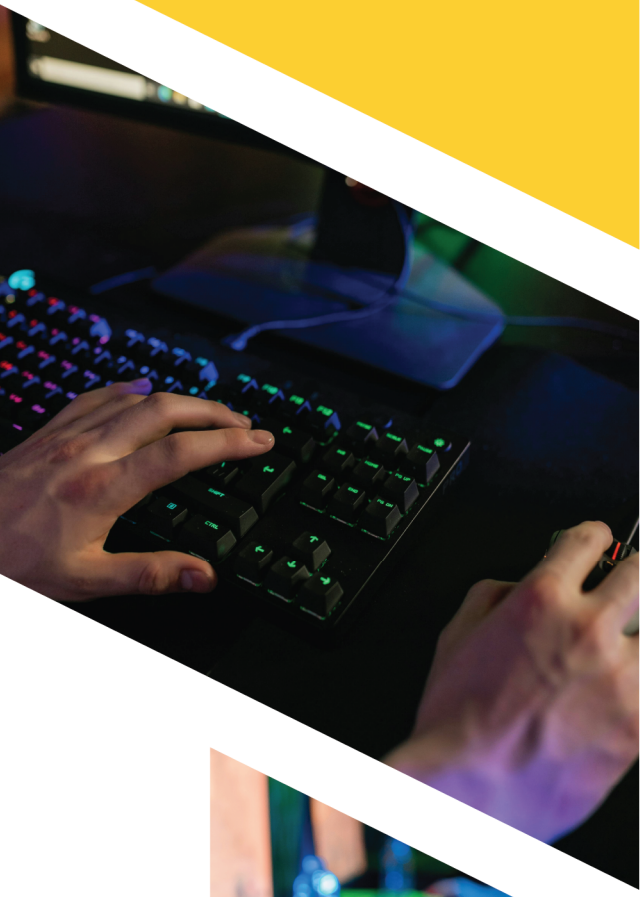

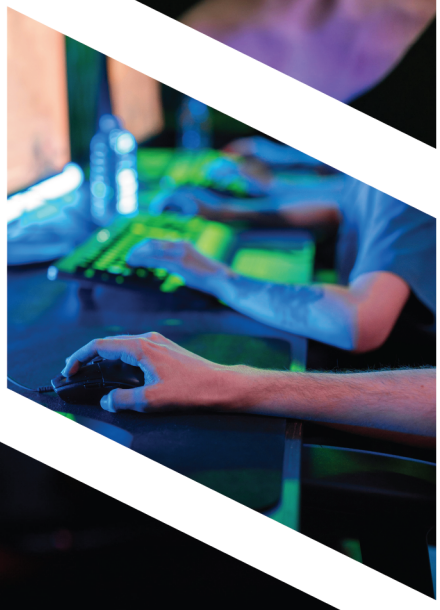

The Question of Skill in Opinion Trading

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Index

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Dr. Justice Balbir Singh Chauhan retired as a justice of the Supreme Court of India, and was former Chief Justice of the Odisha High Court. He also served as Chairman of the 21st Law Commission of India, and of the Cauvery Water Dispute Tribunal.

About

About Evam Law & Policy

Evam Law & Policy is a boutique policy research and advisory firm based in New Delhi, India with a focus on tackling policy issues raised by emerging technologies.

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Introduction

The digital world that we now inhabit has given rise to a number of innovative new products, services, and avenues for entertainment that were scarcely imaginable even 20 years ago. Online gaming is one such innovation that has grown exponentially over the last decade, inextricably linked with the increase in the affordability of smartphones and internet data plans, a rise in the adoption of digital payments, and increased opportunities for digital users to earn monetary wins. As of 2023, the global online gaming market was valued at USD 87 billion, and is projected to grow to USD 230 billion by 2033.[1]

India is a keenly followed and sought after market within this larger global setting, bearing in mind the young demographic, the strong presence of a technical community, and the presence of an avid group of over 568 million gamers.[2] In 2023, the Indian online gaming market was valued at approximately USD 4 billion, and is projected to reach USD 7.6 billion by the end of 2028, growing at a Compounded Annual Growth Rate (CAGR) of 14.5% between 2023 and 2028, with Real Money Games (RMGs) accounting for over 80 percent of market share.[3]

In addition to its potential for economic growth, the online gaming sector is also poised to significantly boost job creation. Home to the second largest gamer community globally, India's online gaming sector is estimated to have employed, either directly or indirectly, a total of around 100,000 skilled professions in 2023 alone.[4] Between 2018 and 2023, the workforce in the sector has grown 20-fold, at a CAGR of 97 percent.[5] Given this pace of growth, it is also estimated that anywhere between 200,000 and 300,000 jobs could be further created in the near term.[6]

Online gaming platforms today do not simply offer digital versions of popular offline games like Go or Chess but also put significant resources in developing new, digitally native games like Fantasy Sports and Opinion Trading; a game becoming increasingly popular in India, and the subject of the present study.

The rise in popularity of such games, however, is a product of a more fundamental shift taking place within the global online gaming and sports industry as a whole, where technological advances

1 Yahoo Finance, Spherical Insights LLP, "Global Online Gaming Market Size by 2033." June 27, 2024. https://finance.yahoo.com/news/global-online-gaming-market-size-050000553.html.

2 India Brand Equity Foundation. "India's Gaming Market: A Thriving Industry Revolution," August 2024. https://www.ibef.org/blogs/india-s-thriving-gaming-market.

3 "Real Money Gaming Drives Revenue In India's Gaming Industry." Accessed February 4, 2025. https://inc42.com/buzz/real-money-gaming-key-revenue-driver-in-indias-gaming-industry-report/.

4 *The Indian Express*. "Online Gaming Employed 1 Lakh Skilled Professionals in 2023 in India." Accessed February 4, 2025. https://indianexpress.com/article/technology/gaming/online-gaming-india-employment-downloads-report-9236060/.

5 "India's Booming Online Gaming Industry | A Potential Powerhouse." Accessed February 4, 2025. https://www.primuspartners.in/reports/indias-booming-online-gaming-industry-a-potential-powerhouse.

6 India, PwC. "From Sunrise to Sunshine: The Contribution of Online Gaming to the Viksit Bharat Journey and India's Cultural Power," October 2024. https://www.pwc.in/assets/pdfs/online-gaming-to-the-viksit-bharat-journey-old.pdf.

in game design and development is being fuelled by greater utilisation of data engineering. It is these developments that have in turn given rise to not only more innovative and engaging, but also more nuanced and complex gameplay concepts and formats. As a result, the industry has become increasingly heterogeneous – slowly pushing the boundaries of how games, sports, and allied concepts such as 'skill' are conceived and understood, as well as how innovation takes place within the digital economy.

The unique format of online Fantasy Sports League (FSL) games is a case in point. In layering games on top of real-life sports, and thereby seamlessly integrating elements of real life events, active spectatorship, and competition that is determined by superior analysis of live-data insights, FSL game formats today have significantly expanded the paradigm for gaming. One could also look to Electronic Sports (eSports) i.e. organised competitive play of video games, which have come to challenge physical prowess as a prerequisite in sports, advancing instead the idea of 'virtual athletes' who succeed on the merit of their intellectual and reasoning skills. After a period of being excluded from professional sports tournaments on account of such non-traditional elements, today eSports is a celebrated category in global sports tournaments and an officially recognised sport in several jurisdictions including India.[7] Online Chess is yet another example which, unlike its exclusively two-player format in the physical world (1v1), is offered in a range of formats, including one where teams of two players play against each other in a 2v2 format.[8]

Such examples are illustrative of the small but significant shifts taking place within the larger gaming paradigm, making it a more heterogeneous space, and it is within this very paradigm that the phenomenon of opinion trading platforms in India can be best understood.

According to recent estimates, opinion trading platforms in India have already accumulated a user base of nearly 50 million gamers, with annual transaction values exceeding USD 6 billion and a collective funding of nearly USD 500 million from more than 35 leading global investors.[9] Given the revenue generation projections of USD 120 million for the financial year of 2024-25, such platforms are poised for significant growth in the near term.[10]

One major headwind in their growth story, however, is the uncertain regulatory landscape they are currently subject to. Games in India are regulated based on their classification as 'games of skill' or 'games of chance,' where games of chance are prohibited. In particular, there also appears to be significant uncertainty amongst policymakers and regulators about whether opinion trading is a game of skill or chance. Besides the case-to-case basis determination of games under India's regulatory framework, which creates legal uncertainty for specific games, the confusion about opinion trading can also be attributed to a lack of fundamental awareness about the inner workings of opinion trading platforms, and the absence of substantial legal and statistical literature in the public domain on such games.

This pocketbook endeavours to address the aforementioned gap in literature on the subject and help clarify the legal position on whether it is to be classified as a game of skill or a game of

7 Daniels, Tom. "Indian Esports Industry Welcomes Government Recognition of Esports." *Esports Insider* (blog), January 3, 2023. https://esportsinsider.com/2023/01/india-esports-industry-government.

8 Chess.com. "4 Player Chess - Chess Terms." Accessed February 9, 2025. https://www.chess.com/terms/4-player-chess.

9 The Indian Express. "New Game in Town: Opinion Trading Sees Surge in Users, Funding — under the Radar," December 23, 2024. https://indianexpress.com/article/business/new-game-in-town-opinion-trading-sees-surge-in-users-funding-under-the-radar-9736911/.

10 *Ibid*.

chance, and thereby clarify the applicability of various gaming laws to opinion trading platforms.

The pocketbook proceeds as follows. Chapter 1 offers an exploration of the fundamental characteristics of opinion trading and sheds light on the inner workings of opinion trading platforms, along with providing a historical and theoretical overview. Chapter 2 provides a data driven analysis of whether there exist elements of skill in opinion trading. Chapter 3 looks at Indian and international jurisprudence on games of skill versus chance and Chapter 4 studies whether opinion trading fulfils the prevailing legal tests for games of skill in India. Finally, the book offers concluding thoughts on the way forward for opinion trading platforms from a regulatory standpoint.

Chapter 1:
What is Opinion Trading?

Shashank Reddy, Shruti Mittal

Opinion trading, popularly known as 'prediction markets' outside India, refers to a market setting in which a large number of individuals trade on the probability of the occurrence of a real-world event. Such trades take place on platforms that primarily act as intermediaries, take a low fixed fee as a charge for making available their digital infrastructure, and impose certain boundary conditions on how such trades may take place. Consciously, the idea is kept simple: individuals hold opinions about something that is quite commonly seen in the news or around them and are encouraged to financially back such views, with fairly simple rules dictating the process as well as the payoffs.

Opinion trading platforms enable trading that is centred around a specific question or statement articulated to evaluate the occurrence of an event. Take for example, "Will political party A secure a minimum of 3 seats in the city-wide elections imminent in City B?," with the player having to choose either "Yes" or "No" as per their opinion. At first blush, this appears to be a simple binary poll and similar to betting or gambling. The gameplay however suggests they are more complicated than initial impressions.

At the heart of every question on an opinion trading platform is a contract with a predefined value (for example, 10 rupees) regarding the likelihood of a specific event happening. Each such event contract is composed of two opposite sides – Yes or No. Players can bid on either Yes or No with a price point that they believe to most accurately reflect their understanding of the *probability of the event in question happening,* with the correct side pocketing the entire contract value of 10 rupees. On an aggregate level, the prices of the Yes and No sides fluctuate in real-time depending on market forces, i.e. the number of users who are bidding on each side of the contract, which in turn is influenced by real time information about the event.

In the above example, if someone believes that there is a 60% probability of party A securing 3 seats, then they would attach a monetary price of Rs. 6 to the Yes side of the contract, however, they are only said to have completed that purchase when a corresponding individual looking to pay Rs 4 to purchase the event, under the conviction that there is only a 40% probability of the event not occurring. Upon such complementary positions being taken, the platform reflects a 'match' automatically, as determined by the algorithm, and without any interference in price determination by the platform. Depending on market forces of demand and supply and the balance of probabilities i.e. whether individuals are willing to pay either side of the prevailing price, prices continue to fluctuate, allowing individuals to determine for themselves the price at which they wish to enter the event or, alternatively, the price at which they wish to 'Exit' the event. This fluctuation continues till the event's outcome (here, the election results) materialises. This stage is called a 'settlement.' At any given point of time players can purchase multiple Yes / No contracts for the same question, if they so wish.

The prevailing gameplay format also provides users the option to exit their positions and therefore

profit by playing the market itself even before the actual event in question occurs or is completed, enabling multiple avenues for winning. For example, in the above example, if a player has bought the 'Yes' side of the contract for Rs. 6, but the market price of the 'Yes' side subsequently goes up to Rs. 8 due to new information becoming available (say a popular candidate drops out of the race) and market fluctuations, the player can sell his contract at Rs. 8 and pocket the difference of Rs. 2 as profit, even before the actual results of the elections are known. Users therefore must be constantly engaged to maximize their winnings, unlike in gambling. Further, unlike gambling, the odds of a particular event happening are not decided by the 'House,' as there is no 'House' in opinion trading. Neither does the user need to wait for the event to occur to realize his or her gain. Instead, the probability of an event occurring is determined by real-world public opinion and market sentiment.

The entire process of gameplay is best captured in the below flowchart:

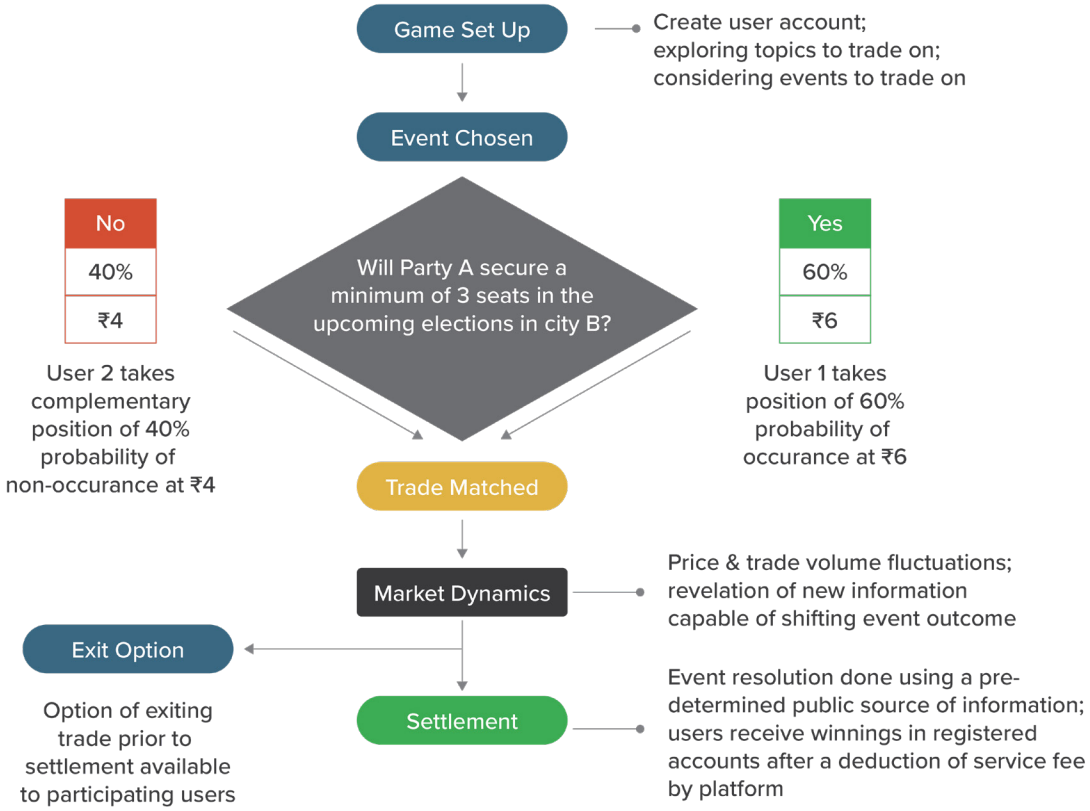

Figure 1: *A simplified depiction of the gameplay involved in opinion trading*

Prediction Markets: Historical & Global Context

Prediction markets, as opinion trading is called outside India, date back to at least the mid-1800s if not earlier, coming to the fore first in the United States and have long been a subject of deep academic interest. The fundamental idea underpinning prediction markets is what James Surowiecki called "The Wisdom of Crowds" in his seminal 2004 book with the same name.[11] Suroweicki argues

11 Surowiecki, James. "The Wisdom of Crowds" London: Abacus 264 (2005).

that this "wisdom" - measured as the statistical aggregate of the individual opinions of ordinary people - is more likely to predict future events accurately than individual experts. He argues that this is also true of vague questions such as "How many tennis balls can fit in a room"? that might require abstract answers, and that the combined intuition of a crowd answering such questions is almost always the closest approximation to the correct answer.

