**[LEGAL OPINION ON BETTING LAWS IN INDIA FOR GO GAMING ONLINE PVT. LTD.]**



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1. **BACKGROUND**:

The Opinion is being prepared on the instructions of Go Gaming Online Private Limited **(“Querist/Company”)** who is in the business of providing online gaming activities and activities ancillary thereto (“**Services**”).

The Querist intends to set up a business whereby providing a social gaming platform without any winnings and redemptions in any manner whatsoever, solely for the purpose of entertainment and thrill. The platform would provide the users with virtual game currency (“**Coins**”)that can be used to place bets on various cricket related events. The users would be entitled to free Coins upon signing up and thereafter the users would get extra Coins for watching advertisement videos or downloading referral applications. The Coins are neither purchasable nor redeemable. Upon winning a bet, the users would receive additional Coins in ratio of their bet. Also the users would be listed on the leaderboards as per their ranks, which will be derived from the percentage of total winnings of such users. The Querist has sought our opinion on the below mentioned points with respect to its aforementioned business model:

1. Would the model of Querist be deemed legal when there is no price paid for participation and no prize is given to the participants for winning either?
2. Does the business model attract any Gambling or Betting laws under the Union or State list or any other laws which could deem the activities of the Querists platform an offence? Suggestions to finetune the model to make it 100% legal.
3. Analysis of similar case laws in India, Europe, USA etc
4. What is the GST applicability in case of purchase of Coins or other elements in the social gaming platform?
5. Can transfer of coins between Players/Friends/Family by way of gift be allowed on the platform?
6. **LEGISLATIONS/DOCUMENTS EXAMINED**:

For the purpose of issuing this note, we have reviewed:

* Public Gambling Act, 1867
* Various State Gambling Legislations
* Information Technology Act, 2000 along with the Rules & Regulations.
* Indian Penal Code 1860
* Law Commission of India Report No.276 on Legal Framework: Gambling and Sports Betting including in Cricket in India
* Various judgements of Hon’ble Supreme Court of India and various State High Courts.

1. **ASSUMPTIONS AND QUALIFICATIONS**

The views and opinions expressed in this opinion are strictly limited to the question raised by the Company as mentioned in Paragraph 1 and do not extend to any other matters.

1. **CONCEPT OF BETTING IN INDIA**

In India, betting is considered to be an illegal act owing to the fact that people put in money or money’s worth on the chance of winning something in return. Since betting and gambling may lead to exploitation of the vulnerable class, the courts believe it to be against the principles of morality.

Betting was earlier defined under Section 65-B(15) of Finance Act, 1994 as “*putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or the likelihood of anything occurring or not occurring.”* However, this definition had been repealed.

A reference can be taken from the Dictionary meaning of betting as well. The Cambridge English Dictionary defines gambling as “*the activity of risking money on the result of something, such as a game or horse race, hoping to make money*”. Whereas, the Oxford English Dictionary defines betting as “*the action of gambling money on the outcome of a race, game or other unpredictable event”.* From the aforesaid definitions, it can be said that, the terms betting and gambling are interchangeable owing to the similar definitions.

Since betting has not been defined under the Indian legislations, courts have often had to rely upon definitions from external sources such as dictionaries or foreign legislations. The Calcutta High Court in the case of *Bimalendu De v. Union of India[[1]](#footnote-1)* referred to the definition of ‘gambling’ in the Black’s Law Dictionary, and stated that “*Making a bet occurs when there is a chance for profit if a player is skilful and lucky… A play for value against an uncertain event in the hope of gaining something of value… It involves not only chance, but a hope of gaining beyond the amount played. Gambling consists of a consideration, an element of chance, and a reward… The elements of gambling are payment of a price for a chance to win a prize.”*

Further, the Hon’ble Supreme Court of India in *M.J. Sivani & Ors. V. State of Karnataka & Ors.[[2]](#footnote-2)* referred to the Stroud’s Judicial Dictionary along with Black’s Law Dictionary to define gambling. The distinction between gaming and betting was laid out by the Hon’ble Madras High Court in the case of *Public prosecutor v. Veraj Lal Sheth,[[3]](#footnote-3)* wherein the Hon’ble Court opined that the principal distinction between gaming and betting is that; in gaming the stake is laid by the players upon a game, the result of which may depend to some extent upon the skill of the players, but in a bet, the winning or losing of the stake depends solely upon the happening of an uncertain event.

