through the issuance of licenses and prohibits gambling. Section 2(3) of the 2015 Act, defines the term, "games of skill", to "include all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analysis or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen." The Act recognizes virtual team selection games and virtual sports fantasy league games as games of skill.

Similar to Nagaland, Meghalaya⁴³ has a licensing regime for online gaming. Similar to Sikkim, Meghalaya has restricted offerings of "online games and sports games" to the physical premises of 'gaming parlours' through intranet gaming terminals within the geographical boundaries of the State.

(C) Karnataka and Tamil Nadu's blanket ban on online gaming

The Karnataka government amended the Karnataka Police Act, 1963, to ban all forms of gambling in the state in connection with a game of chance (except horse races and lotteries), including all forms of online gambling. The amendment also extended to any game of skill wherein any act of risking money or otherwise on the unknown result of an event will constitute an offence. It was challenged in the case of *All India Gaming Federation v. State of Karnataka*⁴⁴ and the court lifted the ban on betting on and playing games of skill, including online games, as it was violating the fundamental rights.

In 2023, the state of Tamil Nadu passes the Tamil Nadu Prohibition of Online Gambling and

⁴¹ The Sikkim Online Gaming (Regulation) Act, 2008, § 3.

⁴² Suyash Bajpai, *Online Gaming and Gambling Law in Sikkim*, December 6, 2021, available at: https://ssrana.in/articles/online-gaming-gambling-law-sikkim/#_ftn3 (Last visited on April 17, 2023)

⁴³ The Meghalaya Regulation of Gaming Act, 2021, § 3.

⁴⁴ *All India Gaming Federation v. State of Karnataka*, WP 18703/2021, (Kar. H.C.) (Unreported).

Regulation of Online Games Bill, 2022, through which a blanket ban on online gambling which equates games of skills to games of chances is established. This law is in the teeth of all the precedents set by the Court, which states that the game of skills does not amount to gambling. This law is contrary to the earlier decision passed by the Madras High Court in *Junglee Games & Ors. v. State of Tamil Nadu*⁴⁵ where it was held that imposing a blanket ban fell afoul of Article 19(1) (g) of the Constitution of India

In 2017, Telangana became the first state to formally outlaw online betting and online gaming. In 2020, Andhra Pradesh outlawed online gaming. The Kerala High Court⁴⁶ invalidated the ban on online rummy in 2021, citing the fact that it is "a game of skill."

The Ministry of Electronics and Information Technology issued a central legislation specifically for online real money games, effective as of April 6, 2023, which has settled the aforementioned status of online gaming in different States. These rules are added to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules"). 'Online game'⁴⁷ is defined as "a game that is offered on the internet and is accessible by a user through a computer resource or an intermediary". The amendments empower self-regulatory organizations (SROs) to determine which real-money games that include money transfers are allowed to operate in India and to grant licenses to such games. It does not include wagering or gambling, i.e., just acknowledging Game of Skill to be regulated. The operation of skill games in India is now clearly sanctioned, provided they comply with the current rules.

VII. ANALYSING SKINS BETTING WITHIN THE AMBIT OF INDIAN LEGISLATIONS

(A) Distinction between online gaming and esports:

It is important to establish a distinction between online gaming and esports as the two have often been used interchangeably, but they have distinct features. Online gaming is commonly playing video games which may or may not involve a competitive element. Video gaming describes the playing of video games for varying purposes, for example, for fantasy fulfillment and symbolic exploration, for proving oneself, for social engagement, to exercise mentally or physically, and to seek acknowledgment⁴⁸. Most of the times, an online game is played against any non-player entity such as 'a bot'. This could be anything from a quick game of Candy

⁴⁵ *Junglee Games & Ors. v. State of Tamil Nadu*, (2021) SCC OnLine Mad 2762, (per Sanjib Banerjee, C.J., Senthilkumar Ramamoorthy, J.).

⁴⁶ *Head Digital Works Private Limited v. State of Kerala*, WP (C) No. 7785/2021, (Ker.H.C.) (Unreported)

⁴⁷ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Rule 2(1)(qa).

⁴⁸ Werder, K. *Esport. Bus Inf Syst Eng* 64, 393–399 (2022), available at: <https://doi.org/10.1007/s12599-022-00748-w>

Crush on your phone to a fast-paced match of CS:GO with your friends⁴⁹. Because the sole goal of the game is to defeat another player, the players often walk out with next to nothing.