The observation and study of such "wisdom", dates back more than a 100 years, when Sir Francis Galton, a celebrated British statistician of his time and a cousin of Charles Darwin, while running some statistical tests on a whim during a regional livestock auction, unexpectedly found that in a competition to judge the weight of an ox, the average guess of participants was almost exactly the actual weight of the animal.[12] The core mechanism to measure these opinions in prediction markets originates from two seminal essays written in the early 1900s. The first, is 'Economic Calculation in the Socialist Commonwealth' by Ludwig von Mises published in 1920,[13] and the second ís 'The Use of Knowledge in Society' by Friedrich Hayek published in 1945[14] - one of the most important economic texts of the 20th century. Both these papers seek to answer one fundamental question: "How does one effectively aggregate disparate pieces of information that are spread among many different individuals, information that in its totality is needed to solve a problem?"[15]

Their answer, particularly underlined by Hayek, is that *market prices* are the means through which those disparate pieces of information are aggregated. "The mere fact that there is one price for any commodity…brings about the solution which…might have been arrived at by one single mind possessing all the information which is, in fact, dispersed among all the people involved in the process."[16] Additionally, they have argued that the market works even when people have limited knowledge about their surrounding environment and the people with whom they are transacting. Suroweicki too argues that attaching a price to one's opinion, i.e. providing *some* financial incentive to back an opinion, incentivizes better decision and opinion-making abilities.[17]

This mechanism is complemented by the Efficient Market Hypothesis, which states that the current market price of an asset reflects all available information about the asset. This means that at any given point in time, the price of an asset *accurately* incorporates all current information, making future movement in the asset's price dependent on new information entirely. Expanding on this hypothesis further is the idea of a "random walk." The logic of the random walk is that if information flows without impediments and stock prices immediately reflect that information, then tomorrow's price changes will reflect only tomorrow's news and are independent of today's price changes. But since news is unpredictable, then price changes are also unpredictable.[18] Consequently, prices fully reflect all known information, and even uninformed investors buying a diversified portfolio at market prices will obtain a rate of return as generous as that achieved by the experts. Thus "[i]n an efficient capital market, asset prices reflect all relevant information and thus provide

12 *Ibid*.

13 Von Mises, Ludwig. *Economic Calculation in the Socialist Commonwealth*. Ludwig von Mises Institute, 1990.

14 Hayek, Friedrich August. "The Use of Knowledge in Society." In *Modern Understandings of Liberty and Property*, 27–38. Routledge, 2013. https://api.taylorfrancis.com/content/chapters/edit/download?identifierName=doi&identifierValue=10.4324/9781315053844-2&type=chapter pdf.

15 Yeh, Puong Fei. "Using Prediction Markets to Enhance US Intelligence Capabilities." *Studies in Intelligence* 50, no. 4 (2006). https://www.cia.gov/resources/csi/static/Prediction-Markets-Enhance-Intel.pdf.

16 *Supra* note 14.

17 *Supra* note 11.

18 *Supra* note 15.

the best prediction of future events given the current information."[19]

Several academic studies have sought to delve deeper into these theories by putting them into practice, particularly for economic and political forecasting. The most famous of these is the Iowa Electronic Markets (IEM) project,[20] founded in 1988 at the University of Iowa to predict the outcomes of elections, with a focus on domestic American elections. Significantly, IEM provides a marketplace for players to trade in contracts on election results in the same manner as how opinion trading platforms in India do. Buyers can buy or sell opposite sides of an event contract asking for example "Will Donald Trump Run for 3rd Term?" by attaching a specific price to them. The continuous buying and selling of these contracts results in the emergence of a market price that reflects the broad probability of the event in question happening as determined by the market of players. Once the event in question happens, one can go back to compare how well the market price of a contract reflects the probability of the actual occurrence. As Suroweicki notes, in 49 different elections between 1988 and 2000, not only did IEM outperform major standard polls such as Gallup, but its forecasts were off by just 1.37% in Presidential elections.[21]

The success of IEM led to the increasing adoption of prediction markets across sectors for business and policy purposes. The Hollywood Stock Exchange ("HSX"), for example, allows people to trade in event contracts related to film business-specific outcomes such as box-office returns and winners of the Oscars.[22] Over the years, HSX's forecasts, determined by the price of the contracts on its platform, have correctly predicted Oscar nominees and winners, often with a 100% strike rate, like during the 2000 Oscars race, when its forecasts accurately picked all the eventual winners in the 6 major awards categories. Several follow-up studies, including one by scholars at Harvard Business School, suggest that HSX's forecasts are the most reliable indicators of the box office performance of a movie, better than any other expert predictions.[23]

Google has also been using prediction markets for assessing "product launch dates, new office openings, and other things of strategic importance."[24] The United States military, through the Defense Advanced Research Project Agency (DARPA), began testing whether prediction markets could be used to improve upon existing approaches to preparing strategic intelligence, through the Future Markets Applied to Prediction (FutureMAP) program.[25] While this program was shut down in 2003 under Congressional pressure, several intelligence and academic experts have subsequently called to restart the program in light of its potential benefits.[26]

Prediction markets can also serve as risk management tools, to hedge against uncertain events and potential risks arising from such events. For businesses and investors specifically, investing in prediction markets would allow them to hedge any potential losses in the financial markets.

Growing academic interest in the field has also led to the creation of the Journal of Prediction

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19 Rhode, Paul W., and Koleman S. Strumpf. "Historical Presidential Betting Markets." *Journal of Economic Perspectives* 18, no. 2 (2004): 127–42.

20 "IEM - Iowa Electronic Markets." Accessed March 15, 2025. https://iem.uiowa.edu/iem/.

21 *Supra* note 11.

22 "The Entertainment Market - Box Office Futures | HSX.Com." Accessed March 15, 2025. https://www.hsx.com/.

23 Elberse, Anita, "How Markets Help Marketers", *Harvard Business Review Magazine*, September 2005.

24 Schwarz, Dan, "The Death and Life of Prediction Markets at Google", *Asterisk Magazine*, November 2024.

25 *Supra* note 15.

26 *See* Hanson, Robin, "The Policy Analysis Market: A Thwarted Experiment in the Use of Prediction Markets for Policy Analysis", (2007); *Supra* note 15.

Markets,[27] a peer reviewed journal that captures the latest studies and trends in prediction markets from across the world.

Over the last decade, several platforms have arisen to make prediction markets more mainstream and commercially viable by enabling any individual to participate. Kalshi, for example, is a prediction markets platform that allows individuals and institutions to place trades on the outcomes of a variety of future events from sports and weather to politics.[28] Trading on the platform is similar to the format used by opinion trading platforms in India mentioned above, where players buy opposite sides of a binary question regarding the possibility of a future event happening. Kalshi is regulated in the United States by the Commodities Futures Trade Commission (CFTC) and has raised upwards of USD 100 million thus far. Kalshi has also begun offering its contracts via traditional brokerages, allowing individuals to purchase them in the same way they might purchase stocks, highlighting its increasing integration with American financial markets.[29] Polymarket is another global platform that allows players to trade in contracts related to the probabilities of real-world events occurring.[30] Interestingly, market prices on both Kalshi and Polymarket showed a greater probability of Donald Trump winning the 2024 US Presidential elections long before standard opinion polls did.[31] Robinhood, a leading American stock trading platform has also started offering investment opportunities in prediction markets alongside traditional financial investments for individual investors.[32]

Prediction markets therefore have a long-established presence outside India, with considerable theoretical backing, academic, and commercial interest. In India however, it is only within the last 5 years that platforms such as Probo and MPL Opinio have begun offering these markets.

27 "The Journal of Prediction Markets." Accessed March 15, 2025. https://www.ubplj.org/index.php/jpm.

28 "Kalshi - Prediction Market for Trading Event Contracts" Accessed March 15, 2025. https://kalshi.com/.

29 "Kalshi, an Online Prediction Market, Will Open Up to Brokerages - The New York Times." Accessed March 15, 2025. https://www.nytimes.com/2025/01/31/business/dealbook/kalshi-prediction-market-brokerages.html.

30 Polymarket. "Polymarket | The World's Largest Prediction Market." Accessed March 15, 2025. https://polymarket.com/.

31 Hoover, Amanda, "Polymarket Predicted Trump's Win. Now Comes the Hard Part" *Business Insider*, Accessed March 15, 2025. https://www.businessinsider.com/polymarket-kalshi-trump-victory-future-prediction-markets-2024-11.

32 Saini, Manya & Nishant, Niket. "Robinhood taps into event contracts to launch prediction markets hub". *Reuters*, March 17, 2025.
https://www.reuters.com/business/finance/robinhood-expands-betting-footprint-with-prediction-markets-launch-2025-03-17/

Chapter 2:
Skill in Opinion Trading: Data Analysis

Dr. Saptarshi Mukherjee, Shubham Kumar

In online games, 'skill' refers to the player's ability to significantly influence the game's outcome, in contrast to games of chance, where the result is beyond the player's control and dependent on external random factors. Globally, and in India, courts have recognised this distinction through the *predominance test*, which evaluates whether skill or chance predominantly determines a game's result (*State of Bombay v. R.M.D. Chamarbaugwala, 1957 AIR 699*). This becomes particularly important in games that involve both elements, necessitating a careful inquiry into whether skill outweighs chance in practice.

Given opinion trading's gameplay, a basic question that needs to be answered is whether "winning" within the context of the game is determined by a player's skill or pure chance. Very few games, offline or online, are pure games of chance or skill. Statistically speaking if the skill element in coin toss (a pure game of chance) were to be given a value of 0 and the skill element in chess (as close to a pure game of skill as one can get) were to be 1, all games would exist in a spectrum between 0 and 1 as there is always some element of chance determining gameplay or winning. However, the closer they get to 1, the more skill predominates over chance.

Early evidence from established prediction markets and analogous platforms underscores that informed players can gain an edge. For instance, prediction markets have a track record of accurately forecasting events by aggregating knowledgeable opinions – often outperforming individual experts or polls.[33] This suggests that participants' skills in information analysis and interpretation translate into better-than-chance outcomes. In fantasy sports (a game already adjudicated to be skill-based) which is closely related to opinion trading games, studies have found that *experienced, well-informed players consistently beat casual players*.[34] One analysis noted some players persistently outperformed others over time – a pattern unlikely under pure chance.[35] Opinion trading similarly rewards skillful play. A user who diligently follows news, studies statistical models, or applies domain expertise (for example, a politics enthusiast predicting elections or an economist forecasting markets) is more likely to succeed than one who trades arbitrarily.

The quantification of skill in traditional games is relatively straightforward as the structure of gameplay, player actions and available information are tightly controlled. In the example of card games, the probability estimation of every possible outcome such as a straight or a flush is an exercise in combinatorics and its complexity remains within the domain of arithmetic calculations. In contrast, opinion trading games or prediction markets involve dynamic, uncertain, and decentralized

33 Atanasov, Pavel & Rescober, Phillip & Stone, Eric & Swift, Samuel & Servan-Schreiber, Emile & Tetlock, Philip & Ungar, Lyle & Mellers, Barb, "Distilling the Wisdom of Crowds: Prediction Markets vs. Prediction Polls", *Management Science*. 63 (2017).

34 Misra, Vishal, Devavrat Shah, and Sudarsan VS Ranganathan. "Is It Luck or Skill: Establishing Role of Skill in Mutual Fund Management and Fantasy Sports." *Massachusetts Institute of Technology*, 2020. https://fifs.in/wp-content/uploads/2022/03/MIT-Columbia-Report.pdf.

35 *Ibid.*

environments that pose significant challenges for any skill assessment. The large number of variables involved in analysis of events due to the inherent stochastic nature of the events coupled with a large number of actions and/or strategies that users can incorporate in their gameplay makes the skill quantification of opinion trading games a serious challenge.

Unlike games like poker, where the probability space is bounded, prediction markets feature evolving, often non-quantifiable uncertainties. The complex interdependence of variables renders deterministic prediction impossible, requiring players to engage in probabilistic reasoning under uncertainty—a higher-order cognitive task that goes beyond arithmetic computation.

Consider the example of an event titled "Will Manchester City win the premier league in 2024-25 season?". A large number of game-related variables will influence the outcome of this event such as the strength of the team, strength of opposition in this season, if players are able to stay healthy or if they succumb to injuries and more. Analysis of such variables, while helping in the direction of making informed guesses and claims about the outcome, still remain incomplete. One also needs to consider external factors that play a role in the outcome of such events. Such variables that can affect outcomes are environmental, for example, the weather conditions, or sentiment related variables such as the morale of the team or attitude of fans towards their teams, many of which are hard to quantify.

The nature of the event itself, such as the length of the event, can also lead to a difference in analysis and strategy. We can take for example, another event, titled "Will Manchester City win tonight's match against Arsenal?". Unlike the last example, this event deals with a shorter time horizon and in-game events would need to be followed meticulously to update beliefs and positions by players. Even in the case of starting with equal odds, factors such as conceding an early goal may severely shift the outcome odds, arguably more than it would in the previous longer-horizon based event. In events of such nature, the heightened volatility in prices calls for a higher degree of monitoring and belief updating, illustrating that the optimality of strategies is dependent on a myriad of factors and no one strategy can win it all.

The use of correct strategies at the optimal time requires a vast understanding of the variables that impact an event, the understanding of market's reactions as well as the inherent uncertainties of the event all of which relies upon skill and experience.

While the ability to predict the final outcomes provides a strong advantage in winning in opinion trading games, it is reductive to look at opinion trading games solely as outcome determination contests. The events are largely stochastic (probabilistic), which implies that while statistical analysis can provide insight into likeliness of the occurrence of events, the correct prediction cannot always be made with certainty even with perfect information. Winning then relies on skilled trading behaviors, such as identifying market inefficiencies, timing exits, and risk management — activities far removed from mere guessing. Thus, if the ability to correctly predict final events is taken as a sole measure of skill, then we will find an overestimation of chance in such games and fail to capture the broader skill dimensions embedded in these games.

There also exists several complexities in interpretation of gameplay data and user behaviour. Opinion trading platforms are open to both experts and novices and event participation isn't separated by skill level for the purposes of evening out the playing field, like the use of ELO matching in games of chess. The irrational decision making carried out by the novices makes the pricing in the markets less efficient (efficiency here refers to how accurately market prices reflect the true probabilities of outcomes based on all available information). While this creates an opportunity for

skilled players to capitalize on by correcting the distortions, they may also create situations where it may be more opportune for skilled players to bet on the market's irrationality and focus less on the outcome of the events. Such player heterogeneity can lead to increase in market noise, reducing the reliability of some performance metrics that focus on the aspect of outcome determination ability.

Further, in opinion trading games, there will always be a proportion of players that resort to the use of uninformed or random decision making such as taking random guesses or incorporating biased strategies like betting on favourites. To conclude the nature of the game itself based on the activity of such players would point to the game being that of chance and would lead to a flawed analysis. This is akin to estimating how much skill is involved in a game of chess, where all players are 10-year-olds and novices of the sport. A better assessment would seek to explore whether uninformed strategies are rewarded equally (or punished) relative to informed strategies, where the latter is intensively skill based.

Another issue that lies with the analysing of the gameplay data is to deduce whether a certain decision was undertaken strategically or randomly. A strategy that, when used skillfully generates rewards, might produce losses when applied in the wrong context. Similarly, some actions suggestive of high skill might be random choices or mimicked actions, which makes the analysis of skillful actions highly complex.

These ambiguities pose a serious obstacle to conventional statistical analyses. A challenge then emerges into finding questions that accurately assess the skill component of such a nuanced game. Skill in prediction markets must therefore be inferred not from isolated behaviors, but from sustained patterns of decision-making over time—patterns that indicate consistent profitability, adaptability to new information, and exploitation of market inefficiencies. In the next section, we will define the performance metrics of interest in our statistical analysis as well as the frameworks used to test the existence and dominance of skill in opinion trading games.

What is winning in Opinion Trading games?

To conduct a deeper analysis of the skill aspect of winning in these games, it is paramount to clearly define what it means to win in an opinion trading game and in how many ways can one do so. In this paper, we define winning as making a profit on a trade. If player A has made 3 trades, all at Rs. 5 and he makes a total of Rs.8 on the first, Rs. 5 on the second and Rs. 3 on the third then we would say that player A has won 33% of the times. Therefore, a profit occurs when a player achieves an amount higher than his initial investment amount. In this example, player A has made a profit of 3 on his first, breaks even on his second and makes a loss on his third.

A player can achieve a profit in one of two ways:

1. Correctly determining the event outcome - Suppose player A has made an investment of X amount (on a single trade) and finds himself on the right side at the time of conclusion, he will then make a total of Rs 10 and a profit of Rs. 10-X.

2. Selling one's position for a higher price - Suppose player A bought an opinion for Rs. 5 for option "Yes" on an unspecified event. If player A sells this opinion for a price higher than 5, she can win or secure a profit. She doesn't need to wait till event completion to win.

It is then clear that the objective of the players in these games is to make a profit and correctly

predicting the outcome is just one of the strategies and not the primary objective. Further, "winning" is not a singular concept. Some players may rarely hold till settlement but profit handsomely from interim trading. Hence, win rate (the proportion of trades where a player secures a positive profit) and ROI (taken as the ratio of total return/ total investment) are two main metrics we consider as indicators of performance. Win rate measures the frequency of success in opinion trading games whereas ROIs are indicators of the degree of success in monetary terms. This actively tackles the problem of taking 'win' as a measure of pure forecasting accuracy while also acknowledging the multidimensionality of performance in opinion trading games.

Given the adapted definition of winning in opinion trading games, an important question which arises is *"How can the skill component of opinion trading games be measured?"* In recent years, attempts have been made to standardize skill assessment in online games through objective, statistically grounded frameworks. Notably, the paper titled *"An Objective Framework to Determine Permissible Online Real Money Games: Version 1.0"*[36] outlines a set of criteria based on recurring legal considerations such as the *predominance of skill*, the *persistence of skill*, and the existence of a *skill gradient*. Drawing from this framework, three major statistical tests are typically employed to determine whether a game is predominantly skill-based:

- **Persistence of Skill**: Evaluates whether a player's success is consistent across different time periods, implying that outcomes are driven by enduring skill rather than transient luck.