1. **GAME OF SKILL AND GAME OF CHANCE**

The primary method to identify if any game amounts to gambling or not is what dominates/preponderates: skill or chance. Games of chance are those where the winner is mostly decided on the basis of luck and the result is uncertain with the person being unable to influence such result by his mental or physical skill. On the other hand, the result of a game of   
  
  
skill is influenced by the expertise, knowledge and training of the player. Under the Indian regime, the games of skill are not considered to be gambling activities and are usually exempted from the ambit of anti- gambling laws.

In the case of *RMD Chamarbuagawala v. Union of India[[4]](#footnote-4)* the Supreme Court relied on the ‘skill test’ to decide whether an activity is gambling or not. The court held that competitions which substantially involve skills are not gambling activities but are commercial activities protected under Article 19(1)(g) of the Constitution of India. Further in the case of *State of Andhra Pradesh v. K. Satyanarayana[[5]](#footnote-5)* and *Dr. K. R. Lakshamanan v. State of Tamil Nadu[[6]](#footnote-6)* the courts have propounded that no game is a game of pure skill and that all games have at least some amount of chance or luck involved. The courts have thus adopted the test of ‘dominant factor’ which requires the assessment and determination of whether chance or skill is the dominating factor in determining the result of the game.

The Hon’ble Punjab and Haryana High Court in *Varum Gumber v. Union Territory of Chandigarh and Ors[[7]](#footnote-7)* , the court while answering the issue of whether fantasy sports are a game of skill or not, relied upon the *Dr. K. R. Lakshamanan (supra)* to state, “the skill constitutes a game in which primarily the success depends upon the superior knowledge, training, attention, experience and adroitness of the player, in essence, the skill dominates over the element of luck/ chance. It has been held that the expression “mere skill” would mean substantial degree or preponderance of skill”.

Further, in most of the state legislations, it is clearly stated that horse betting and/or dog racing are exempt from the application of the statute. This is because in the case of *Dr. K R Lakshmanan (supra)*, the Hon’ble Supreme Court had propounded that horse-race betting was a game of skill. The court observed that the outcome in a horse race depends upon several factors like form, fitness and inherent capacity of the animal, the ability of the jockey, the weight carried and the distance of the race, which are all objective facts capable of being assessed by persons placing bets.

One could argue the same for cricket betting too as it also should be assessable through the statistics available on the players, fields, and their performance. However, the game has not yet been declared to be a game of skill.

Currently, a petition titled “*Geeta Rani v Union of India*” bearing Writ Petition No. 287 of 2017 is pending before the Hon’ble Supreme Court wherein the issue of whether betting on cricket amounts to an offence or not since such betting or wagering depends upon the skill of the player. However, no effective hearing has taken place in the said matter and same has been clubbed with Civil Appeal No. 4235 of 2014 titled “*Board of Control for Cricket & ors. v Cricket Association of Bihar & Ors.*”, wherein the Hon’ble Supreme Court is adjudicating on the issues with regard to irregularities with the functioning of Board of Control for Cricket.

1. **CENTRAL LEGISLATIONS IMPACTING BETTING PLATFORMS**
   1. Constitution of India, 1950

Article 19(1)(g) of the Constitution of India are used as an argument by gambling platforms to state that they are allowed to operate under the same through the freedom of trade and profession. However, the doctrine of *res extra commercium* excludes certain acts from such freedom of trade. The Hon’ble Supreme Court of India in the case of *State of Bombay v. RMD Chamarbhaghwala[[8]](#footnote-8)* observed that:

*“ We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient countries trade commerce or intercourse to be declared as free under Article 301… the real purpose of Articles 19(1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and essence are extra commercial through the external forms, formalities and instruments of trade maybe employed and they are not protected by Article 19(1)(g) or Article 301 of the Constitution. ”*

This view was upheld by the Apex court in multitude of other judgements. The courts have strictly held such gambling activities to be outside the purview of trade commerce that is protected by Article 19(1)(g) and Article 301 as the same is *res extra commercium.*

* 1. Public Gambling Act, 1867

The Gambling Act defines “Common Gaming House” as “*any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever”.* This definition is quite vast and considering the fact that most states have directly adopted the said legislation with minor changes, thereby having a binding effect with respect to all gambling related activities.