On the other hand, the esports platform aids the esports provider in organizing tournaments and matches. The organizers require licenses to host esports events as the video games are the intellectual property of video game owners. Esport providers also acquire additional resources through sponsorship and partnership deals⁵⁰. For example, Amazon service **Prime Gaming** had an agreement with developer **Riot Games** to become a partner of the **Valorant Champions Tour EMEA** for the 2022 season⁵¹. Esports events foster a sense of community among viewers since they frequently involve competitive gaming throughout the entire weekend. The esports community makes use of internet media and streaming services through which users of streaming services can interact by using chat, voting, funds, donation, and other features.

The Indian government recognised esports as part of a "multisport" event on December 27, 2022, after integrating them with traditional sports⁵². The Ministry of Electronics and Information Technology also included a section titled "*Matters Relating to Online Gaming*" to the document. And has been designated as the Nodal Ministry for online gambling. The Department of Sports, a division of the Ministry of Youth Affairs and Sports, has been designated as the nodal department for e-Sports⁵³. This distinguishes esports from online gaming, which has a different definition.

(B) Esports betting in the realm of traditional sports betting

The distinction between online gaming and esports is important to bifurcate the applicability of legislations. Skins are derived in online gaming when a player unlocks a crate which he received during the gameplay. Once the crate is unlocked, new skins get transferred to the gamer's inventory which he can either utilize or trade via Steam or third-party websites. As discussed earlier, skins are emerging as an alternative currency to place a bet on esports tournaments. Esports skin betting involves using virtual video game items known as "skins" to bet on esports, most often via unregulated online operators⁵⁴.

⁴⁹ *ESPORTS VS GAMING – KEY DIFFERENCES BETWEEN ESPORTS AND GAMING*, ESPORTS.NET, <https://www.Esports.net/wiki/Esports-vs-gaming/> (Last visited on April 25, 2023)

⁵⁰ WERDER, *supra* note 41.

⁵¹ Henreita Hyrlikova, *Key Esports sponsorships and partnerships, February 2022*, March 8, 2022, available at: <https://Esportsinsider.com/2022/03/key-Esports-sponsorships-and-partnerships-february-2022> (Last visited on April 19, 2023)

⁵² Govt. of India, Ministry of Youth Affairs and Sports, F. No. 1/21/13/2021 (December 23, 2022).

⁵³ The Economic Times, *MeitY to steer online gaming, e-sports with Sports Ministry*, December 28, available at: <https://economictimes.indiatimes.com/news/sports/meity-to-steer-online-gaming-e-sports-with-sports-ministry/articleshow/96552301.cms> (Last visited on April 22, 2023).

⁵⁴ Greer, N., Rockloff, M., Browne, M., Hing, N., & King, D. L. *Esports betting and skin gambling: A brief history*,

The conundrum is, what if the action of the Ministry of Youth Affairs and Sports to include esports as multiplayer sports in traditional sports setup makes it illegal to bet on esports all in all? The repercussions of viewing esports in the realm of traditional sports can cause a dilemma. Firstly, in India, traditional sports betting is illegal other than horse racing. The central legislation and state legislations and even the judicial decisions has set the record to ban all the sports betting activities except horse racing. The lack of uniformity in sports betting in general has led to a crisis. For instance, substantial charges of spot-fixing against cricket players surfaced in the 2013 Indian Premier League betting and spot-fixing case. The issue of legalising cricket betting was also given more consideration. The Lodha Committee was tasked with making recommendations to enhance the performance of the Board of Control for Cricket in India (BCCI), and it strongly suggested a functional approach to legalise such betting for people other than players and officials. The goal was to ensure that there was a built-in method to control cricket betting and to build a platform with sports regulations that were enforced by recognised authorities⁵⁵.

Secondly, there are many esports that, in terms of competitiveness, audience, level of talent necessary, etc., resemble traditional sports. In order to perfect their skills and abilities, elite esports competitors must undergo extensive training. To say that esports athletes experience the same strain and physical effort as athletes in "regular sports" would not be out of place. It's interesting to see how sports leagues are becoming involved with esports. The NBA 2K League, for instance, is the first official esports league run by a US professional sports league and is a partnership between the National Basketball Association (NBA) and Take-Two Interactive. It is a professional esports league that features the greatest NBA 2K players in the globe⁵⁶.