- **Experience Gap**: Examines whether players with more experience outperform novices, suggesting that practice and learning contribute meaningfully to success.

- **Exemplary Skill**: Assesses whether a subset of highly skilled players significantly outperforms the broader population, which should be statistically unlikely in a game of chance.

To better understand if opinion trading reflects these characteristics we have relied on data from 3 leading Indian opinion trading platforms : Probo, MPL Opinio, and SportsBaazi. We structure our analysis into two major sections. Section 1 covers the quantitative tests conducted on *Experience gap*, *Persistence of skill* and *Exemplary skill.* Section 2 discusses these results along with additional qualitative data analysis to discuss our views on learning as well as winning distributions in OT games. We discuss each in turn, with simplified explanations of technical concepts for clarity.

Before attempting to answer these questions, a quick recap of gameplay and winning conditions is necessary. In our previous example, the player can buy opinions of **Yes** at a price of Rs. P, or of opinion **No** at a price of Rs. 10-P. Each position taken by a player has to be matched with an exact opposite opinion of another player, that is, if player 1 wants to buy opinion of Yes at Rs.6 then there has to be another player willing to buy the opinion of No at Rs. 4. Upon the completion of the event, if the chosen option occurs, then the player wins Rs.10, while the loser loses his share. The demand and supply of Yes and No opinions determine the price of these opinions in the market (referred to as market price). A player has the option to bid (ask) at prices that differ from market prices but may be less likely to get a match. The market operates continuously, allowing traders to adjust their positions as new information about the event / contract in question becomes available.

Any player has 2 win options:

36 Roy, B., Singh, K. & Rizvi, K, "An Objective Framework to Determine Permissible Online Real Money Games: Version 1.0", *The Dialogue*, October 2024.

i. Exit – Exit the game by selling their side of the contract if the market price of their opinion exceeds their investment, allowing a profit. Or conversely if the market price falls, leading to a loss that the player wants to contain.

ii. Event – Stay in the game until the event in question occurs and pocket the profit if they are on the winning side of the occurrence.

The 'win' here is to make a profit on the initial investment of the player.

5.1 Quantitative Tests

This section discusses the hypothesis tested and tests conducted on user data from opinion trading platforms.

5.1.1 Persistence of skill

One of the fundamental indicators distinguishing games of skill from games of chance is the persistence of player performance over time. In a game of pure chance, past success offers no advantage in future rounds: outcomes are independent, and no amount of prior winning can systematically improve the likelihood of future success. In contrast, games of skill exhibit persistence, that is, skilled players consistently perform better than others over time, reflecting underlying abilities rather than random fluctuations. To empirically assess persistence in opinion trading games, two independent analyses were conducted using data from Probo, SportsBaazi and MPL Opinio.[37]

To test the persistence of performance across different months, Probo compares the ROI and win rates for pairs of consecutive months.[38] This analysis was undertaken for the whole calendar year of 2024. Only users with over 20 orders were considered. A Spearman correlation test was conducted to check whether there exists a correlation between player's ROI and Win rates between all months, Jan-Feb, Jan-March…. Nov-Dec.

Null Hypothesis: Spearman Correlation between the ROIs and Win Rates of users for consecutive months of 2024 is non-positive.

Result: The null hypothesis was rejected for every pair of months. The p-values obtained across all month pairs were less than 10^{-100}, an extraordinarily small value, providing overwhelming statistical evidence of positive persistence. Thus, there exists a strong and statistically significant month-to-month correlation for both ROI and win rates among active users on Probo. Players who performed well in one month tended to continue performing well in subsequent months, a pattern highly inconsistent with purely random outcomes and strongly indicative of skill.

37 Data publicly available at https://github.com/suyashk869/skill_test_otp.

38 Bagchi, Amitabha & Pal, Ankan & Kumar, Suyash, "Quantifying Skill on Opinion Trading", March 24, 2025, *available at* https://www.cse.iitd.ac.in/~bagchi/Probo-Skill-Tech-Report-March2025.pdf.

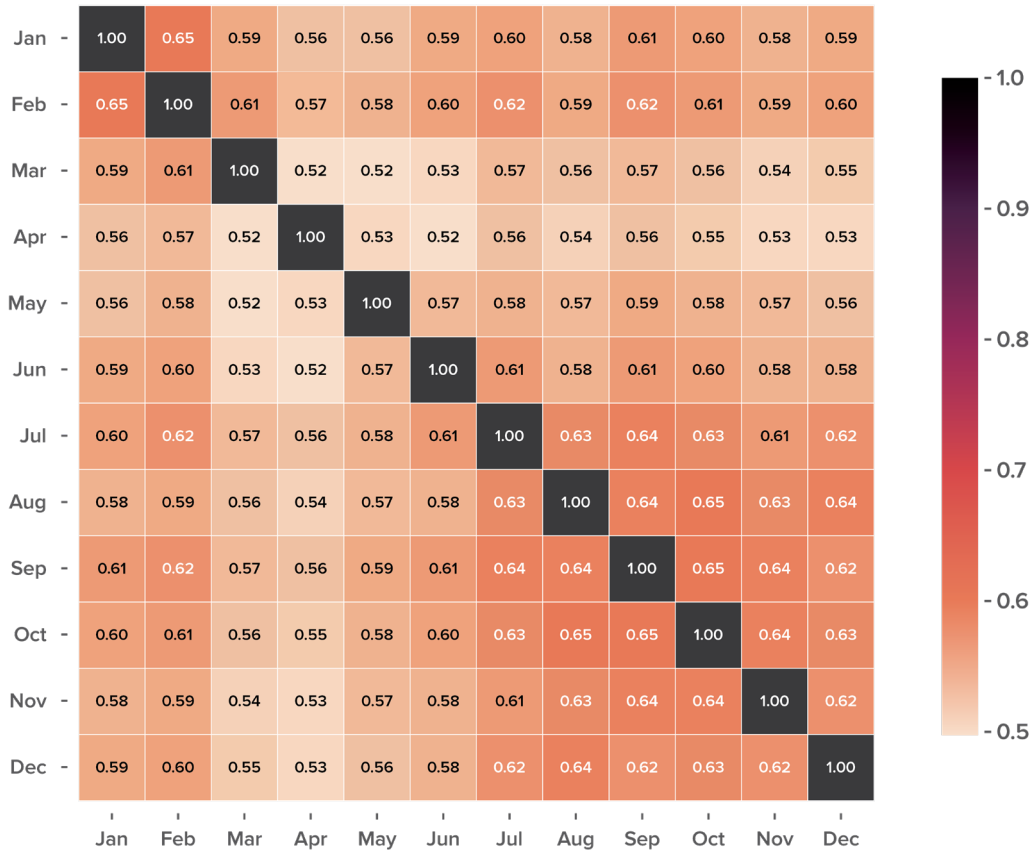

Figure 2: *Spearman Correlation Matrix Heatmap for win rates across Jan to Dec 2024 - Probo*[39]

In another analysis conducted by SportBaazi for their sports trading games, correlation between win rates were analysed between the months of April, May and June 2023. Players who played over 100 matches over 3 consecutive months were considered for this analysis. A Pearson correlation test was used in this study.

***Null Hypothesis*:** Pearson Correlation between the Win Rates of users for the months April to June of 2023 is non-positive.

Results: Correlations between all 3 pairs were positive and statistically significant. Correlation coefficients between April and May is 0.72, May and June is 0.494, and April and June is 0.433. The p values for all three correlations are under 0.000 making the results highly significant. These findings demonstrate a substantial degree of persistence in player success: users who exhibited high win rates in one month were significantly more likely to maintain high win rates in subsequent months.

39 *Supra* note 38.

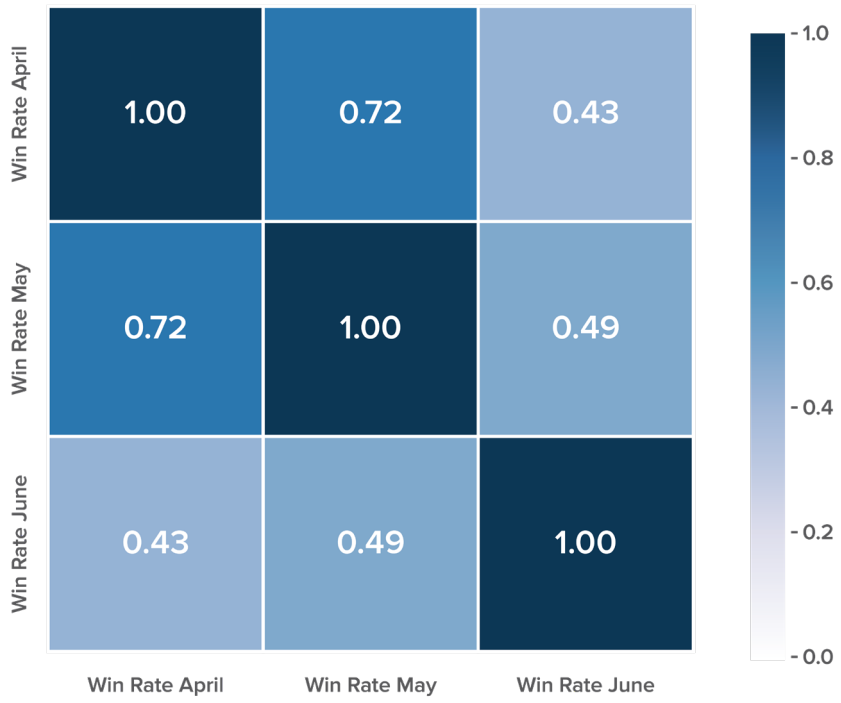

Figure 3: *Pearson Correlation Matrix Heatmap for win rates across April, May & June 2023 - SportsBaazi*

Lastly, using user-level data from MPL Opinio, we conducted a pairwise Spearman rank correlation analysis to examine the persistence of player performance over time. The sample consisted of 715 users who were each tracked across three consecutive months, denoted as Month 0 (M0), Month 1 (M1), and Month 2 (M2). Notably, the specific months analyzed differed across users depending on their activity timeline. Win rate is taken as (number of orders where users made profit)/ (total number of orders).

Null Hypothesis: Spearman correlation between user win rates across three consecutive months is non-positive.

Results: The analysis revealed strong and statistically significant positive correlations between user win rates across months. The Spearman correlation between Month 0 and Month 1 win rates was $\rho = 0.747$ ($p < 0.001$), indicating a strong persistence of relative performance. Similarly, win rates between Month 1 and Month 2 exhibited a correlation of $\rho = 0.605$ ($p < 0.001$), and win rates between Month 0 and Month 2 showed a correlation of $\rho = 0.606$ ($p < 0.001$). These results strongly reject the null hypothesis and provide evidence of significant persistence in player performance over time.

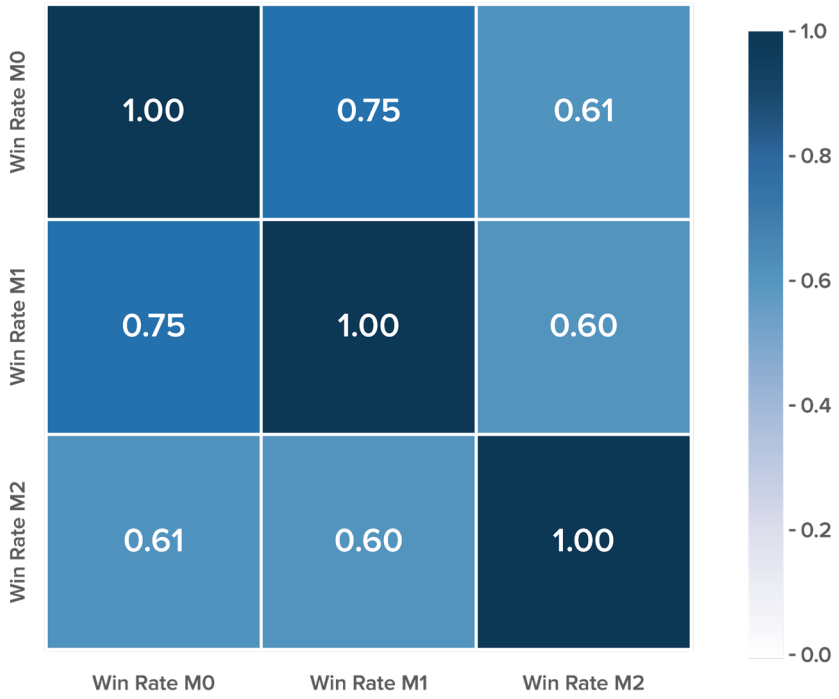

Figure 4: *Spearman Correlation Matrix Heatmap for win rates across 3 consecutive months - MPL Opinio*

5.1.2 Exemplary skill

Games of chance and games of skill can also be differentiated by comparing the distribution of user performance metrics. If the distribution of success rates amongst users in opinion trading games are statistically different from those expected in a game of chance such as a coin toss, then it can be said that opinion trading games are games of skill. This is because games of skill will observe the presence of a few highly skilled users (users with high profit, win rates) that achieve a very high success rate. Such success rates should be very unlikely to be achieved in a game of chance.

An analysis was conducted by Probo to compare the profit distributions from opinion trading with those of a coin toss game. The analysis proposes that in a game of chance, the scaled distribution of winnings over a sufficiently large number of rounds/trials should be *normal*, according to the central limit theorem. .

Null Hypothesis 1*: Opinion trading on Probo is a Game of Chance.*

Results: The distribution of net profits on Probo was highly skewed (with a heavy tail). data. The skewness (S) = 285.70 and Kurtosis (K) = 128038.04. These figures indicate high skewness and fatter tails in the distribution relative to a normal distribution, which is to be expected in a game of chance.

*Jarque-Bera Tes*t was conducted, a statistical test that checks whether a given distribution is normal based on skewness and kurtosis. The test static *T-statistic* obtained was *4656222809152955*, which is extremely large suggesting that the observed distribution is far from that one would observe in a *normal* distribution.

Further, the *Wilcoxon signed-rank test* was used, which checks whether two related samples (or one sample's differences from some baseline) have median zero. This test is used here to check whether the distribution of profits could come from a game of chance distribution (coin toss game).

Null Hypothesis 1#*: The distribution of differences (profits) is symmetric around zero*

Results*: T-statistic = 6121630453336.5* and a *p-value of 0.00* were obtained. Therefore, we can clearly reject the hypothesis.

The results obtained from both the tests provide strong evidence to reject the *Null Hypothesis 1.* The distribution of net profits on Probo is not normal at all. It is highly irregular — not what you would expect if outcomes were based purely on chance (e.g., coin toss). The Wilcoxon signed-rank test rejects the null hypothesis of symmetric profit differences around zero (p-value = 0.0), which also suggests that the distribution of player profits is asymmetrically skewed, consistent with systematic skill advantages rather than random fluctuations.

On SportsBaazi, the distribution of win rates was analysed instead of net profits with a similar rationale followed in the previous test, that is, in a game of skill, there will exist a set of highly skill users that should be able to achieve a very high win rate relative to a game of chance. The primary objective of this analysis was to determine whether the distribution of win rates in Sports Trading exhibited a fatter right tail, that is, a higher proportion of players achieving exceptionally high win rates compared to what would be expected under random chance alone.

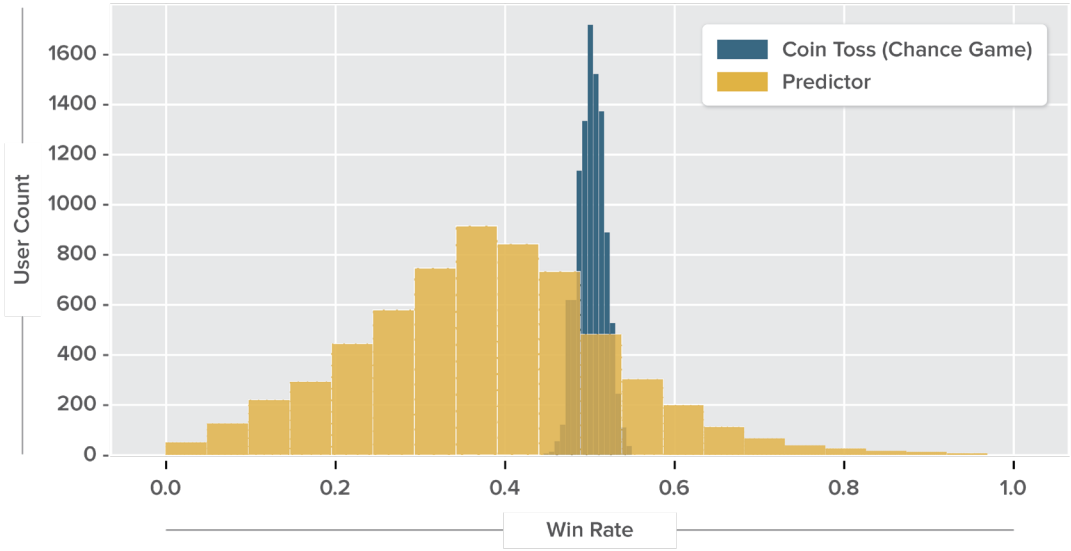

Figure 5: *Win rate distribution across users in Sports Trading (Predictor) vs Coin Toss simulation - SportsBaazi*

For the purpose of the comparison, the proportion of players exceeding a specified win rate threshold (corresponding to the "top 1%" category) was measured for both datasets. In the coin toss simulation, the top 1% win rate threshold was observed at 79%, and only approximately 0.01% of players crossed this benchmark, reflecting the extremely rare occurrence of consistent high performance in a purely random environment. In contrast, in Sports Trading, the corresponding proportion of players achieving similarly high win rates was found to be 12.7%, a significantly larger fraction.