However, it should be noted that the legislation was enacted before the advent of internet and its applicability over internet betting platforms has not been tested in the Courts of law as of now, although there are some states have included internet to the ambit of the state gambling legislations.

Most states in the country have enacted their own gaming/gambling laws, majorly deriving its intent from the Central Act. The only states where any kind of gambling, betting or wagering on certain games of chance, is allowed are the States of Sikkim and Goa and Union Territories of Daman and Diu.

The State of Telangana has taken a step further and banned not just gambling, betting and wagering in the State but also has banned online gaming by way of two Ordinances promulgated by the State in June 2017. Therefore, the Querist may not establish any business in the State that provides services related to gambling, betting or wagering, especially involving stakes and providing winnings to the residents of the State.

* 1. Information Technology Act, 2000

The Act is silent with regard to any kind of gaming whether hosted by Indian websites or with regard to residents of India gaming on sites hosted outside India. However, the Information Technology (Intermediaries Guidelines) Rules, 2011 under the Information Technology Act, 2000 (the “**IT Rules**”) under Rule 3, mandates the intermediaries such as Internet Service Providers to not allow, hosting, displaying, uploading, modifying, publishing, transmitting, updating or sharing any information that is grossly harmful, harassing, blasphemous defamatory, obscene, pornographic, paedophilic, libellous, invasive of another’s privacy, hateful, or racially, ethnically objectionable, disparaging, relating or encouraging money laundering or gambling, or otherwise unlawful in any manner whatever.

Thus, the Internet Service Providers in their Terms of service have been including such rules whereby blocking websites providing such services *suo moto* or upon notices from the Department of Telecom or similar authorities. Regardless, the chances of any legal implication apart from the website being blocked for access seem relatively low as the obligation for hosting such rules is upon the Internet Service Providers.

Further, Section 67 of the Information Technology Act, 2000 prohibits publishing of any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter. Although it does not directly refer to betting or gambling, given the expansive application of the provision, the courts could interpret it to be applicable over online betting platforms.

The Hon’ble High Court of Delhi in the case of *Avinash Mehrotra v. Union of India & Ors.[[9]](#footnote-9)* directed the Union of India, and Government of NCT of Delhi to determine whether the online poker games etc. were considered as gambling or not, and in case such games were considered as gambling, then Ministry of Electronics and Information Technology were ban all such websites from operating.

* 1. Indian Contract Act, 1872

Since the Indian Contract Act, 1872 under Section 23 states that consideration or object of an agreement would be lawful unless regarded as immoral, or opposed to public policy, by the Court. This brings the aspect of “immorality” or “opposed to public policy” relevant while considering the legality of betting games.

The Hon’ble Supreme Court of India in the case of *Central Inland Water Transport Corporation Limited & Anr. v. Brojo Nath Ganguly & Anr*.[[10]](#footnote-10) observed that public policy connotes some matter which concerns the public good and public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. Courts have already opined on various occasions that gambling is against the principles of morality and thus the act of gambling is immoral and can also be considered to be opposed to public policy.

Further, Section 30 of the Indian Contract Act makes agreements by way of wager to be void and unenforceable.

* 1. Consumer Protection Act, 1986 (and 2019)

Under the Consumer Protection Act, section 2(r)(3)(b), conduct of any contest, lottery, game or chance or skill for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest has been deemed as part of unfair trade practices. Therefore, the said provision shall not be attracted to the Querist.

* 1. Prize Competition Act, 1955

Although not directly being applied over gaming platforms, the Querist should consider the application of Prize Competition Act, 1995 (“**Prize Competition Act**”). Competitions where a prize is offered for the solution of any puzzle based upon building up, arrangement, combination or permutation, of letters, words, or figures, would be governed under the Prize Competition Act. However, only some states have passed resolutions to give effect to this law, being the states of Andhra Pradesh, Gujarat, Maharashtra, Madhya Pradesh, Orissa, Punjab, Tamil Nadu and Uttar Pradesh.