Given that many factors and trends in esports are similar to those in traditional sports, it is uncomplicated to include them in the category of traditional sports. However, doing so will make it difficult for legislators to decide whether to outlaw betting on these sports, like traditional sports or to give the benefit of the doubt and legalize it under the provisions of online gaming laws. Traditional sports do have elements of skill-based activities, but betting on such

4 JGI 133-134, (2019), available at: <https://doi.org/10.4309/jgi.2019.43.8>

⁵⁵ The Economic Times, *The case for legalized cricket betting; it's not what you think*, January 19, 2016, available at: <https://economictimes.indiatimes.com/news/sports/the-case-for-legalized-cricket-betting-its-not-what-you-think/articleshow/50631879.cms> (Last visited on April 22, 2023).

⁵⁶ Siddharth Batra, Archana Yadav, *Precincts of Electronic Sports, Betting and Gambling*, August 1, 2022, available at: 2022 SCC OnLine Blog Exp 59. <https://www.scconline.com/blog/post/2022/08/01/precincts-of-electronic-sports-betting-and-gambling/> (Last visited on April 22, 2023).

games is prohibited. For instance, in the case of *State v. Gupton*⁵⁷, the Supreme Court of North Carolina held that any athletic game or sport is not a game of chance. Since 2022, when esports were recognized as sports in India, they were scrutinized and governed similarly to traditional sports. Consequently, any technicality of being bound by online gaming regulations is eliminated via this stance without any clarity.

(C) Regulating esports betting on skins as games of skills

Due to the way the regulations are currently framed, esports are considered traditional sports. The laws governing esports have not been specifically mentioned, though the need to control them under online gaming laws is quite perceptible as they are played on online platforms. Thus analyzing them as a matter of games of skill versus chance will naturally transpire. So far, the analysis of online gaming laws, with the ongoing development in making central legislation to cover online gambling laws and to protect the game of skills, it is right to comment esports betting may have the benefit of being a game of skills and thus acquiring the protection on its betting.

Considering the definition of online game⁵⁸, esports being played on the online platforms indeed brings the online gaming laws into picture. The definition is confined to using the internet to access virtual games offered by an intermediary. Without taking into account the online gaming rules that serve as the foundation for all internet gaming activities, it would be extremely unrealistic to decide on the regulation of esports.

Skins are not often used as a bet in online gaming because this gameplay involves a player-to-player competition and not a multiplayer tournament. Online gaming is limited to an experience which does not involve risks or a high prize pool. esports is a matter of games of skills because they are designed to test and challenge the player's abilities, analytical mentality and physical and strategic abilities. Many games in the esports genre involve aspects of chance, although they don't generally influence the result of a match⁵⁹.

The Indian courts, while deciding the question of "skill versus chance", have adopted the test followed by the US Courts⁶⁰. In *Morrow v. State*⁶¹, the US Supreme Court established the Dominant Factor Test, which evaluates the character of a game on the basis of the dominant

⁵⁷ *State v. Gupton*, (1848), 30 N.C. 271 (N.C. 1848).

⁵⁸ See, supra note 42.

⁵⁹ Manish Gupta, *Is Esports all about skill, or does luck matter?*, July 27, 2022, available at: <https://tournafest.com/blog/is-Esports-all-about-skill-or-does-luck-matter/#:~:text=By%20design%20and%20without%20exception,luck%20to%20a%20precise%20degree>. (Last visited on April 22, 2023)

⁶⁰ SIDDHARTH BATRA, ARCHNA YADAV, supra note 53.

⁶¹ *Morrow v. State*, 511 P.2d 127 (1973) (per Connor, J.)

factor—whether chance or skill—that determines the game's outcome. The order emphasized that the following aspects are requisite to a scheme where skill predominates over chance⁶²: (i) Participants must be able to use their skills, and they must have access to enough information to make an informed decision; (ii) The skill must be available for participants to use, and it must be possessed by the majority of participants; (iii) The outcome must be sufficiently governed by skill or the rivals' efforts; (iv) Participants must be aware of the skill standard, and this standard must control the outcome.

By the virtue 'Dominant Factor test', it is safe to establish that esports come within the purview of games of skills. The factors (i) and (ii) are fulfilled as the players go through years of training mastering an online game for esports tournaments. These games are infused with highly analytical thinking and the result of a match is determined by strategic preparation through skill development. The way these games are structured is different from how traditional sports are played since in esports, players are judged only on how quickly they can apply their wits on a keyboard. It is reasonable to infer that the outcomes are not the result of chance. Even if the two players have similar skill sets, which would cause the element of luck to occur, it cannot be stated that chance dominates skill in these esports competitions because they are designed to measure a player's skills in genuine cognitive circumstances. Hence, every player's psychology varies, which will have an effect on the game and cannot be referred to as luck or chance.