To assess the statistical significance of this observed difference, a Z-test for proportions was used. This test evaluates whether two sample proportions differ more than would be expected by random variation alone.

The null hypothesis (H_0) posited that there is no difference between the proportions of high-performing players in the two datasets, implying that the fatter tail observed in Sports Trading could be explained by chance. The **alternative hypothesis (H_1)** proposed that there is a difference, with Sports Trading having a significantly higher proportion of high-performing users, consistent with the presence of skill.

The test produced a Z-statistic of 36.7 with a p-value < 0.05, providing strong statistical evidence to reject the null hypothesis. In practical terms, this indicates that the likelihood of observing such a large difference in proportions purely due to chance is exceedingly small.

These findings lead to the conclusion that the distribution of win rates in Sports Trading is significantly more right-skewed than that of a pure chance game like coin toss. The presence of a much greater number of players consistently achieving high win rates supports the hypothesis that skill plays a substantial and measurable role in determining success within opinion trading games.

5.1.3 Experience Gap

An important marker of skill in games is the presence of learning effects, i.e., the ability of players to improve their performance with experience. In games of pure chance, repeated participation does not lead to improvement because outcomes are random and uninfluenced by player actions. In contrast, in games of skill, players are expected to learn, adapt, and perform better over time.

To explore the presence of learning in opinion trading games, Probo designed and conducted a learning curve test - where they test whether there exists a correlation between mean and median win rates and ROIs of users with the number of events played. The dataset used[40] consisted of users who have traded at least 20 units in 720 events. Each player has played a minimum of 360 events in the year 2024.

In this experiment, the event rank (i) is used as a measure of experience and is defined as the *i'th* event in the sequence of 720 events played by a user. Therefore, the i'th event for two users may be different. For example, the 10th event for user 1 is the 10th event but for user 2 is the 20th event in the series of 720 events. ROI(u,i) for each user is defined as the cumulative returns made till the ith event of user u, divided by the cumulative investment made till the ith event of user u. Win rate (u,i) is defined as the number of times ROI ≥ 1 for user u till event i, divided by the event rank i. Based on these event ranks, mean and median ROIs and Win Rates are calculated. To evaluate the following hypotheses, the Spearman Rank Correlation Test was used. This non-parametric test assesses whether there is a monotonic relationship between two variables without assuming linearity.

40 Data publicly available at https://github.com/suyashk869/skill_test_otp.

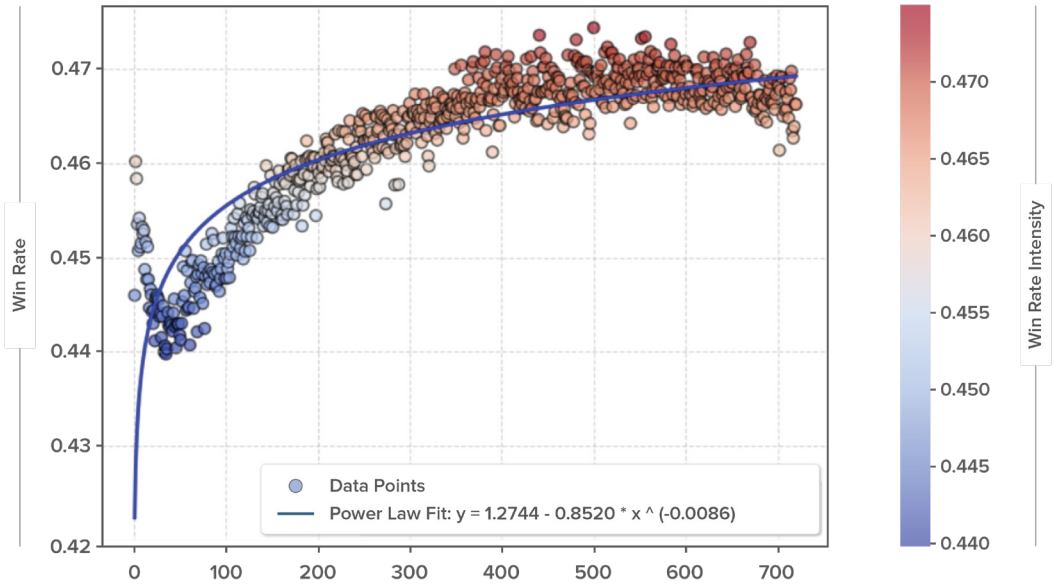

Figure 6: *Graph of Event Rank (X) vs Median Win rate (Y) - Probo*[41]

Null hypothesis 1a: *Median ROI is not positively correlated with event rank i.*

Null hypothesis 1b: *Mean ROI is not positively correlated with event rank i.*

Null hypothesis 2a: *Median Win Rate is not positively correlated with event rank i.*

Null hypothesis 2a*: Mean Win Rate is not positively correlated with event rank i.*

Results: The Spearman correlation between event rank and both performance metrics (mean/median ROI and mean/median Win Rate) was found to be positive. The null hypothesis was rejected in all 4 cases, with high statistical significance (p<000). Thus, there is overwhelming evidence that players' performance improves as they participate in more events, strongly suggesting the existence of learning effects.

5.2 Insights and trends

5.2.1 On learning in opinion trading games

A defining feature of a skill-based game is that practice and experience lead to measurable improvement. In activities of pure chance, such as a lottery, a newcomer and a veteran perform similarly over time, since no amount of practice can alter fundamentally random outcomes. Consider the example of a coin toss: if a player continually bets on heads or tails, the probability of winning remains static at 50%, regardless of how many times the game is played. In such environments, there is nothing to learn, and no optimal strategy to employ.

41 *Supra* note 38.

By contrast, opinion trading games demonstrate clear and measurable learning effects—players improve the more they participate. As is typical of games of skill, repeated play allows individuals to refine their understanding, sharpen their strategies, and enhance their decision-making abilities.

	Number of Orders	Cohort Win Rate (%)
0	>20	35.24
1	20-50	38.6
2	50-100	40.93
3	100-200	43.42
4	200-500	45.62

	Number of Orders	Cohort Win Rate (%)
5	500-1000	47.9
6	1000-5000	52.68
7	5000-10000	59.82
8	10000-20000	64.37
9	20000-50000	67.51

Table 1: *Display of average win rate of cohorts assigned based on number of orders on Probo.*
Note: *each order can include multiple trades; eg: if a user places an order for 10 units of Yes" on event X for Rs. 6 each, his total trade volume for the one order is Rs. 60.*

Table 1 presented above shows a clear trend of the rise in win rates with the number of orders played, i.e, groups that placed a higher number of orders outperform those who placed relatively less number of orders on average. This is suggestive of the presence of learning effects in opinion trading games, however, a causal claim should be avoided as there may exist a problem of the survivorship bias - namely, the case of only winners persisting in the long run, leading to a higher win rate in the groups with higher trade orders.

The results from Probo's learning curve test also provides strong empirical support for the presence of learning in opinion trading. Analysis of user win rates, plotted against the number of events played, reveals that median win rates improve systematically with experience.

In figure 6, The curve follows a **power law**, a pattern typical of skill acquisition, where improvement is rapid initially and gradually plateaus over time ([Stafford & Dewar, 2014]; [Steyvers & Benjamin, 2019]).

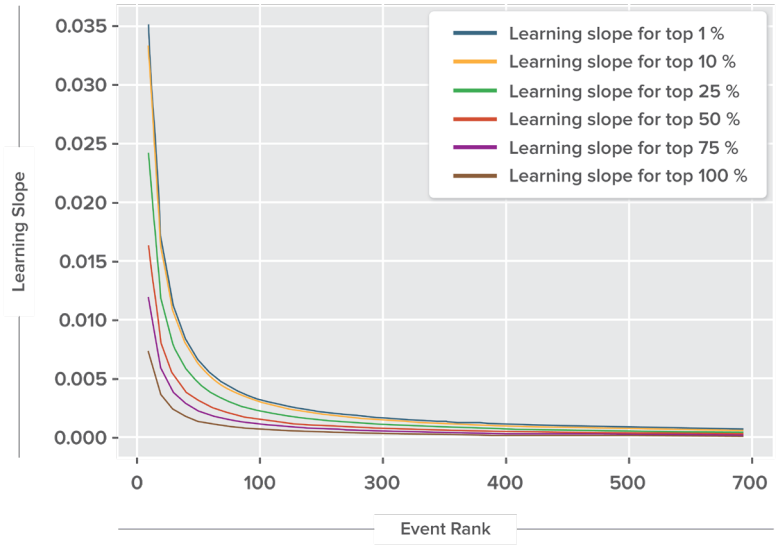

Figure 7: *Graph of Event Rank vs Learning Curve Slope - Probo*

Further analysis segmented players into cohorts based on performance levels (Top 1%, Top 10%, Top 25%, etc.). Figure 5 plots the slopes of the median win rate of players against their event rank — that is, how many events they have played. Analysis of the slopes showed that top performers learn faster than others, though all groups eventually plateau - another hallmark of skill-based games.

Importantly, when comparing learning rates with games designed explicitly for cognitive skill training, such as Lumosity,[42] the results were striking. For example, the top 1% of players in opinion trading had a learning slope of **0.322** at event rank 10 and **0.157** at rank 20, comparable to slopes from Lumosity games (ranging from 0.109 to 0.426). This comparison is significant. Lumosity games are purpose-built to foster cognitive skills, so achieving similar rates of improvement in opinion trading seem to strongly suggest that players are developing real, transferable skills through experience.

Additionally, Probo's targeted training intervention—where selected users underwent five weeks of active coaching—resulted in measurable performance improvements. This controlled experiment further substantiates that skills in opinion trading can be taught and learned. Notably, players improved as they gained a better understanding of the platform's dynamics, including key gameplay tools such as the early exit and stop-loss features. This highlights that learning in opinion trading games occurs not only at the level of forecasting or strategy but also through mastering the rules and tools available to optimize decision-making

The presence of learning effects is not unique to Probo. On MPL Opinio, a plot of ROI against the number of trades played shows a clear positive trajectory, demonstrating that players who trade more achieve better returns on average.

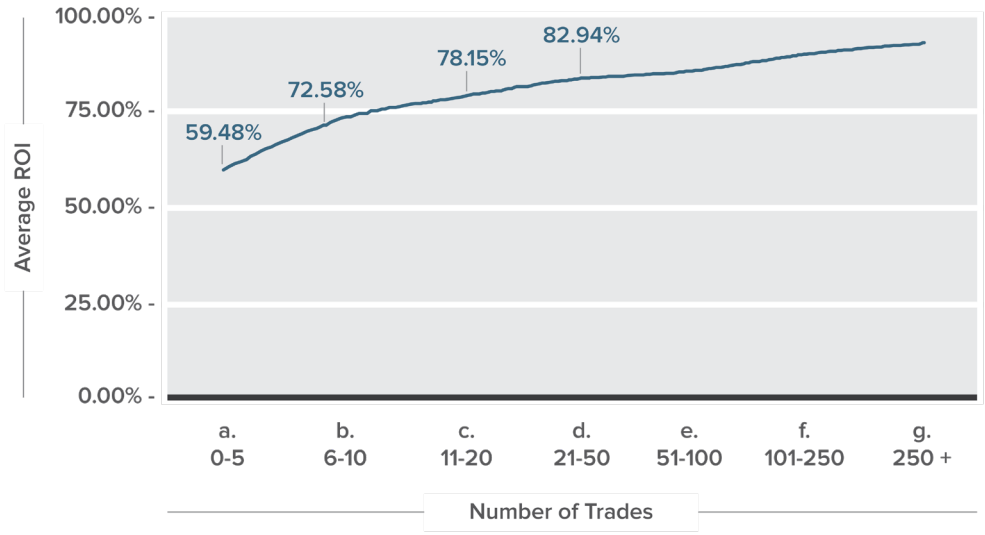

Figure 8: *Graph of Number of trades (X) vs Average ROI (Y) - MPL Opinio for Opinion Trading*

42 *See* https://www.lumosity.com/en/brain-games/.

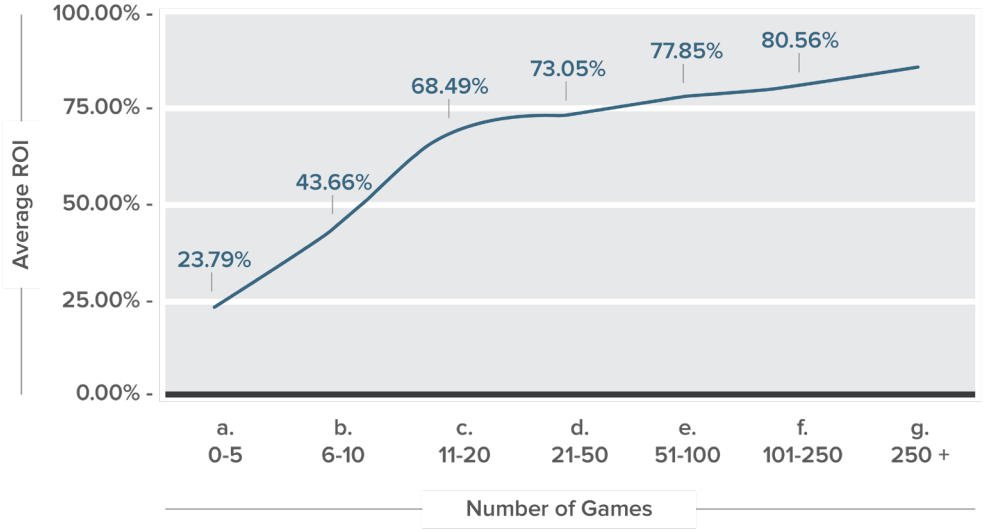

Figure 9: *Graph of Number of trades (X) vs Average ROI (Y) - MPL for Rummy*

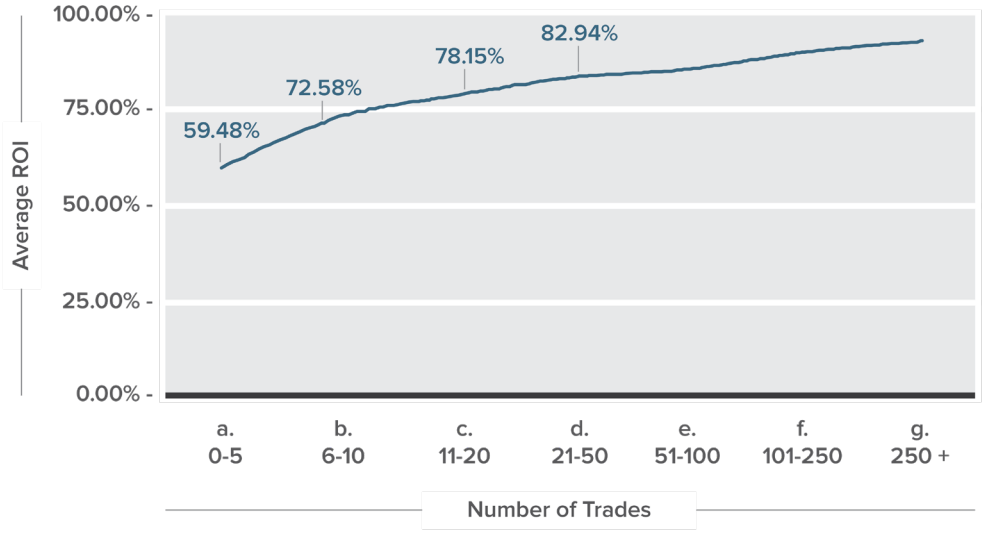

Figure 10: *Graph of Number of trades (X) vs Average ROI (Y) - MPL for Fantasy Cricket*

Similar patterns are observed in other recognized skill-based games hosted on the platform, such as Rummy and Fantasy Cricket, reinforcing the notion that increased engagement fosters skill development across diverse game types (see figures above).

Likewise, SportsBaazi presents compelling evidence. An analysis of first-time users during the 2023 IPL season found that the win rate (group)[43] improved from 36% to 42% as users played more matches—a considerable rise within a short span. This analysis was conducted on a cohort with 100 users, where the win rate is taken as the number of users who made a positive profit on their first trade divided by the total number of users who played their first trade (which is 100). Notably, because the analysis tracked a fixed cohort of 100 players, the potential problem of survivorship bias—where only successful players remain over time—was mitigated. All original users were included in calculating the win rate at each point, regardless of whether they won or lost previously. This ensures that the observed improvement reflects true learning effects rather than selective dropout of weaker players.