Some states like West Bengal have their own legislations for governing prize competitions. Regardless, the definition of prize competition in these states is more or less similar. Under these, a prize of more than Rs.1000 is not allowed to be conducted and all such prize competitions are to be registered with the state.

* 1. Prevention of Money Laundering Act, 2002

Under the Prevention of Money Laundering Act, 2002 (“**PMLA**”), the entities carrying out the activities for playing games for cash or for kind (including online gaming sites and casinos) are required to adhere to the provisions of the PMLA. Section 12 of the PMLA requires such entities to maintain records of:

* All cash transactions of the value of more than INR 10 Lakh or its equivalent in foreign currency; or
* All series of cash transactions integrally connected to each other which have been valued below INR 10 Lakh where such series of transactions take place within one calendar month; or
* All suspicious transactions whether or not made in cash and including, credits or debits into from any non-monetary account such as DEMAT account.

Such records are required to be maintained for a period of 10 years by such entities, from the date of transaction between the client and the entity. Apart from the maintenance of such records, they are also required to do a KYC process to verify the identity, address (current and permanent), and nature of business and financial status of the client.

* 1. Cable Television Network Rules, 1994

The Cable Television Network Rules, 1994 prohibit advertisement of gambling activities. However, as set out in Rule 7, the advertisement of games of skills, such as horse racing, rummy and bridge is not prohibited. Since the platform proposed by the Querist is that of gambling, they should not engage in cable advertisements where gambling is directly represented. Regardless, if the platform provides for a free-to-play system without any pay out, the same can be argued that it would not be gambling under the Indian laws.

* 1. Income Tax Act, 1961

The current taxation regime in India covers the gaming industry, both directly as well as indirectly, in terms of imposition of tax and the revenue generated from taxation of legalised and regulated gambling. The “tax on winnings from lotteries, crossword puzzle, races, card games, betting etc.” is levied under Section 115BB of the Income Tax Act, 1961. Further, under Section 194B of the Act, Tax Deduction at Source is also required to be done.

* 1. Central Goods and Services Tax Act, 2017

Under the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) all actionable claims in the form of chance to win in betting, gambling or horse racing in race club, being in the nature of services are taxable under the Goods and Services Tax. As such, Integrated Goods and Services Tax would also apply for cross border provision of service, which becomes relevant when online services are being provided.

1. **STATE LEGISLATIONS**
   1. Telangana Gaming Act, 1974

The Telangana Gaming Act defined gaming under section 2(2) as “Gaming means playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta or online gaming for money or any other stakes and lucky board and wagering or betting except where such wagering or betting takes place on a horse-race on the day it is to be run and in an enclosure which the stewards controlling the horse-race have with the sanction of the government set apart for the purpose through a licensed book maker, but does not include a lottery”

The Act further provides for following explanation to the concept wagering and betting:

* + collection or soliciting of bets;
  + the receipt or distribution of winnings or prizes in money or otherwise in respect of any wager or bet;
  + any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution;
  + any act of risking money, or otherwise on the unknown result of an event including on a game of skill; and
  + any action specified in sub-clause (i) to (iv) varied out directly or indirectly by the players playing any game or by any third parties.

Further, as per section 8 of the Telangana State Gaming Act, the act of opening, keeping, operating, using or permitting for usage any common gaming house or online gaming or conducting or assisting in conducting the business of any common gaming house or advancing or furnishing money for gaming therein, is punishable in the Telangana State with an imprisonment of 1 to 2 years and a maximum fine of ten thousand rupees.

The Telangana State Gaming (Amendment) Ordinance 2017, brought forth new restrictions on the gaming industry of Telangana. The Ordinance provided explanation for game of skill as “a skill game is a game which is totally based on skill and ability of the person and not otherwise, A game which depends partly on skill and partly on luck or chance cannot be termed as a skill game, Rummy is not a skill game as it is involved partly skill and partly luck or chance”. This interpretation of “mere skill” contradicted the interpretations given by the Supreme Court. Various online Rummy websites had challenged the Ordinance before the High Court of Telegana, in the matter of *Auth Rep, Head Infotech (India) Pvt. Ltd. Hyderabad & Anr. v. Chief Secy, State of Telangana, Hyderabad & Ors.[[11]](#footnote-11)*, wherein the Hon’ble High Court directed the State of Telangana to not seize the Rummy Operators plant and machinery located in Hyderabad or seal their premises on the condition that the Operators would block access to their rummy portals within the State of Telangana.

