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## Karnataka High Court: Banning games of skill is ultra vires the Constitution of India

In the case of *All India Gaming Federation v. State of Karnataka*, the Karnataka High Court (“**High Court**”) struck down certain provisions of the Karnataka Police (Amendment) Act, 2021 (“**Amendment Act**”), which had the effect of prohibiting online real-money games of skill in the state of Karnataka. The High Court held that regulation of online games of skill is outside the legislative competence of states; and an absolute prohibition is violative of fundamental rights.

### Brief Facts & Procedural History

The Amendment Act notified on October 5, 2021, amends the Karnataka Police Act, 1963 (“**Police Act**”) to prohibit wagering on games of skill, in addition to wagering on games of chance. The Amendment Act also expands the definition of ‘instruments of gaming’ under the Police Act, which brings a prohibition on the operation of real-money online gaming platforms from the state of Karnataka (even if such platforms were not offered to users in Karnataka). This prompted several online real-money gaming companies to leave Karnataka and set up operations in other states. The Amendment Act further increased gaming-related penalties; and made the majority of gaming-related offences cognizable and non-bailable.

Individuals and companies associated with online gaming filed numerous petitions at the High Court, challenging the constitutional validity of the Amendment Act.

### Issues

1. Whether the Amendment Act could not have been enacted for want of legislative power?
2. Whether the Amendment Act was in violation of the fundamental rights enshrined in the Constitution?

### Analysis and Findings of the HC

**Legislative Competence:** The High Court held that the words ‘betting’ and ‘gambling’ in Entry 34 of the State List of the Constitution must be interpreted conjunctively to mean that only betting on gambling activities falls within the legislative competence of states.

**Games of Skill v. Games of Chance:** The High Court held that the collective ratio of judicial precedents set by the Supreme Court and High Courts is that games of skill and games of chance are distinct legal concepts of constitutional significance. While there may not be a game of chance which does not involve an element of skill; or a game of skill which does not involve some elements of chance – the test to determine whether a game is a ‘game of chance’ or a ‘game of skill’ is to apply the **Predominance Test**, i.e., a game involving a substantial element of skill is not a game of chance but is a game of skill. Further, the High Court held that a game does not cease to be a game of skill when played for stakes.

The High Court held that the Amendment Act was disproportionate and in violation of Articles 19(1)(g) and 14 of the Constitution, as it did not distinguish between games of skill and games of chance – despite the former being recognised as a ‘business’. The High Court also held that the mere likelihood or propensity for misuse of online gaming platforms does not constitute legal justification for prohibition.

**Online Games v. Actual Games:** The High Court held that there is no functional difference between actual games and virtual games; and that games of skill do not metamorphize into games of chance merely because they are played online.

**Scare Argument:** The High Court noted the Advocate General of Karnataka’s argument that the Amendment Act had been brought about to curb the “*menace of online gaming which, has a deleterious effect on the social interest*”. However, the High Court held that this ‘scare argument’ did not have any basis in empirical data. The High Court observed that as internet/online gaming expands, it is likely that problems associated with such games may surface – however, regulation of online gaming must be based on data-driven empirical research. The High Court held that when the policy content of a statute is sought to be defended on the ground of its intrinsic merits and technological advancement, states should be able to substantiate the same with necessary material.

**Ruling:** The Amendment Act prohibits wagering and betting on games of skill and had made the majority of gaming-related offences cognizable and non-bailable. Accordingly, the High Court struck down sections 2, 3, 6, 8 and 9 of the Amendment Act declaring it to be *ultra vires* the Constitution. However, the increased penalties of the Amendment Act continue to remain in force.

## Conclusion

The High Court struck down the provisions of the Amendment Act which had the effect of prohibiting online games of skill in the state of Karnataka – due to lack of legislative competence, disproportionality and a failure to distinguish between games of skill and games of chance.

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