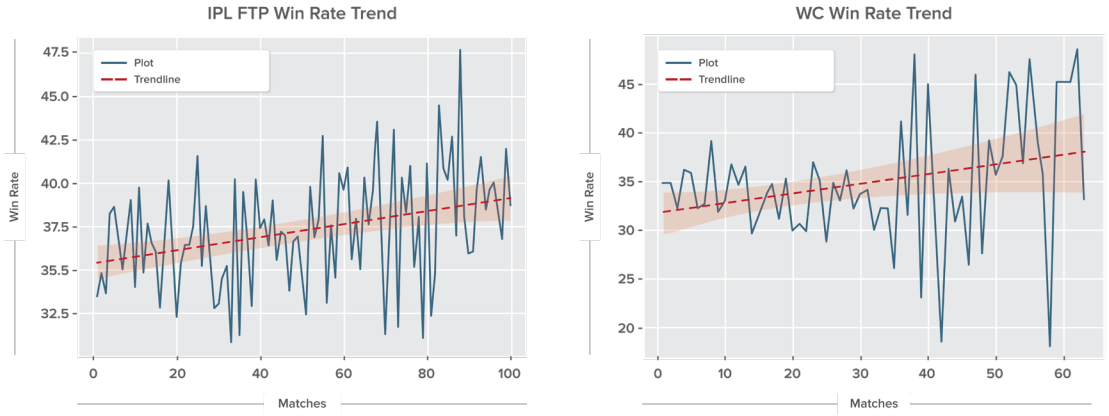

Figure 11: *Graphs of Number of matches played by cohort (X) vs win rate group (Y) - SportsBaazi.*

Similarly, Probo's targeted training intervention also relied on a fixed group of users undergoing five weeks of active coaching. Since the same users were measured both before and after the intervention, survivorship bias was minimized here as well. More generally, future analyses aiming to capture learning effects accurately should rely on fixed cohorts to avoid distortions caused by selective retention of higher-performing users.

Besides the general analysis on the effect of experience, learning in games also presents as incorporation of certain user-actions such as use of strategies. In pure games of chance, one is unlikely to notice the incorporation of any strategies as there is no right or wrong way to play such games (incorporating strategies in such games is arguably the only wrong way to play such games)

Data from Probo shows that users exercising the use of exits strategically have a win rate of 70% compared to a win rate of only 42% for those who do not. Further, players with more experience make use of exits significantly more, such that 67% of experienced users (players who have placed over 20 orders) use this exit option compared to only 34% of inexperienced players (players who have placed 20 orders or less).

43 In this study, the win rate labeled "win rate (group)" is calculated as the proportion of players who made a profit on each match played out of the total cohort comprising of 100 players

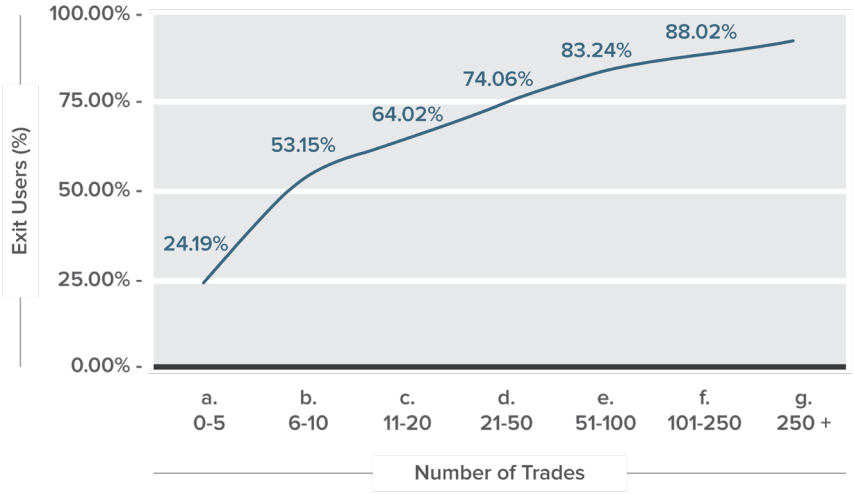

Figure 12: *Graph of Number of trades (X) vs Percentage of users that used exits (Y) - MPL Opinio*

We also notice a similar trend on MPL Opinio - users who trade more use exits substantially more. Experienced players, who have played over 100+ games on the platform, use the exit option over 80% of the time and recoup about 85% of their investment on average. We also conducted a spearman correlation analysis using individual user data and found a significant correlation *(correlation coefficient = +0.26; p<000)*, suggesting that players who use exits more tend to win more.

These findings indicate that the utilisation of the exit option is an essential strategy that is adopted by players as they get more experienced, as a possible way to dramatically increase their performance. In contrast, players who simply hold bets no matter what (or who lack any plan) often end up surrendering large early profits or riding a losing bet to zero.

Nevertheless, this is not the only strategy at play. Some high performing winners were found to hold multiple opinion positions on different price points on the same trade across both Probo & MPL Opinio.

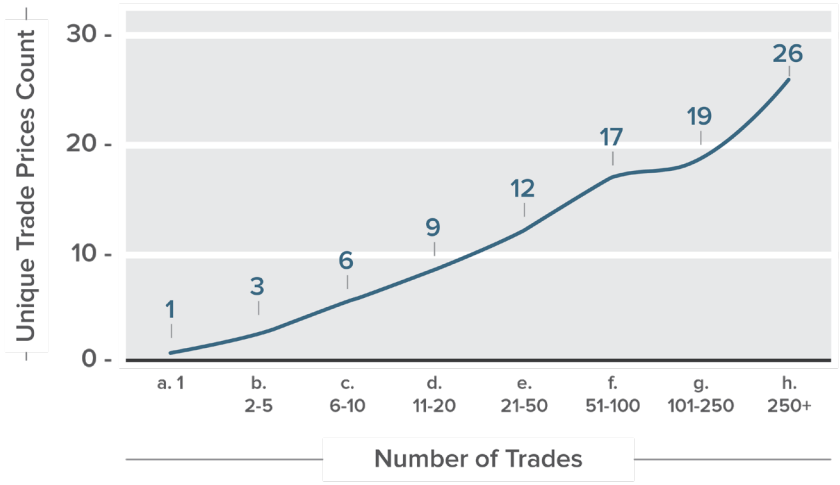

Figure 13: *Graph of Number of trades (X) vs Average number of unique price points traded on (Y) - MPL Opinio*

In Graph 13, we can see that on MPL Opinio, players who trade at over 12 unique price points recoup over 80% of their investment on average. Again, we also notice that more experienced players tend to hold more positions on different price points relative to less experienced players. For example, players with under 50 trades were shown to hold 12 positions on different price points on average, while those with over 250 trades hold 26 positions on average.

Similarly on Probo such players have a win rate of over 60% compared to less than 50% for players who do not use this method. This points to players actively monitoring the game as well as updating their beliefs according to the information they receive. Another use of holding multiple positions could be to hedge investments. Many players also seem to use a combination of these strategies, with them placing multiple orders *and* exiting before the conclusion of the event. Such players on Probo have a win rate of 63% whereas players who just place 1 or 2 orders and wait for the event's conclusion have a win rate of only 39%.

These patterns suggest players are not relying on blind luck, but actively monitoring markets, adjusting strategies in real time, and maximizing returns. Such strategic behavior aligns prediction markets with other legally-recognized games of skill. For example, rummy and poker players employ tactics (discarding certain cards, bluffing opponents) and fantasy sports players craft team strategies. Prediction market users similarly demonstrate forethought, strategy, and adaptation. This strategic play is exactly what one expects in a skill-based environment.

Furthermore, these findings align with principles of *evolutionary game theory*, which suggest that over repeated interactions, players tend to adopt strategies that enhance survival and success, while suboptimal strategies are gradually abandoned.[44] The observed adoption of advantageous strategies such as early exits and diversified position-taking mirrors this theoretical expectation, where only the most adaptive behaviors persist in competitive environments.

Taken together, the empirical findings from learning curves, training interventions, strategic behavior analyses, and cross-platform trends present a compelling case: Players in opinion trading games seem to improve systematically over time by refining complex cognitive and strategic skills. Such sustained, skill-driven improvements are fundamentally incompatible with games of pure chance, where no learning occurs. Therefore, the presence of significant and structured learning effects strongly supports the classification of opinion trading as a predominantly skill-based activity.

5.2.2 On performance of users

One of the fundamental ways to differentiate between games of chance and games of skill is to observe how player performance metrics are distributed across the population. In games of pure chance, such as a coin toss, player outcomes are expected to cluster symmetrically around an average, forming a normal distribution. No player or group of players would consistently outperform others because outcomes are purely random. In contrast, skill-based games tend to produce skewed distributions: a small cohort of players consistently outperforms the majority.

Our analysis of user performance on Probo and SportsBaazi reveals clear signs of such asymmetry. On Probo, the distribution of net profits was highly skewed and heavy-tailed, suggesting that a few users consistently achieved far greater profits than would be expected under random chance.

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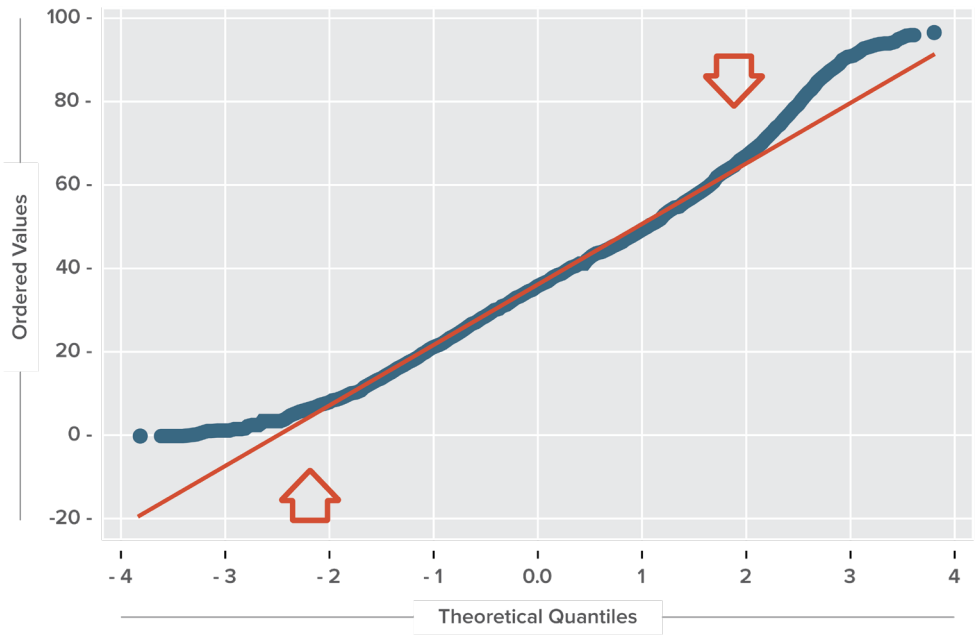
44 Weibull, J. W., "Evolutionary Game Theory", *MIT Press*, 1995; Sandholm, W. H., *Population Games and Evolutionary Dynamics*, MIT Press (2010).



***(Figure 14:** Q-Q Plot illustrating deviation from Normal Distribution)*

Similarly, win rate distributions on SportsBaazi did not conform to normality. A Q-Q plot of win rates showed pronounced fat tails, meaning there were far more users achieving exceptionally high (or low) win rates than would be expected if outcomes were purely random. The presence of these outliers suggests that certain traders possess markedly superior skill (producing the far-right tail of success), while others might lack skill or take uninformed risks (producing a far-left tail of poor results).

Critically, the presence of such extreme outliers was statistically validated. For instance, while only 0.01% of players crossed the 79% win rate threshold in a simulated coin toss, 12.7% of SportsBaazi users exceeded this threshold in opinion trading. A Z-test of proportions confirmed this difference to be highly significant. These findings suggest that some users systematically outperform others, a pattern highly inconsistent with pure games of chance.

While it is possible for such a high level of performance to exist in games of chance, the probability of such occurrence is extremely low - especially if players are able to retain their level of performance. Persistence tests conducted across platforms revealed strong correlations between player success across consecutive months, suggesting that high performance is not fleeting. In purely random games, past success should not predict future outcomes. However, our findings show that players who performed well in one period were statistically likely to continue performing well.

The key takeaway is that the market isn't a level random playing field – some participants consistently do much better (and some much worse) than average, reflecting what seems to be underlying skill disparities. These observations are consistent with what one would theoretically expect in a market characterized by differences in skill.

Drawing an analogy to the **Efficient Market Hypothesis (EMH)**, in fully efficient financial markets where all participants are perfectly informed and rational, no one should consistently outperform. However, real-world markets are rarely perfectly efficient. Participants differ in information, skill, and execution ability. As a result, skilled individuals can identify and exploit

mispricings, consistently outperforming the average.

A similar dynamic can be seen in opinion trading platforms. If all participants were equally skilled—or equally uninformed—performance would converge toward the mean. In a market composed entirely of informed traders, opportunities for outsized profits would disappear as prices fully reflect available information. Conversely, in a market of purely uninformed traders, outcomes would be random, and profits would distribute symmetrically.

However, in a mixed market—where skilled players coexist with less informed or random participants—opportunities for profit arise. Mispricings created by uninformed actions are corrected by informed traders, allowing skilled participants to consistently outperform. Over time, two reinforcing mechanisms operate:

- ***Reduced Arbitrage Opportunities:*** As informed players act, mispricings diminish, making random success increasingly unlikely.

- ***Asymmetric Information Advantage:*** Skilled players better identify underpriced opportunities, while uninformed players are more likely to make suboptimal bets.

Thus, it is not the absolute skill level that matters, but the relative skill gap between players that drives outcomes. This explains why we observe a fat-tailed distribution of profits and win rates in opinion trading games. Much like in competitive sports such as football—where matches between equally skilled teams may be decided by chance, but mismatches reliably favor the better team—skill advantages in opinion trading manifest when facing less informed opponents.

Importantly, this does not imply that opinion trading platforms are perfectly efficient. In fact, inefficiencies—arising from the presence of less informed traders—are what create opportunities for skilled players to succeed. Over time, evolutionary pressures favor strategies and players best able to exploit these inefficiencies, reinforcing the role of skill as well as diminishing the use of random or uninformed strategy and decision making.

The empirical results observed across platforms—highly skewed profit and win rate distributions, the presence of a substantial cohort of consistently high-performing users, and strong persistence of success over time—are consistent with this theoretical framework. In other words, the data patterns we observe are exactly what would be expected in a skill-based competitive environment marked by skill based advantages.

Thus, based on the cumulative weight of statistical evidence and theoretical reasoning, it is reasonable to suggest that opinion trading games are likely to be predominantly skill-based activities. Players are not merely engaging in random speculation, but rather participating in dynamic information markets where sustained success depends critically on knowledge, strategy, adaptability, and continuous learning.

Closing Remarks

Several leading academic institutions ranging from MIT to the Indian Statistical Institute (ISI) have sought to provide an empirical basis to determine games of skill and chance. For example, a recent study by a combined team of ISI and IIT Kanpur uses chess as a reference point to measure

comparative skill levels in online games.[45] So if chess has a measure of 1 indicating it is a perfect game of skill, then rummy gets a comparative score of 0.620 (indicating high skill requirement).[46] Using this comparative methodology, internal studies of platforms have shown that opinion trading gets a comparative score of 0.644, higher than rummy – an acknowledged game of skill as we shall see later.

Game	Category	Score	Source
Chess	Offline	1.000	Online Data
Poker	Online - Texas Hold'em	0.667	SportsBaazi Data
Opinion Trading	Total	0.664	Opinion Trading Data - Probo Platform
Ludo	Online - Ninja Version	0.640	Study by IIT-K, ISI-K
Rummy	Online	0.620	Study by IIT-K, ISI-K
Daily Fantasy	Online - All Leagues	0.563	SportsBaazi Data
Teen Patti	Online	0.430	Study by IIT-K, ISI-K

Table 2: *Comparative Skill Levels in Online Games*

The empirical data across platforms reveal strong and recurring patterns: highly skewed distributions of profits and win rates, significant persistence of performance over time, and measurable improvement through experience. Players who engage more frequently tend to win more often, and learning effects are visible not only in trading outcomes but also in the adoption of sophisticated strategies, such as early exits and multi-price positioning. These findings align with what one would expect in games where skill, knowledge, and strategic adaptation determine outcomes. Importantly, the analyses incorporated careful consideration of potential biases, such as survivorship bias, and leveraged fixed-cohort studies to ensure robustness.

To summarize, the cumulative evidence from data analysis, theoretical modeling, and cross-domain analogies supports the view that opinion trading games are likely to be predominantly skill-based. Players on these platforms are not engaging in mere speculation; they are participating in complex, dynamic information markets where sustained success is built on skill, strategy, and continuous learning. Going forward, further research could deepen this understanding. For example, applying reinforcement learning models such as Q-learning to player behavior could illuminate which strategies are learned, refined, and ultimately adopted over time. Such studies would not only strengthen the empirical case but also highlight the specific cognitive and strategic competencies that underpin success in opinion trading.

45 Banerjee, Tathagata, Anushka De, Subhamoy Maitra, and Diganta Mukherjee. "Skill vs. Chance Quantification for Popular Card & Board Games." arXiv, October 18, 2024. https://doi.org/10.48550/arXiv.2410.14363.

46 *Ibid*.

As a final word, the skills required to succeed on opinion trading platforms (forecasting abilities, market awareness, and exploiting behavioural biases) appear to be analogous to the skills required to succeed in the stock market. Afterall a skilled trader in the stock market is required to accurately gauge the future movement of a stock price, determine the underlying company's worth, understand current market sentiments and trends, and finally play on other traders' biases to exit their positions at a profit. In the stock market therefore one is continually gauging the difference between other's valuation of a specific stock compared to your valuation and derive an arbitrage from this difference. The more experienced players in opinion trading approach their game play similarly. An MIT paper from 2020 compared the presence of skill in fantasy sports and the stock markets, and found that fantasy sports require a *higher degree* of skill to succeed when compared to the stock markets.[47] By extension, opinion trading, which shares many fundamental characteristics with fantasy sports as shall be discussed later in the report, would also therefore require at last a similar level of skill as stock market trading, if not more. Opinion trading might be potentially less abstract than the stock market. The pricing in the stock market remains largely vague and there is no "correct" price that everyone can agree on even as time passes. However, in opinion trading, we do reach a conclusion as the event closes.