However, before the final adjudication in the matter, the State of Telangana had passed the Telangana Gaming (Amendment) Act, 2017 whereby removing the explanations and the exemption of “mere skill” and further amending the definition of wagering and betting to include “any act of risking money, or otherwise on the unknown result of an event including a game of skill”. Accordingly, all games of both skill and chance were banned in the State of Telangana.

One can argue that gaming in any form attains the nature of gambling or betting only when a stake is involved in the game, regardless of the game being predominantly skill based or chance based. Therefore, mere playing games without the involvement of any stake might not make the said game illegal. Thus, games can be allowed to operate, if there is no option of purchase of in-game currency or there are no prize or winnings.

* 1. Sikkim Online Gaming (Regulation) Act, 2008

The Sikkim Online Gaming (Regulation) Act, 2008 (“Sikkim Act”) provides for three important definitions,

* + Section 2(d) of the Sikkim Act defines Online Games – means all or any games of chance or a combination of skill and chance, including but not limited to Poker, Roulette, blackjack or any game, played with cards, dice or by means of any machine or instrument for money or money’s worth, as may be prescribed from time to time;
  + Section 2(k) of the Sikkim Act defines Online Gaming – means any gaming, where any player enters or may enter the game or takes or may take any step in the game or acquires or may acquire a chance in any lottery, by means of a telecommunication device including the negotiating or receiving of any bet by means of a telecommunication device;
  + Section 2(p) of the Sikkim Act defines Sports Gaming – means gaming involving the prediction of the results of sporting events and placing a bet on the outcome, in part or in whole, of such sporting event.

The Sikkim Act mandates a license for online gaming which may be applied for by writing to the State Government in the prescribed form. These licenses are valid for a period of 5 years which can be renewed by making an application for the same.

It is pertinent to note that by way of an Amendment in 2015 of the Sikkim Act, the State Government had curtailed its operations by restricting the licenses issued under it only to the premises of gaming parlours having physical presence within the geographical boundaries of the State through intranet gaming terminals.

* 1. Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016

The Nagaland Act has become the only legislation to define game of skill in Section 2(3) being;

*“any game including all such games where there is a 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 analyses, or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen”.*

Upon perusal of above said definition that, it clearly establishes that the State government while enacting the said provision had took into consideration the judicial precedents on gaming. Apart from being a highly inclusive definition, the government has also provided for a schedule in which it laid out the specific games that can be considered such as, poker, rummy, virtual football, virtual cricket etc.

The licensing regime, much like the Sikkim Act has been brought forth under this Nagaland Act for conducting games of skill online through any entity, that is substantially held or controlled in India. Further, the license is only granted if such entity has no interest in gambling activities, whether in India or abroad.

1. **INTERNATIONAL PERSPECTIVE**

We have analysed the laws of different countries, primarily in Europe to provide a comparative perspective with the Indian laws.

* 1. United Kingdom

Gambling is defined under Section 3 of the Gambling Act, 2005 to include gaming, betting and participating in a lottery, which are defined under sections 6, 9, 14 and 15 of the Act.

Section 6 of the Act defines Gaming as *‘playing a game of chance for a prize’ and includes ‘game that involves a game that involves both an element of chance and an element of skill, a game that involves an element of chance that can be eliminated by superlative skill, and a game that is presented as involving an element of chance, but does not include a sport.’*

The Act covers a wide range of practices associated with betting and gambling, such as paying an individual to deliberately lose a game and to profit from a bet placed on the result of the game. Betting is defined under section 9 of the Act to mean *‘making or accepting a bet on the outcome of a race, competition or other event or process, the likelihood of anything occurring or not occurring, or whether anything is or is not true.’*

Section 65 of the Act authorizes the Gambling Commission established under Section 20 of the Act to provide Operating Licenses to operate a casino, facilities for playing bingo, facilities for betting other than pool betting, facilities for pool betting, to act as an intermediary, to make gaming machines available for use in adult gaming centres, family entertainment centres, to manufacture, supply, install, adapt, maintain or repair a gaming machine or gambling software or to promote a lottery. The operators also have to pay a Remote Gaming Duty to finance the working of the Commission.

