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# MADRAS HIGH COURT STRIKES DOWN TN BAN ON ONLINE RUMMY AND OTHER GAMES.

**Author : G. Natarajan**

The difference between a “game of skill” and a “game of chance” has been judicially interpreted several times, while the former is permissive, the latter is pernicious and frowned upon. What was before the Madras High Court on the one hand is the right to freedom bestowed upon the individuals to live their life in their own way and on the other hand, the freedom to carry on any lawful business, interlaced with notions of morality, politics and appeasement.

It all started with few persons who lost money by playing online games taking their own lives, leading to widespread resentment against such online games and the need for regulating or even prohibiting them. Even the Madras High Court, in one of the cases[1] noted as below.

51. Therefore, this Court hopes and trusts that this Government shall take note of the present alarming situation and pass suitable legislation, thereby, regulating and controlling such online gaming through license, of course, keeping in mind the law of the land as well as the judicial precedents in this regard.

In a State, where always sentiments outweigh senses in all spheres, the Government has introduced an Ordinance in November 2020, which was later enacted as The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 by which the Tamil Nadu Gaming Act 1930 was amended substantially. Prior to such amendment, the Act prohibited various games of chance, enumerated in the Act and Section 11 of the Act specifically stated that these prohibitions shall not apply to pure games of skill. The newly introduced Section 3 A of the Act, seeks to prohibit any person from wagering or betting in cyberspace, by playing any games like rummy, poker or any other game and also prohibit any person from organising such games or facilitate such playing. The age old distinction between “game of skill” and “game of chance” was obliterated. The scope of Section 11 has been turned topsy turvy and it is laid down that even if a game of skill is played for wager, bet, money or other stake the vice of the Act shall apply. Mind you, even the Olympic glory P.V. Sindhu can be booked under this amended Act, if she happens to live, in the State of Tamil Nadu.

The above legislative action was assailed as being blanket, disproportionate and excessive. It was argued that Entry 34 of List II of 7th Schedule to the Constitution grants legislative power to the States on “Betting and gambling” and is what is not judicially laid down as not amounting to betting and gambling, if sought to be brought under the ambit of the said Entry, it amounts to overarching, it was argued.

Naturally, when such over reach is so manifest, the Court had no choice except to strike down the amendments as being ultra vires the Constitutional guarantees of freedom. The Court also castigated the extreme legislative measure as an attempt to play to the gallery during election season and the unanimity with which it was passed is nothing but optics before the elections.

It is hoped that the Government will once again approach the issue in a more pragmatic way by balancing the competing interests.

To conclude, in a rights conscious society, if morality is sought to be enforced from outside, the fate is certain. Rather, the State and all its stakeholders should endeavour to develop a societal milieu, where morality is seeded, evolved and nurtured naturally, so that there is no need to guard it externally.

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