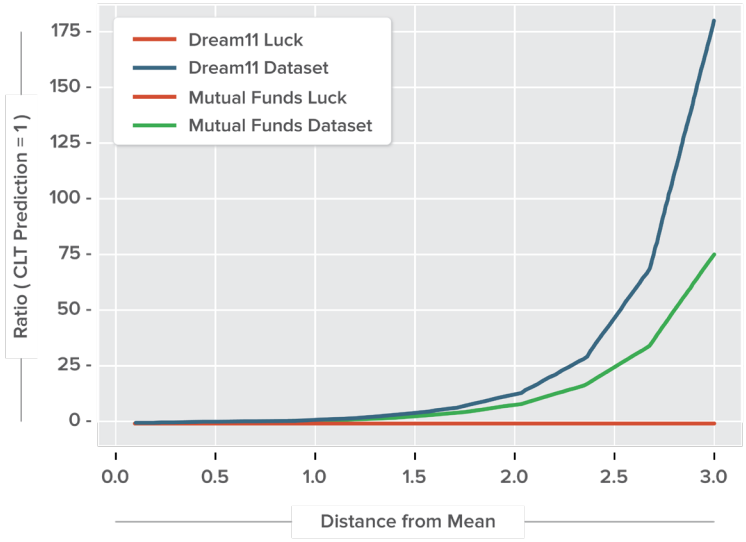


Figure 15: *Comparative Skill Levels between Stock Markets & Fantasy Sports from MIT Study*[48]

Data therefore suggests that skill is an inherent component of online trading platforms. But while they might meet the statistical requirement, do such games also meet the legal threshold required to be determined as games of skill?

47 Misra, Vishal, Devavrat Shah, and Sudarsan VS Ranganathan. "Is It Luck or Skill: Establishing Role of Skill in Mutual Fund Management and Fantasy Sports." *Massachusetts Institute of Technology*, 2020. https://fifs.in/wp-content/uploads/2022/03/MIT-Columbia-Report.pdf.

48 *Supra* note 47.

Chapter 3:
Gaming & Law : Background

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Background

It is clear from the discussion in Chapter 2 that opinion trading games, while presented at first glance in a simple manner to remove entry barriers for participation, involve a considerable amount of strategizing and playing with revealed information by the financially successful players. By spending more time and thought on each event and its potential outcome, players have greater likelihood of becoming adept at making the right bets, exiting at the right time, and hedging their risk in the right manner. All of these facets indicate the workings of a deeply skill-centric game, and contribute to the rising popularity of opinion trading platforms that host such games.

This Chapter delves into the legal and policy ecosystem dealing with such games. It is helpful before embarking on a full blown enquiry into this area to appreciate that a considerable part of the applicable jurisprudence has evolved prior to the advent of the internet. Subsequently, courts and policy makers have attempted to contextualise such jurisprudence to the virtual world and online gaming with varying degrees of challenge in meeting this endeavor. There is no better acknowledgment of this reality in the Indian context than the 276th Report of the Law Commission of India that came out in July 2018 under the Chairpersonship of Hon'ble Justice BS Chauhan, retired judge of the Supreme Court of India.

The report, titled *Legal Framework: Gambling and Sports Betting including in Cricket in India*,[49] was prepared on the recommendation of the Indian Supreme Court in *Board of Control for Cricket in India v. Cricket Association of Bihar*,[50] wherein it asked the Law Commission to explore the possibility of legalizing betting in India. As the report rightly noted, the internet revolution has opened new dimensions of betting and gambling, while creating a global market for the same.[51] Therefore, even if these activities were to be considered morally questionable, the framers of the Constitution were cognizant of the fact that it would be nearly impossible to completely prohibit them, more so with the advent of the internet.[52] This in turn explained the presence of "betting and gambling" in entry 34 of List II with the underlying idea that States, based on the prevailing socio-economic conditions within each of their territorial boundaries, would be best placed to regulate these activities.

Proceeding further, the Law Commission also took note of the various advantages offered by a regulated industry, as compared with State interventions that completely frowned upon any form of betting or gambling activities. In particular, the Commission identified the generation of

49 "Legal Framework: Gambling and Sports Betting Including in Cricket in India." Law Commission of India, July 2018. https://images.assettype.com/barandbench/import/2018/07/Report276.pdf.

50 2016 (8) SCC 535.

51 *Supra* note 49, Page 6.

52 *Supra* note 49, Page 45.

considerable revenue, the creation of jobs, development of tourism as a complimentary industry, protection of vulnerable sections of the society, and prevention of inconvenience at the hands of law enforcement authorities, as significant advantages to a regulatory approach as compared with practically unenforceable bans.[53] The Commission also considered as merit-worthy a self-regulatory approach to tackling the problem of excessive gambling while securing the advantages noted here, observing that such an approach could infuse more efficiency into the regulatory process, increased transparency for consumers through certification processes introduced by such self-regulatory bodies, better compliance with laws and industry standards, and freeing up of State resources from monitoring and enforcement activities to an extent.[54]

The Law Commission of India's acknowledgment that the transnational character of online gambling called for a much needed change in approach, one that entails a relook at the earlier approach of a complete ban, also defined the tenor of its recommendations. The Commission particularly saw merit in focusing on the channels by which online gambling was carried about, noting that the Union Government's competence to regulate the sector under Entry 31 of Union List - Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication - could be called into play, or in the alternative, a model law be passed by Parliament for adoption by consenting States under Article 252 of the Constitution and for the consideration of the remaining States to adapt as they deem fit.

Platforms and Public Policy

Another striking feature of the Law Commission's recommendations, again flowing from the deep seated acknowledgment that technological advances have significantly altered the landscape of betting and gambling, was its focus on the prioritization of regulation of platforms over targeting of individuals and one-off gambling activities as evidenced by the year-on-year increase in cases registered under the gambling legislations (at the time of the Commission's deliberations).[55] This is evident from two broad sets of recommendations that the Commission made. The *first* was towards reforming the existing law to ensure that a total ban approach is discarded. As part of this broader theme, the Commission recommended suitable amendments to the Information Technology (Intermediary Guidelines) Rules of 2011 - one that has been subsequently effectuated - so as to prevent inconsistencies between progressive State legislations that regulate online gambling and these Rules that barred intermediaries from hosting or transmitting content relating to or encouraging gambling.[56]

The *second* was aimed at reforming the manner in which such platforms or channels operate, thereby ensuring the protection of the weak such as gullible minors or "problem gamblers" as well as ensuring that the revenues generated by them also enriched tax coffers. In this regard, the Commission recommended a licensing mechanism wherein operators permitted to do so by the licensing authority alone would be engaged in gambling and betting activities. These licensed

53 *Supra* note 49, Page 109.

54 *Supra* note 49, Page 110.

55 Supra note 49, Page 105.

56 In the same vein, the Commission also notes that the National Sports Development Code of India, 2011, which aims to prevent betting and gambling in sports would need to be amended if betting and gambling were to be regulated. It also puts forth the recommendation to amend Section 30 of the Indian Contract Act, 1872, which renders wagering contracts unenforceable in a court of law, so that transactions that legally take place within the premises of licensed gambling operators or casinos may be exempt from the purview of 'wagering agreements' and the consequences that ensue from the same. *Supra* note 49, Pages 119-120.

operators would then institute a slew of mechanisms to mitigate the potential harms from a regulated gambling and betting industry. These mechanisms would include a cap on the number of transactions that an individual may indulge in within a specific period, linking real money games to PAN and Aadhaar, placing financial caps on stakes, prominent displays on such platforms that highlighted the risks involved in gambling and betting and the ways to play responsibly, entirely digital transactions that avoided the use of any physical money, and the encouragement of foreign direct investment in the sector while controlling for money laundering possibilities.[57]

A similar nuanced stance on betting and gambling activities - separating the channel from the underlying agreements that took place through such channel - was adopted by the Indian Supreme Court long before the advent of the internet, in a decision relied upon in the Law Commission's report - *Gherulal Parekh v. Mahadeodas Maiya*.[58] The parties here had entered into a partnership to carry on wagering contracts with two other firms, with the understanding that profits and losses arising from such contracts would be shared equally. Subsequently, the firm suffered losses and one of them, the appellant before the Supreme Court, refused to honour the mutual understanding. A primary argument before the Supreme Court was that section 30 of the Indian Contract Act, 1872 (ICA), rendered wagering agreements void, thereby making any partnership entered into for the purpose of executing such agreements unlawful under section 23 of the same enactment.

Rejecting this contention, the Supreme Court offered both technical and policy reasons to support its conclusion. On a technical reading of section 30, strengthened with both historical and comparative analyses of this provision, the Court took the view that though contracts of wager were void and unenforceable, they were not forbidden by law. Therefore, collateral agreements that were entered into for the purpose of advancing wagering contracts would still be enforceable.

On the policy front, the Supreme Court contended with the nature of public policy that renders contracts unlawful under section 23 of the ICA. The appellant argued that public policy was comprehensive in its scope to include the moral prohibitions contained in Hindu scriptures, which frowned on betting and gambling activities. Rejecting this view, the Court held as follows:

The common law of England and that of India have never struck down contracts of wager on the ground of public policy; indeed they have always been held to be not illegal notwithstanding the fact that the statute declared them void. Even after the contracts of wager were declared to be void in England, collateral contracts were enforced till the passing of the Gaming Act of 1892, and in India, except in the State of Bombay, they have been enforced even after the passing of the Act 21 of 1848, which was substituted by s. 30 of the Contract Act. The moral prohibitions in Hindu Law texts against gambling were not only not legally enforced but were allowed to fall into desuetude. In practice, though gambling is controlled in specific matters, it has not been declared illegal and there is no law declaring wagering illegal. Indeed, some of the gambling practices are a perennial source of income to the State. In the circumstances it is not possible to hold that there is any definite head or principle of public policy evolved by Courts or laid down by precedents which would directly apply to wagering contracts. Even if it is permissible for Courts to evolve a new head of public policy under extraordinary circumstances giving rise to incontestable harm to the society, we cannot say that wager is one of such instances of exceptional gravity, for it has been recognized for centuries and has been tolerated by the public and the State alike. If it has any such tendency, it is for the legislature to make a law prohibiting such contracts and declaring them illegal and not for this Court to resort to judicial legislation.

57 *Supra* note 49, Pages 116-119.

58 AIR 1959 SC 781.

If anything, the dawn of new digital technologies has strengthened the above conclusion. While opinion trading cannot be classified as a game of chance, as seen in Chapter 2 and Chapter 4, for the sake of argument, *even if one were to assume it to be so*, the focus of any regulatory approach towards opinion trading platforms should, if any, be entirely towards ensuring that platforms that host these games are enabled to do so in a safe and secure manner, as they primarily involve trading in contract agreements. As rightly pointed out back in 1959 by the Supreme Court, the legal entities and structures in place to facilitate individuals to enter into wagering agreements would be perfectly valid as there is nothing illegal or unlawful about such entities and structures.

A similar platform-centric approach is reassuringly present in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, which superseded the Information Technology (Intermediaries Guidelines) Rules, 2011, that cast doubts over the legality of online gaming platforms.[59] The 2021 rules, subsequently amended in 2023, provide for a self-regulatory approach wherein online gaming self-regulatory bodies that meet the criteria under Rule 4-A of these rules shall carry the authority to verify an online real money game as permissible. As part of such verification exercise, these bodies are empowered to examine whether the various compliances spelt out under rules 3 and 4 are being adhered to by online gaming intermediaries. Rule 4 in particular imposes additional due diligence requirements on online real money gaming intermediaries, including appointing a Chief Compliance Officer, a nodal contact person, and a Resident Grievance Officer, publishing periodic compliance reports, maintaining a publicly visible physical contact address in India, implementing an appropriate grievance redressal mechanism, enabling a voluntary verification mechanism for users, articulating in clear terms the refund policies, deposit protection measures, and customer KYC procedures, and verifying user identity before accepting any deposits in cash or kind from any user.

While one may agree with or be critical of these recent rules, what is truly evolutionary about the regulatory approach deployed here is the ability to appreciate the role of digital platforms in promoting online gaming as a business category, and the realization that regulating their conduct would be a much better solution than outright bans or excessive restrictions on online real money games or related variants. Yet, ambiguity persists over the optimal regulatory treatment towards opinion trading platforms and indeed, over the very legality of these platforms, for two primary reasons.

The *first* is that the 2021 Rules unfortunately exclude from the purview of jurisdiction of an online gaming self-regulatory body, any online real money game that involves "wagering on any outcome." The Rules are however unclear as to how platforms that host such real money games will then be regulated, especially if in reality, these games are highly skill-centric and do not fall within the real definition of a wager, in much the same way as horse riding bets and some of the other examples discussed below fall outside the purview of wagering. In short, neither are online gaming self-regulatory bodies in a confident position to assert their jurisdiction because opinion trading does, after all, involve placing bets on outcomes, nor can one then point to a set of alternate provisions in the 2021 Rules that will take care of this need to regulate a highly skill-centric game that involves betting on outcomes, resulting thereby in a legal vacuum under the Rules.

The *second* reason for the continuing ambiguity arises on account of the panoply of gambling legislations across the various States in India that have been validly enacted under Entry 34 of List II. Unless an online game is judicially determined to be a game of skill, and therefore outside the purview of any such gambling laws as per the principles laid down by the Supreme Court of India

59 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 (Updated 06.04.2023) https://www.meity.gov.in/content/information-technology-intermediary-guidelines-and-digital-media-ethics-code-rules-2021

in the two *RMD Chamarbaugwala* cases,[60] it is therefore difficult to conclude with abundant clarity that a self-regulatory regime will apply to opinion trading platforms. On the positive side, there is much to support this fact, i.e. opinion-based games coming within the purview of skill-centric games, to make a strong case for a self-regulatory approach when it comes to opinion trading platforms. In the next couple of sections within this Chapter, we probe the various tests laid down by courts in India and abroad to distinguish between games of chance and games of skill, and examples of instances where games were considered to be skill-centric and therefore outside the purview of gambling legislations.

RMD Chamarbaugwala Decisions

The two *RMD Chamarbaugwala ("**RMDC**")* cases mark a significant interpretive milestone in our understanding of the scope of Entry 34 of List II and the kinds of activities vulnerable to being regulated by individual States, necessitating a deeper exploration of what the Supreme Court held in each of these cases. After doing so, this section proceeds to argue that the constitutional implications of the line drawing exercise carried out in these two cases does not stop with federalism, but in fact, extends to the legitimate exercise of fundamental rights including Article 14 and Article 19.

Two different types of laws came under scrutiny in the RMDC cases, though both dealt with the common subject of "prize competitions."[61] In *the State of Bombay v. RMD Chamarbaugwala* (hereinafter RMDC I), the appellant State's taxation of prize competitions administered by a private entity based out of the erstwhile State of Mysore came under challenge. In *RMD Chamarbaugwala v. Union of India* (hereinafter RMDC II),[62] the same private entity challenged the constitutional validity of the Prize Competitions Act, 1955 - a law passed by the Parliament on a matter in the State List using its jurisdiction under Article 252, which sought to place restrictions on the offering of such competitions.

Though RMDC I was a case primarily related to taxation, RMDC raised arguments to the effect that both games of skill and chance were being regulated in the same manner by the Bombay legislation. That both lotteries and prize competitions were covered by the same legislation added credence to this argument, though the State of Bombay maintained that the prize competitions covered in its law were akin to lotteries and thereby clubbed together for regulatory and taxation purposes. The Supreme Court's technical resolution to this issue - a conjunctive interpretation placed upon a disjunctive provision or in simple terms, the word "or" to be read as "and" - gains relevance because of the court's attempt to ensure that innocent prize competitions were kept out of the purview of the taxing legislation. But at the heart of the judicial reasoning in this case was an attempt to make clear that these two categories, ie. games of chance and games of skill, stand on two separate footings and that the Bombay legislation was only addressing games of chance.

This is particularly evident in the Supreme Court's treatment of the second category of prize competitions, the ones where prizes were being offered for "forecasts of the results either of a future event or of a past event, the result of which is not yet ascertained or not yet generally known." A creative argument was advanced by Nani Palkhivala, the counsel for RMDC, that forecasts of such events need not be a matter of chance as they could be "accurately done by the exercise of

60 State of Bombay v. RMD Chamarbaugwala AIR 1957 SC 699; RMD Chamarbaugwala v. Union of India AIR 1957 SC 628.

61 State of Bombay v. RMD Chamarbaugwala AIR 1957 SC 699.

62 RMD Chamarbaugwala v. Union of India AIR 1957 SC 628.

knowledge and skill derived from a close study of the statistics of similar events of the past." Rejecting this plea, the Court observed:

It may be that expert statisticians may form some idea of the result of an uncertain future event but it is difficult to treat the invitation to the general public to participate in these competitions as an invitation to a game of skill. The ordinary common people who usually join in these competitions can hardly be credited with such abundance of statistical skill as will enable them, by the application of their skill, to attain success. For most, if not all, of them the forecast is nothing better than a shot at a hidden target.

While at first glance, this conclusion sounds like a death knell to all forecasting games, it would be useful to stay with the counterfactual possibility for a brief while, ie. the possibility that ordinary common people are indeed armed with the tools to forecast better as well as hedge their risks. If advances in technology were to provide this possibility, as it seeks to do in contemporary times, a compelling case can indeed be made that a "game of skill" is in play here.