* 1. France

The Code de la sécuritéintérieure (“**Code**”) regulate gambling and betting activities. The Code is based on the principle that games of chance, being, lotteries, gambling and casinos are prohibited unless the operator can benefit from an exception to the law, or has obtained an authorization and approval from the appropriate authority. Betting is illegal in France, with the exception of horse-racing and operators approved by the regulatory authority for horse racing and sports betting online. Poker and other games are allowed to operate in offline casinos however; all online activities are regulated through licenses. Owing to increase in revenue to the country from these activities, the restrictions on such activities has been reduced to a certain extent.

* 1. United States of America

In the United States of America, gambling is regulated at Local, State and Federal level for both online and office gambling,

The Federal Wire Act penalizes placing bets and wagering using a wire communication facility for the transmission in interstate or foreign commerce domain.

In a judgment in *Thompson v MasterCard International et al*[[12]](#footnote-12)**,** the Court of Appeal of the Fifth Circuit held that Act regulated and penalized only online betting for sports and distinguished online casino games by holding them to be legal.

However, the Supreme Court of the United States of America in a judgment in *Philip D. Murphy, Governor of New Jersey v National Collegiate Athletic Association etc[[13]](#footnote-13).*declared the Professional and Amateur Sports Protection Act, 1992 to be unconstitutional as the scheme of the said Act was anti-commandeering in nature and further opined that the States can only regulate the actions of the individual directly and prohibited the States from regulating sports gambling.

However, online gambling in the United States is regulated by the Unlawful Internet Gambling Act which prohibits person engaged in business of betting or wagering to knowingly accept credit, electronic fund transfer, cheque, draft, etc. in relation to unlawful internet gambling, and violations of the provisions under the Act is punishable by either imprisonment or fine or both. This Act prohibits online betting by targeting the intermediaries such as banks and financial groups to process payments made in regard to gambling or betting. The Act explicitly excludes a few markets viz. certain fantasy sports bets and existing legal intrastate and inter-tribal gaming. Other federal legislations such as Racketeer Influences and Corrupt Organization Act, 1970 and Money Laundering enactments also apply over such activities to form a cohesive system of regulation at the Federal level of government.

1. **ANALYSIS OF LEGAL POSITION**

Based on the aforesaid understanding, the replies to the questions raised by the Querist are as under:

1. **Would the model of Querist be deemed legal when there is no price paid for participation and no prize is given to the participants for winning either?**

As per the accepted definition of gambling in the courts of India, there are three elements for any gamble; (i) payment of consideration, (ii) element of chance and (iii) a reward. The Hon’ble Calcutta High Court in the case of *Bimalendu De v. Union of India[[14]](#footnote-14)* referred to the definition of ‘gambling’ in the Black’s Law Dictionary, and stated that *“Making a bet occurs when there is a chance for profit if a player is skilful and lucky… A play for value against an uncertain event in the hope of gaining something of value… It involves not only chance, but a hope of gaining beyond the amount played. Gambling consists of a consideration, an element of chance, and a reward… The elements of gambling are payment of a price for a chance to win a prize.”*

However, in the proposed platform of the Querist, the users are participating in a free-to-play gaming platform where they gain Coins from watching advertisement videos or downloading sponsored applications. Thus there is no consideration involved on the said platform, thereby, making it legal to operate.

1. **Does the business model attract any Gambling or Betting laws under the Union or State list or any other laws which could deem the activities of the Querist platform an offence? Suggestions to finetune the model to make it 100% legal.**

In India, gambling and betting in all forms is illegal under the Central and State legislations except in a few States, where such services are regulated by the State authorities in a restricted manner. The proposed model of the Querist would however, not attract the provisions of any gambling legislations owing to the fact that there is neither any payment for participation nor any payout for winning either.