Thus, the element of skills shall be prioritized, making esports a game of skills and not a game of chance. Since Indian legislation and judicial decisions have not provided any decisions regarding esports betting, by considering the elements of online gambling with regards to online gaming, esports betting can get the protection of the law. Skins betting on such esports matches where the outcome is dependent on the skills will naturally be a legitimate virtual asset to place for the bet. Skins betting may get the protection of law depending on the matches where it is placed for a bet, but currently, wagering skins are highly unregulated. It not only causes consequences on betting on the outcome of eSport matches but is highly fatal when skins are placed as a bet on the games of chance.

(D) Skins betting in game of chance:

The author examined skins betting in the previous heading when the outcome of the match is dependent on games of skill. Due to ambiguity in the law and a lack of common knowledge, skins betting in the game of skills can receive legal protection if it satisfies the requirements set

⁶² *Id.*

forth. In other words, if forthcoming legislation is supportive of recognizing a game of skills betting as legitimate and enabling only licensed companies to run such betting activities, betting with virtual commodities like skins can be safeguarded.

Hence, skins betting in the game of skills is somewhat established. However, gambling operators accept skins as a digital currency for betting on esports and as well as simple games of chance such as coin-flips or roulette⁶³. Regarding the legality of skill-based games, there have been conflicting opinions depending on the gameplay, player abilities, or overall game design. However, the regulation is clear when it comes to games of chance. The games of chance are not allowed to be wagered on. The distinction between games of skills versus games of chance is important.

Using skins to wager on esports could indicate an interest in the sport than just a desire to gamble. On the other hand, using skins to wager on games of chance can reveal someone interested in utilizing skins as an alternative form of payment or who wants to collect them for personal gain⁶⁴. It encourages unhealthy gambling behaviors such as betting on skins for higher amounts or expensive rare skins, which start with simple skins betting but lead to a deeper interest in gambling and greed. For instance, a minimal wear StatTrak Tier 1 Case Hardened AK-47 with a Blue Gem pattern skin has become the most expensive gun in CS:GO worth \$400K.⁶⁵ This level of popularity causes these rare skins to be gambled aggressively, resulting in an increase in wagering in games of chance.

The laws in India clearly negate betting on games of chance. Skins gambling therefore will result in being illegal. Skins as a digital currency have not been recognized by Indian law. Thus, skins must be defined or offered under the bracket of inclusion on items that can be placed as bets in order to frame illegality in games of chance. When dealing with new-age wagering activities and the variables related to them, there must be clear and express legal language. Due to the omission of these variables, gambling websites with no authorization and that operate on games of chance can avoid liability.

VIII. CONCLUSION

Skins are virtual assets created solely for aesthetic purposes. They are rising as a new era of

⁶³ GREER, N., ROCKLOFF, M., BROWNE, M., HING, N., & KING, D. L, *supra* note 49.

⁶⁴ Greer, N., Rockloff, M., Hing, N. *et al.* *Skin Gambling Contributes to Gambling Problems and Harm After Controlling for Other Forms of Traditional Gambling.* *J Gambl Stud*, 225–247 (2023), available at: <https://doi.org/10.1007/s10899-022-10111-z>

⁶⁵ Rich Stanton, *Counter-Strike skin sells for \$400K, probably the most expensive gun in videogame history*, April 18, 2023, available at: <https://www.pcgamer.com/counter-strike-skin-sells-for-dollar400k-probably-the-most-expensive-gun-in-videogame-history/> (Last visited on April 23, 2023).

virtual currency in gaming but soon it will lead to a larger demography. It is because online gaming and esports matches have recently gained popularity, resulting in the establishment of legislation to safeguard them. Online gaming and online gambling laws are treated side by side in India, but there is a huge difference between games of skill and gambling. Online gambling laws are not uniformly regulated in central legislation, but the government has dawn on this matter for making games of skills an important subject matter for any legality in online betting. Skins betting on esports tournaments will gain the advantage as these are games of expertise which have been broadly translated as lawful through enactment and legal decisions. But there's still a problem concerning esports being put beneath the domain of traditional sports which can bring disarray as wagering on conventional sports is unlawful in India. The author believes that skins wagering ought to be looked into through online gaming laws as these laws are given to ensure online video games. The platform in which esports tournaments are conducted and regulated is subjected to online and there have to be a clarification by the Government concerning the same.