If RMDC I epitomizes interpretive jugglery on the part of the Supreme Court to ensure that only prize competitions that qualify as games of chance are taxed akin to lotteries, RMDC II represents categorical assertion from the Court that no law pertaining to betting and gambling can extend to games of skill. This was held to be the case even in a situation where such legislation was passed by Parliament on the behest of the States, i.e. law-making by a body with competence under all three lists of Schedule VII of the Indian Constitution on account of the delegation of legislative power through resolutions under Article 252. While using the doctrine of severability to restrict the meaning and thereby uphold an otherwise unacceptably wide definition of a prize competition that would, on the face of things, extend to both games of chance and games of skill, the Supreme Court observed:

Having regard to the circumstances under which the resolutions came to be passed, there cannot be any reasonable doubt that the law which the State legislatures moved Parliament to enact under Art. 252(1) was one to control and regulate prize competitions of a gambling character. Competitions in which success depended substantially on skill could not have been in the minds of the legislatures which passed those resolutions. Those competitions had not been the subject of any controversy in court. They had done no harm to the public and had presented no problems to the States, and at no time had there been any legislation directed to regulating them. And if the State legislatures felt that there was any need to regulate even those competitions, they could have themselves effectively done so without resort to the special jurisdiction under Art. 252(1). It should further be observed that the language of the resolutions is that it is desirable to control competitions. ***If it was intended that Parliament should legislate also on competitions involving skill, the word, 'control' would seem to be not appropriate. While control and regulation would be requisite in the case of gambling, mere regulation would have been sufficient as regards competitions involving skill****.*

Thus, the two RMDC cases firmly entrenched within India's legal landscape the vital distinction between games of skill and games of chance, with the latter up for all kinds of legal restrictions and controls that could be placed on them and the former only vulnerable to regulation within the permissible limits of Article 19(6) of the Indian Constitution and falling outside the jurisdictional purview of Entry 34, List II of the VIIth Schedule.

Building on the above reasoning and observations contained in the RMDC cases, some of the recent High Court verdicts have further constitutionalized the distinction between games of skill and games of chance, especially by going deeper into the fundamental rights implications of the distinction. Two main strands of this broader approach are explained below.

The Arbitrariness Doctrine

In *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*,[63] key amendments to the Tamil Nadu Gaming Act, 1930 that expanded the definition of "gaming" to include wagering or betting in cyberspace, and extended the legal prohibition on such games to even "games of mere skill, if played for wager, bet, money or other stake," were constitutionally challenged. Viewing these amendments from the lens of paternalism, which the court likened to a version of authoritarianism when such State protection is practised in a pronounced and excessive manner, the Division Bench of the Madras High Court observed that when a statute came under attack on the on the ground of overbearing paternalism, a cost-benefit analysis would be called for, "not in mathematical terms, but only to assess whether by and large the benefit in the form of public good outweighs the cost of the individual being deprived of his choice."[64]

Applying this principle to the facts at hand, the Division Bench noted that the effect of the amendments stood to be that even in cases where persons were skilled in card games or word games, the amendments eliminated any chance of display of skill in any game on the virtual mode if any stakes, however little, were involved. The Constitution, on the other hand, only permitted the State to impose such "reasonable restrictions that do not completely blunt their chance to show off or make a living out of their skills."[65] In the final view of the Bench, these "crass and overbearing" amendments were unreasonable and manifestly arbitrary,[66] as they ruled out any element of choice that an individual may exercise by removing the aspect of skill from any game played in the virtual medium. As the Bench rightly concluded,

The all-pervasive impact of the wide definition of gaming seeks also to brush aside the law of the land as recognised by the Supreme Court and, to the extent that the Amending Act seeks to undo the effects of dicta that may be regarded as stare decisis, it cries out to be struck down as invalid. The unwavering mantra of the impugned legislation is prohibition and not regulation. The Amending Act fails the constitutional test as stricter scrutiny has to be exercised when vast swathes of apparently permissible activities are sought to be prohibited rather than regulated.

It is therefore clear from the above decision of the Madras High Court that excessive overreach of State power into the realm of games of skill amounts to disproportionate exercise of power and violation of Article 14 under the manifest arbitrariness doctrine.

Trade, Interactivity and Freedoms under Article 19

When reflecting on the theme of fundamental freedoms under Article 19 and the jurisprudence on games of skill, the most obvious of concerns is the restriction placed on Article 19(1)(g) - the

63 AIR 2021 Mad 252.

64 *Ibid*, Para 95.

65 *Supra* note 63, Para 109.

66 *Supra* note 63, Para 114.

right to carry on any occupation, trade or business - largely driven by considerations of morality and public health. Part of the response to this issue lies in having a heightened scope of judicial review as suggested in the *Junglee Games* verdict discussed in the previous sub-section, with the objective of ensuring that grounds like morality and public health do not become avenues for excessive paternalism by the State. The proportionality doctrine, a well-accepted standard of review to ensure that the balancing exercise between rights and their scope on the one hand, and restrictions and the legitimate State interest driving them on the other, would be an integral part of the judicial toolkit on this front.[67]

However, adding more nuance to this debate is the issue of how the doctrine of *res extra commercium*, i.e. objects outside the scope of legitimate trade and commerce, plays out in the context of gaming.[68] Here, the recent decision of the Karnataka High Court in *All India Gaming Federation v. State of Karnataka*,[69] demonstrates a conceptually sound approach by the Division Bench towards clarifying the zones of distinction between legitimate commerce and *res extra commercium* using the category of game of skill.

This case involved challenges to the constitutional validity of amendments introduced to the Karnataka Police Act, 1963, with the objective of criminalizing the playing or facilitation of online games. As witnessed earlier in the context of the *Junglee Games* verdict, here too, there were strong prohibitions on online games of skill that enabled wagering or betting. Rejecting the State's plea that all of these activities fell within the circle of *res extra commercium,* the Division Bench held that games of skill with business characteristics were protected under Article 19(1)(g). The Bench also drew from the constitutional right to property under Article 300A and its coverage to include intangible properties like the intellectual properties associated with gaming, to hold that "a mere likelihood or propensity of misuse of online gaming platforms, without anything more, does not constitute a legal justification for the banning of commercial activities."[70] Moreover, even if the State's objective were to curb the menace of gambling, it could only prohibit activities which amounted to gambling as such, and not games of skill which are "distinct, in terms of content and produce."[71] Thus, the Bench in categorical terms laid to rest any doubt as to whether games of skill fell within or outside the scope of Article 19(1)(g) on account of the *res extra commercium* doctrine.

In this regard, it is also worth noting that the *res extra commercium* doctrine itself has been under cloud for a while, first through academic critique and subsequently upon efforts by the State to extend this doctrine to situations beyond the sale of alcohol. Delving into the historical Roman Law underpinnings of the doctrine of *res extra commercium*, Arvind P. Datar, an eminent senior advocate, was perhaps the first to make a compelling academic case that this doctrine, meant to

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67 See Modern Dental College & Research Centre v. State of Madhya Pradesh & Others (2016) 3 SCR 579; Justice K.S. Puttaswamy (Retd.) & Anr. v. Union of India & Ors. (2017) 10 SCR 569, wherein the Supreme Court has enumerated the ingredients that must be fulfilled for a law to pass the proportionality test. These are encapsulated in Justice Sanjay Kishan Kaul's authored portion of the *Puttaswamy* decision, and are listed below:

a. The action must be sanctioned by law;
b. The proposed action must be necessary in a democratic society for a legitimate aim;
c. The extent of such interference must be proportionate to the need for such interference;
d. There must be procedural guarantees against abuse of such interference.

68 See Datar, Arvind P. "Privilege, Police Power and Res Extra Commercium–Glaring Conceptual Errors." *National Law School of India Review*, 2009, 133–48; Datar, Arvind P. and Unnikrishnan, Rahul, "Kerala Liquor Ban: Revisiting Res Extra Commercium & Police Power' (2017) 3 SCC J-1.

69 (2022) 2 AIR Kant R 422.

70 *Ibid*, Part XIX (i) & (j).

71 *Supra* note 69, Part XIX (h).

exclude certain kinds of property that were incapable of private ownership from the purview of trade, was incorrectly being applied to 'immoral' objects that could very well be privately owned, due to decades of error by the Indian Supreme Court.[72] As noted in this article:

Certain kinds of property were incapable of private ownership or acquisition because such ownership would be contrary to their natural purpose. Such kinds of property were known as res extra commercium. Within this broad category, there were sub-categories. A resource which by its nature could only be used in common was called res communes. Fish, wild game, rivers, and the sea fell into this category. Property set aside for public use by public functionaries or the political community was categorized as res publicae. Public buildings and the furniture within them exemplified this category. In the present day context, the Parliament building can be considered so. Then there was a third category, res divini, which may no longer be relevant since its subjects, res sacrae (churches) and res religiosae (cemeteries) are now subjects of ownership. The fourth category was res universitatis which included things held by a corporate body, and the last was res nullius, meaning those things or places that belonged to no one. It is clear from these categories that morality had no role to play in the classification of property as res extra commercium. In fact, no one individual could claim any right over such property because it was meant for the common benefit of all.

Datar's exploration of the glaring conceptual errors in application of *res extra commercium* to noxious substances and the like has resulted in seeding doubts even among Supreme Court judges when it comes to the scope and applicability of this doctrine.[73] In *State of Maharashtra v. Indian Hotels Association*,[74] amendments to the Bombay Police Act, 1951 that illegalized the long-standing profession of bar dancing, were challenged. Among other submissions, the State relied upon the *res extra commercium* to defend this ban, contending that dance bars were akin to the sale of liquor in that they perpetuated immoral trafficking of women and the weakening of social morals. The pressure imposed by bar owners on young girls to perform indecent and obscene dances with the intent of luring a predominantly male audience to the bar, was also highlighted to strengthen this argument.[75]

Rejecting this contention, the Supreme Court held that there is nothing that could not have been achieved through proper enforcement of existing regulations that the ban would manage to additionally achieve. It accordingly distinguished the liquor ban cases that drew upon *res extra commercium* from the case at hand, and observed:

In Khoday Distilleries Ltd. (supra), it was held that there is no fundamental right inter alia to do trafficking in women or in slaves or to carry on business of exhibiting and publishing pornographic or obscene films and literature. This case is distinguishable because of the unfounded presumption that women are being/were trafficked in the bars. The case of the State of Punjab & Anr. Vs. Devans Modern Breweries Ltd. & Anr. (supra) dealt with liquor trade, whereas the present case is clearly different. The reliance on New York State Liquor Authority (supra) is completely unfounded

72 See Datar, Arvind P. "Privilege, Police Power and Res Extra Commercium–Glaring Conceptual Errors." *National Law School of India Review*, 2009, 145.

73 In this regard, see the observation in Union of India v. Martin Lottery Agencies Ltd., (2009) 12 SCC 209, 222, where the Supreme Court has noted that "the concept of res extra commercium may in future be required to be considered afresh having regard to its origin to Roman law as also the concept thereof." For specific reference to Datar's article in connection with the shaky foundations of *res extra commercium* doctrine as applied to the Indian context, see *Action Committee, Unaided Private Schools v. Director of Education, Delhi*, (2009) 10 SCC 1, 28.

74 (2013) 8 SCC 519.

75 *Ibid*, Paras 554-57.

because in that case endeavour of the State was directed towards prohibiting topless dancing in an establishment licensed to serve liquor. Similarly, Regina Vs. Bloom (supra) dealt with indecent performances in a disorderly house. Hence, this case will also not help the appellants. Therefore, we are not impressed with any of these submissions. ***All the activities mentioned above can be controlled under the existing regulations.***[76]

These observations of the Supreme Court were reaffirmed in *Indian Hotels Association v. State of Maharashtra*,[77] a case where the Supreme Court was called upon to examine the validity of a fresh set of legislative and executive actions by the State to regulate the same conduct. Here, the court availed the opportunity to also provide more clarity on the idea of morality as a guiding principle for imposition of authority by the State. Interestingly, the court even expressed doubts about gambling's continued immorality in the context of an ever-changing world, in the following paragraph:[78]

It needs to be borne in mind that there may be certain activities which the society perceives as immoral per se. It may include gambling (though that is also becoming a debatable issue now), prostitution etc. It is also to be noted that standards of morality in a society change with the passage of time. A particular activity, which was treated as immoral few decades ago may not be so now. Societal norms keep changing. Social change is of two types: continuous or evolutionary and discontinuous or revolutionary. The most common form of change is continuous. This day-to-day incremental change is a subtle, but dynamic, factor in social analysis. It cannot be denied that dance performances, in dignified forms, are socially acceptable and nobody takes exceptions to the same. On the other hand, obscenity is treated as immoral. Therefore, obscene dance performance may not be acceptable and the State can pass a law prohibiting obscene dances. ***However, a practice which may not be immoral by societal standards cannot be thrusted upon the society as immoral by the State with its own notion of morality and thereby exercise "social control"****.*

From the above decisions, it is clear that it is no longer open to the State to merely rely upon an uncertain concept like *res extra commercium* and extend its prohibitory powers beyond liquor and traditional lotteries, the only two commodities in respect of which Supreme Court jurisprudence is well settled as to the applicability of this doctrine and the excludability of Article 19(1)(g) freedoms. In all other cases, the State's power is confined to drawing up proportionate regulations that control the trade, business or profession in terms of balancing the respective freedom to carry on such activity and the harms associated with it. This is precisely the exercise undertaken by the Division Bench of the Karnataka High Court in *All India Gaming Federation v. State of Karnataka*,[79] which compelled the bench to conclude that *res extra commercium* shall not apply to games of skill.

Freedom of Expression under Article 19(1)(a)

In a pathbreaking move towards further constitutionalization of the protections afforded to games of skill, the Division Bench in *All India Gaming Federation v. State of Karnataka*,[80] also entered a terrain overlooked until then by all judicial discussion in India on the legality of games, which is that of the expressive content of games. In a pathbreaking analytical move, the Bench

76 *Ibid*, Para 589.

77 (2019) 3 SCC 429.

78 *Ibid*, Para 493.

79 *Supra* note 69.

80 *Ibid.*

observed that "games have emotive content whose effects tend more toward the cognitive," thus blurring the line between entertainment and information. Even when games failed to convey a discernible message, their non-cognitive forms of expression could serve as a means to promote self-development. Their interactivity could enhance the expressive impact of a medium, working often to create "a mood as an abstract art," besides subtly shaping thoughts in a manner characteristic of all artistic expression. The expansive idea of fundamental freedoms, on account of judicial precedents, would therefore equally offer protection to games of skill within the protective contours of Article 19(1)(a) and Article 21, in much the same way as it would for "abstract painting, avant-garde music and nonsensical poetry."[81] Proceeding further, the Bench clarified that virtual games would be entitled to similar protection in this regard as physical medium games, a conclusion that is further amplified in the case of opinion trading platforms that give expression to the opinion of individuals through an outlet for them to place a financial value on the same.

The Division Bench's aforementioned views on the issue of applicability of Article 19(1)(a) are supported by the Indian Supreme Court's free speech jurisprudence, though the Bench omitted to cite this strand of precedents, going back to 1995 and paradoxically emanating from the world of sport and entertainment, that support its reasoning and conclusions. In *Secretary, Ministry of Information & Broadcasting v. Cricket Assocn. of Bengal*,[82] the Indian Supreme Court had to decide on whether the cricketing body was bound to share broadcasting signals with the public broadcaster when it had already auctioned airtime to the highest private bidder. The case arose from the I&B Ministry's refusal to grant permission on time for the contractual arrangement between the cricketing body and the private broadcaster to be effectuated. Mooring the cricketing body and the private broadcaster's rights in the freedom available under Article 19(1)(a), despite both of them not directly participating in any expression, the Supreme Court observed that the freedom of speech and expression shall also include the "right to acquire information and to disseminate it." The court clarified that this freedom was equally important in the role it played towards facilitating artistic and scholarly endeavours "of all sorts" as it served in the realm of political discourse.[83] Specifically addressing the rights of broadcasters, ie. the platform for such communication, the court observed:

It can hardly be denied that sport is an expression of self. In an athletic or individual event, the individual expresses himself through his individual feat. In a team event such as cricket, football, hockey etc., there is both individual and collective expression. It may be true that what is protected by Article 19 [1] (a) is an expression of thought and feeling and not of the physical or intellectual prowess or skill. It is also true that a person desiring to telecast sports events when he is not himself a participant in the game, does not seek to exercise his right of self expression. However, the right to freedom of speech and expression also includes the right to educate, to inform and to entertain and also the right to be educated, informed and entertained. The former is the right of the telecaster and the latter that of the viewers. The right to telecast sporting event will therefore also include the right to educate and inform the present and the prospective sportsmen interested in the particular game and also to inform and entertain the lovers of the game. Hence, when a telecaster desires to telecast a sporting event, it is incorrect to say that the free speech element is absent from his right.[84]

81 *Supra* note 69, Part XV (c).

82 (1995) 2 SCC 161.

83 *Ibid*, Para 213.

84 *Supra* note 82, Para 224.