Please refer to answer in query (a). The Querist should make sure that appropriate provisions are made in the terms and conditions of the platform to not attract any liability as well. Trading of Coins or accounts should be prohibited outside of the platform for any actual currency. Further, the Querist should assure that the users are 18 years of age or above in order to further limit their liabilities. The Querist should also ensure that they do not display any such advertisements which might deprave or corrupt the users or viewers, who are likely to read, see or hear the matter contained or embodied in it, as the same shall be punishable under Section 67 of the Information Technology Act, 2000.

Apart from the same, the platform of the Querist as it is proposed to be, without any payment or pay-out, would not form any offence under the laws of India with respect to gambling.

1. **Analysis of similar case laws in India, Europe, USA etc.**

Gambling and Betting across the European Union is regulated by the European Gaming and Betting Association (EGBA), which is a Brussel based body representing the leading online gaming and betting operators established, licensed and regulated within the European Union. However, the laws regulating gambling and betting varies from country to country in the European Union. While the United Kingdom, France, Spain and Italy have much liberal laws that allows operators to provided services related to gambling and betting in sports events under licenses, countries like Portugal, Ireland, Austria follow a regulated format for gambling and betting activities in their own countries.

However, the European Court of Justice in a judgment in *Carmen Media Group Ltd v. Land Schleswig-Holstein and Innenminster des Landes Schleswig-Holstein[[15]](#footnote-15)*, has made a rather regressive observing that *“…the characteristics specific to the offer of games of chance by the internet may prove to be a source of risks of a different kind and a greater order in the area of consumer protection, particularly in relation to young persons and those with a propensity for gambling or likely to develop such a propensity, in comparison with traditional markets for such games. Apart from the lack of direct contact between the consumer and the operator… the particular ease and the permanence of access to games offered over the internet and the potentially high volume and frequency of such an international offer, in an environment which is moreover characterised by isolation of the player, anonymity and an absence of social control, constitute so many factors likely to foster the development of gambling addiction and the related squandering of money, and thus likely to increase the negative social and moral consequences attaching thereto, as underlined by consistent case-law.”*

As opposed to the structure of legislations in the European countries, which are liberal in nature, the laws in relation to gambling and betting in United States are rather stringent in nature and such activities are regulated at three levels – State, Local and Federal.

Activities in relation to online gambling and payments made thereunder in the United States are largely regulated by the Unlawful Internet Gambling Act, which prohibits person engaged in business of betting or wagering to knowingly accept credit, electronic fund transfer, cheque, draft, etc. in relation to unlawful internet gambling, and violations of the provisions under the Act is punishable by either imprisonment or fine or both. This Act prohibits online betting by targeting the intermediaries such as banks and financial groups to process payments made in regard to gambling or betting. The Act explicitly excludes a few markets viz. certain fantasy sports bets and existing legal intrastate and inter-tribal gaming. Further, most states have their own laws for recovery of loss from gambling (wherever gambling is illegal), and majority of the cases are filed under the said provision.

The United States Court of Appeals for the 4th Circuit in the case of Mia Mason v. Machine Zone, Inc[[16]](#footnote-16) dealt with the aspect of social gaming. The “Game of War” platform of Machine Zone provided players with an option to purchase virtual gold at prices ranging from USD $4.99 to $99.999. These virtual coins could be used by players in a virtual casino (*spin a wheel*) to win various prizes. The plaintiff approached the court under the Criminal Code for recovery of gambling loss. The court disagreed with the contention of the plaintiff that social games such as this were gambling. The court held:

“  *Instead of losing money in the virtual casino, Mason paid money to obtain virtual gold, which she later used to accrue virtual chips, all while playing Game of War on her mobile device. Later, when Mason participated in the virtual casino, she used only virtual chips, which are not redeemable for money. Thus, when Mason “spun” the virtual wheel, there was no money at stake. Rather, as a result of that action, she only could receive either virtual gold, which she concedes does not amount to money, or she could receive other virtual resources that likewise were not money or redeemable for money. Accordingly, based on the manner in which the Game of War casino operates, Mason could not have lost or won money as a result of her participation in that virtual activity.*

”

In another matter of Soto et al v. Sky Union, LLC[[17]](#footnote-17), the District Court of 7th Circuit of Illinois held that the prize element of the gambling statutes cannot be satisfied by in-game items with no stated value.

It should be noted that unlike India, the state laws of USA provide for recovery of loss from gambling and in doing so consider whether there is a “thing of value” involved. For things to be of value, some states include “chance to play further” and therefore, in-game currency being provided as an award is at times considered to be of value (*Kater v. Churchill Downs[[18]](#footnote-18)).* Regardless, most countries do not object to any free-to-play platform which has no pay-out in any circumstance.

1. **What is the GST applicability in case of purchase of Coins or other elements in the betting platform?**

Under the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) all actionable claims in the form of chance to win in betting, gambling or horse racing in race club, being in the nature of services are taxable under the Goods and Services Tax. As such, Integrated Goods and Services Tax would also apply for cross border provision of service, which becomes relevant when online services are being provided.

Further, as per Rule 31A of the Central Goods and Services Tax Rules 2017, value of supply of actionable claim in the form of chance to win in betting, gambling or horse racing shall be 100% of the face value of the bet or the amount paid into the totalisator.

However, since the Coins used on the platform are free of cost, there may not be any GST implication on the said service.

1. **Can transfer of the Coins between Players/Friend/Family by way of gift be allowed on the platform?**

There is no law in India that regulates the in-game currencies and thus, it would be the discretion of the courts whether in-game currencies would be considered “of value” or not. However, as long as the Querist does not charge anything (real money or in-game currency) for transfer of Coins from one user to the other, the same may not attract any regulatory restrictions. Considering the above, it can be assumed that gifting of Coins which are accrued to a participant without any consideration may be allowed.

As stated above, the Querist should ensure that there is no sale or purchase of Coins on the platform and/or through any third parties as well. Currently, selling of accounts for free-to-play games is done through third party websites with legal tender currencies. It is advisable to disallow the same through the terms and conditions of the platform to ensure that no liability arises from the said activities of the users.

1. **SCOPE OF NOTE**
   1. This note is with respect to Indian law only. By giving this note, we do not assume any obligation to notify you of future changes in law which may affect the opinions expressed in this note, or otherwise to update this opinion in any respect.
   2. We express no opinion in this note on the laws of any other jurisdiction.
   3. We express no opinion on matters of fact.
2. **WHO MAY RELY ON THE NOTE:**
   1. This note is prepared for the Querist solely for their own benefit in relation to the transactions contemplated by Querist in the course of its business operations. It may be relied upon by the Querist’s Addressees’ successors and assigns but solely on the basis that our liability is in no circumstances increased as a result of such reliance. It may not be disclosed to or relied on by any other person, or used for any other purpose without our prior written consent.
   2. This note may be disclosed only on a non-reliance basis to the Addressees’ professional advisers, auditors, insurers and regulators.
   3. Please revert to us if there are any other issues that you wish for us to comment on or elaborate regarding the above.

Yours faithfully,

**(Siddharth Mahajan)**

Advocate (D/1618/2003)

Partner

Athena Legal

1. AIR 2001 Cal 30 [↑](#footnote-ref-1)
2. AIR 1995 SC 1770 [↑](#footnote-ref-2)
3. AIR 1915 Mad 164 [↑](#footnote-ref-3)
4. AIR 1957 SC 628 [↑](#footnote-ref-4)
5. AIR 1968 SC 825 [↑](#footnote-ref-5)
6. AIR 1996 SC 1153 [↑](#footnote-ref-6)
7. 2017 CriLJ 3827 [↑](#footnote-ref-7)
8. AIR 1957 SC 699 [↑](#footnote-ref-8)
9. W.P.(C) 5661/2019 [↑](#footnote-ref-9)
10. 1986 SCR (2) 278 [↑](#footnote-ref-10)
11. WPMP 24819/2017 [↑](#footnote-ref-11)
12. 313 F.3d 257 [↑](#footnote-ref-12)
13. 584 US\_(2018) [↑](#footnote-ref-13)
14. AIR 2001 Cal 30 [↑](#footnote-ref-14)
15. Case C-46/08 [↑](#footnote-ref-15)
16. 851 F.3d 315 [↑](#footnote-ref-16)
17. 159 F. Supp. 3d 871 [↑](#footnote-ref-17)
18. 886 F.3d 784 [↑](#footnote-ref-18)