Subsequently, the Supreme Court in *Union of India v. Association for Democratic Reforms*[85] relied on this principle to extend the freedom of expression to an act that did not involve the utterance of even a word - casting one's vote. Infusing Indian free speech jurisprudence with the US Supreme Court's long-held position on the first amendment's applicability to symbolic and non-verbal forms of expression without expressly acknowledging the same,[86] the court concluded that the voter's speech or expression "would include casting of votes, that is to say, voter speaks out or expresses by casting vote."[87]

Again, without expressly acknowledging another important precedent, the Indian Supreme Court was merely reaffirming its philosophical commitment to protecting non-verbal forms of expression, one that it had brought to the aid of three school children more than a decade ago in *Bijoe Emmanuel v. State of Kerala*.[88] Here, the Supreme Court annulled a decision by the Deputy Inspector of Schools to expel these children, Jehovah's Witnesses by faith, from school because they refused to sing the national anthem. Anchoring its verdict, *inter alia*, in Article 19(1)(a), the court here had observed that Article 19(2) required the existence of a formal law when curtailing free speech rights, thereby implicitly endorsing the protection for symbolic speech that included a refusal to sing the national anthem on the ground of religious belief. In the case at hand, the court found that no such law was in place, and departmental instructions could not substitute for this requirement.

A similar commitment is subsequently seen in the Supreme Court's decision in *Union of India v. Naveen Jindal*,[89] where it extends the scope of Article 19(1)(a) to include the right to fly the national flag, drawing in particular from Canadian free speech jurisprudence and its expansive approach to the meaning of the term "expression" in Section 2(b) of the Canadian Charter.[90] In another striking instance of extending protection under Article 19(1)(a) to non-verbal forms of communication, the Supreme Court in *National Legal Services Authority v. Union of India* holds that "self-identified gender can be expressed through dress, words, action or behaviour or any other form," and that the State cannot prohibit, restrict, or interfere with a trangender's expression of such inherent personality as validly expressed under Article 19(1)(a).[91] Most recently, in *Supriyo alias Supriya Chakraborty v. Union of India*,[92] the Supreme Court has taken note of these important verdicts and expressly acknowledged the constitutional commitment towards protecting symbolic and non-verbal forms of expression, not only those performed in isolation but also extending to "participation in socially valuable forms of expression that are articulated in community."[93] Therefore, the Division Bench of the Karnataka High Court is fully supported by existing precedent in its conclusion that games of skill built on the idea of self-expression and interactivity ought to receive fundamental rights protection under Article 19(1)(a).

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85 (2002) 5 SCC 294.

86 For more on the US free speech jurisprudence pertaining to symbolic forms of expression, see Eugene Volokh, *Symbolic Expression and the Original Meaning of the First Amendment*, 97 Georgetown L.J. 1057 (2009); Laura L. Goodman, *Shacking Up with the First Amendment: Symbolic Expression and Shacking Up with the First Amendment: Symbolic Expression and the Public University*, 64 Indiana L.J. 711 (1989).

87 (2002) 5 SCC 294, 322.

88 1986 (3) SCC 615.

89 (2004) 2 SCC 510.

90 *Ibid*, Para 540.

91 (2014) 5 SCC 438, Paras 489-90.

92 (2023) 16 S.C.R. 1209.

93 *Ibid*.

To conclude, it is not only a legal but also a constitutional imperative to protect games of skill. This imperative is not confined to the aspect of federalism but extends deeper into the realm of rights, and in particular the fundamental freedoms guaranteed under Articles 14, 19 and 21 of the Indian Constitution. This gets further strengthened when we enter the zone of interactive online games as they also represent a form of symbolic speech. Therefore, courts when confronted with specific types of games and other activities inevitably need to draw the line between skill and chance in practical terms, the understanding of which exercise we now turn to.

Ascertaining the Skill Element: Insights from India and Abroad

After the RMDC cases, the first major occasion for the Indian Supreme Court to examine the distinction between game of chance and game of skill came in the form of a challenge occasioned by a police raid carried out on a club where the game of 'rummy' was being played for stakes. In *State of Andhra Pradesh v. K Satyanarayana*,[94] the appellant State of AP (pre-bifurcation) argued that rummy, like *teen patti* or the 'three-card' game, was entirely one of chance. Rejecting this contention, the Supreme Court held that in cases where both skill and chance were involved in shaping game outcomes, the enquiry had to be focused on which of these two predominated. In the court's view, rummy qualified as a game of skill because it involved a *preponderance* of skill over chance, evident from factors such as the need for the players to memorize the fall of cards, and the considerable skill involved in holding and discarding cards as the game advanced to later stages. The court equated the chance in a game of rummy to be of the same character as that in a deal at a game of bridge. The court noted that all games in which cards are shuffled and dealt out involve 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. This in itself would not render rummy a game of chance, as the skill elements of memorization and application of foresight overrode the chance element inherent in the initial hand that a player was dealt with. The Supreme Court's determination of rummy as a game of skill has also been a significant source of guidance for High Courts in subsequent cases. For example, in *All India Gaming Federation & Ors. v. State of Tamil Nadu & Ors.*,[95] the Madras High Court partly upheld a 2022 Tamil Nadu state legislation that prohibited games of chance played for stakes within the state, but ruled that the game of online rummy, which had been explicitly listed as a game of chance in a schedule under the legislation, be *excluded* from its purview.[96]

In *KR Lakshmanan v. State of Tamil Nadu*,[97] the Supreme Court had the opportunity to further examine the dimensions of games of skill and those of chance in the context of bets placed on horse racing. In the context of executive action initiated against the Madras Race Club under the Madras City Police Act, 1888, and the Madras Gaming Act, 1930, the court had to examine whether the running of horse-races by the club would be a game of chance or a game of skill, as well as whether 'wagering' or 'betting' on horse-races would tantamount to gaming under the two aforementioned laws.

Fleshing out further the distinction between games of chance and those of skill, the Supreme Court observed that a game of chance is one that stands determined entirely or in considerable part by mere luck, with throws of the dice, turns of the wheel, and shuffling of cards representing

94 AIR 1968 SC 625.

95 (2023) 2 Writ LR 649.

96 *Ibid*, Paras 104-119.

97 AIR 1996 SC 1153.

classic examples of the same. The common feature in all these instances would be that "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."

On the other hand, the Supreme Court noted that a game of skill would be one where success depends principally upon the *superior knowledge*, *training*, *attention*, *experience* and *adroitness* of the player, even if the element of chance could not be entirely eliminated. Therefore, in such games, examples of which would include golf, chess and rummy, the element of skill *predominated* over the element of chance, thus making it clear that the dominant element, be it 'skill' or 'chance', determined the character of the game.

Significantly, the Supreme Court also made the following observation about the subject of horse racing,[98] having considered different secondary sources in the preceding paragraphs:

Horse racing is an organized institution. Apart from a sport, it has become a huge public entertainment business. According to The New Encyclopaedia Britannica the occasion of certain races are recorded as public holidays. Derby day at Epsom where the public is admitted on two parts of the grounds at no fee has drawn as many as 5,00,000 spectators. Attendance at horse races in many countries is the highest or among the highest of all sports. The horses which participate in the races are a class by themselves. They have a history of their own. ***The breed of the horse is an important factor. The experts select the horses who are to be inducted into the racing profession. The selected horses are given extensive training by professional trainers. Breed, upbringing, training and the past record of the race-horses are prominently published and circulated for the benefit of prospective bettors. Jockeys are experts in horse riding and are extensively trained in various aspects of horse-racing. They are supposed to know the horse they are riding and the turf on which the horse is to run.***

Applying the test to the facts on hand, the Supreme Court responded to the question as to the nature of horse-racing in the following manner:[99]

We have no hesitation in reaching the conclusion that horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post. [..] In view of the discussion and authorities referred to by us, we hold that horse-racing is a game where the winning depends substantially and preponderantly on skill.

As a necessary corollary to this conclusion, the Supreme Court also concluded that only a wager or a bet on a game of chance would amount to a gamble. Therefore, "wagering or betting on horse-racing - a game of skill -" would not fall foul of the two legislations in question.

In *Varun Gumber v. Union Territory of Chandigarh & Others*,[100] the Punjab and Haryana High Court had the opportunity to further examine the question of skill and chance in the context of fantasy sports league ("**FSL**") games, in which users can select, build, and act as managers of a virtual sports team created by them using real sports players or teams, and compete against the virtual teams of other users over the course of many rounds, such that results are calculated on the

98 *Ibid*, Para 24.

99 *Supra* note 97, Para 30.

100 (2017) 4 RCR (Cri) 1047.

basis of the statistics, scores, achievements, and results generated by real sports persons or teams in designed professional sporting events. The winner of a fantasy sports game is the participant whose virtual team accumulates the most number of points across the rounds of the game.

Here, before the High Court was a petitioner who claimed to be a victim of such FSL games offered by the respondent, Dream11, which according to him had been falsely termed skill-based when in fact they amounted to gambling. This, in his view, rendered the petitioner liable for criminal action under the Public Gambling Act, 1867. In this context, the court determined that the question before it was whether FSL games are games of skill or chance, and went on to closely consider the factual position on the different facets of such games and the element of skill involved across different stages of their gameplay, as submitted by the respondents. In particular, the court placed value on the below-outlined set of facts.

1. Drafting a virtual team, which is the *first* stage of participating in an FSL game, requires users to exercise considerable skill since they must assess the relative worth of each sportsperson against all others available for selection and study rules, regulations, strength and weaknesses of other athletes. For example, in a fantasy cricket game, a user would have to evaluate, in the case of a batsman, the anticipated statistics for multiple categories such as batting average, total runs, number of half-centuries and centuries, strike rate, to name just a few. Such evaluation by a user would be based on a wealth of statistics from past matches from which to evaluate future performances, but would also need to be analysed in light of factors such as age, current form, injuries, the athlete's statistics in particular stadia against other opponents, and other material causative factors that will have a bearing on the athlete's performance.[101]

2. The rules for drafting also stipulate that no more than 7 of the 11 athletes in their virtual teams can be from a single real-world team, thereby requiring users to exercise greater skill in acquainting themselves with the athletes of both participating real-world teams in a single match, overcoming team biases and prejudices, and preventing them from creating a circumstance resembling the act of betting on the performance of a single team to win the match/league.

3. At the same time, FSL platforms prescribe a price for drafting a virtual player based on their relative value and ability; attribute a value in credit points to each virtual player available for drafting; and prescribe a total maximum budget in points for each user's virtual team. As a result, users must consider the opportunity cost of selecting each athlete, so as to not exceed the prescribed budget in credit points.[102]

Once the virtual team is drafted, a user moves on to the *second* stage of an FSL game, which involves interacting with the game on a regular basis by way of monitoring the scores accumulated by athletes drafted by him and the general performance of teams; surveying other athletes for substitution; and making substitutions where he deems fit but only during the given time-frame. Greater experience and training in such games provides a user with greater insight into strategies for success and a better understanding of the game's dynamics and operational constraints, and heightens and attunes the element and exhibition of skill on the user's part, thereby having a material influence on generating a successful winning outcome in favour of the user.[103]

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101 *Ibid*, Para 3 (c) - (f).

102 *Supra* note 100, Para 3(e).

103 *Supra* note 100, Para 3(h)-(j).

Having considered the above factual intricacies of FSL games, the court referred to the key findings of the Supreme Court in *KR Lakshmanan* on the dominant element of skill and judgment in horse racing, and responded to the question as to the nature of FSL games in the following manner:[104]

It has been found that horse racing like foot racing, boat racing, football and baseball is a game of skill and judgment and not a game of chance. The aforementioned finding squarely applies to the present case. Even from the submissions and contentions of respondent-company and factual position admitted in writ petition, I am of the view that playing of fantasy game by any participant user involves virtual team by him which would certainly requires a considerable skill, judgment and discretion. The participant has to assess the relative worth of each athlete/sportsperson as against all athlete/sports persons available for selection. He is required to study the rules and regulations of strength of athlete or player and weakness also. The several factors as indicated above submitted by the respondent – company would definitely affect the result of the game. [..]

The respondent company's website and success in Dream 11's fantasy sports basically arises out of users' exercise, superior knowledge, judgment and attention. I am of the further view that the element of skill and predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, I do not have any hesitation in holding the any sports game to constitute the game of "mere skill" and not falling within the activity of gambling for the invocation of 1867 Act and thus, the respondent company is therefore, exempt from the application of provisions, including the penal provisions, in view of Section 18 of 1867 Act. [..]

Resultantly, the questions noticed above are squarely answered in favour of the respondent – company and no need to issue the direction against the respondents to settle the criminal law into motion.

Significantly, the Supreme Court dismissed a subsequent appeal filed against the Punjab & Haryana high court's aforementioned opinion in *Varun Gumber.*[105] In *Gurdeep Singh Sachar v. Union of India & Ors.*,[106] however, wherein the Bombay High Court saw no reason to take a different view than that of the Punjab & Haryana High Court's, a number of parties filed proceedings before the Supreme Court against the Bombay High Court's decision, including the Union of India and the State of Maharashtra. Here, the Supreme Court dismissed all such challenges barring one; the proceedings filed by the State of Maharashtra, where the Supreme Court stayed the effect of the Bombay High Court's decision in *Gurdeep Singh* case.[107] While this stay order is indicative of an imminent reconsideration by the Supreme Court, most likely on the issue of taxability, the *Varun Gumber* decision of the Punjab & Haryana High Court and the Supreme Court's dismissal of appeal against that decision remain in effect. Moreover, several High Courts have, and continue to, rely on the *Varun Gumber* opinion to quash or dismiss similar suits about the legality of FSL games against gambling laws,[32] including in *Chandresh Shankla v. State of Rajasthan & Ors,*[108] where the Rajasthan High Court observed that the question of whether FSL games had any ingredient of betting or gambling is no more *res integra;* an untouched matter or a point without a precedent.[109] In fact, even as recently as 2022, a division bench of the Supreme Court dismissed a civil review petition that was filed by Varun Gumber against the Supreme Court's dismissal of his appeal in

104 *Supra* note 100, Paras 8-10.

105 *See* Ravindra Singh Chaudhary v. Union of India D.B. Civil Writ Petition No. 20779/2019.

106 Criminal PIL Stamp No. 22/2019.

107 State of Maharashtra & Ors v. Gurdeep Singh Sachar (Special Leave Petition (Criminal) Diary No. 42282/2019.)

108 Civil Writ Petition No. 6653/2019.

109 *Ibid*.

the case before the Punjab & Haryana High Court.[110]

Beyond India, over the last several decades, a number of foreign courts have been tasked with determining the legality of specific games within their respective gambling laws, and in doing so, have considered similar questions about *skill* and *chance* elements present in those games. Some of the most impactful insights on such questions have come from courts in the United States, which have laid down two primary tests for ascertaining the skill element in games: the *dominant factor test* and the *material element test.*

The dominant factor test, also adopted in the RMDC cases, was laid down in *Morrow v. State,*[111] where while determining whether the appellant's scheme of selling 'football card' tickets constituted a lottery and was therefore illegal, the Supreme Court of Alaska had to consider whether the scheme involved an 'element of chance.' For this purpose, it observed that courts typically employed one of two methods to ascertain this question, either the *pure chance doctrine*, under which a scheme would constitute a lottery "if a person's judgement played no part in the selection and award of the prize," or the *dominant factor test*, under which a scheme would constitute a lottery "where chance dominated the distribution of prizes," even though such distribution was affected, to some degree, by the exercise of skill or judgement. Agreeing with the latter approach, the court laid down *four* prerequisites for meeting the test:

1. Participants must have a distinct possibility of exercising skill and must have sufficient data upon which to calculate an informed judgment. The test is that without skill it would be absolutely impossible to win the game.

2. Participants must have the opportunity to exercise the skill, and the general class of participants must possess the skill. Where the contest is aimed at the capacity of the general public, the average person must have the skill, but not every person need have the skill. It is irrelevant that participants may exercise varying degrees of skill. The scheme cannot be limited or aimed at a specific skill which only a few possess.

3. Skill or the competitors' efforts must sufficiently govern the result. Skill must control the final result, not just one part of the larger scheme. Where skill does not destroy the dominant effect of chance, the scheme is a lottery.

4. The standard of skill must be known to the participants, and this standard must govern the result. The language used in promoting the scheme must sufficiently inform the participants of the criteria to be used in determining the results of the winners. The winners must be determined objectively.

The other test put forth by US courts is the material element test, which states that regardless of whether skill plays a dominant role, it is tantamount to gambling if chance is more than a mere incidental effect on the outcome of the game.[112] This test was applied in *People v. Turner,*[113] where while determining whether the defendant had promoted gambling by encouraging pedestrians to bet on a shell game, the New York Criminal Court noted that "games of chance range from those

110 Review Petition (Civil) Diary No. 5195/2022.

111 511 P.2d 127 (Alaska 1973).

112 Mindell, Ryan. "Context Matters: Luck and the Paradox of Skill." *Gaming Law Review* 22, no. 5 (June 2018): 270–72. https://doi.org/10.1089/glr2.2018.2253.

113 165 Misc. 2d 222.

that require no skill, such as a lottery, to poker or blackjack which require considerable skill in calculating the probability of drawing particular cards," because even in the latter, "the outcome depends on a *material degree* upon the random distribution of cards," and "while the skill of a player may increase the odds in a player's favour, it cannot determine the outcome regardless of skill applied."

Courts in other jurisdictions, for instance Canada, have also brought forth interesting insights on skill and chance, for example in *Ross, Banks, and Dyson v. The Queen,*[114] while determining whether bridge was a game of chance, the Supreme Court of Canada held that chance does not contemplate the "unpredictables that may occasionally defeat skill, but the *systematic resort* to chance involved in many games like the throw of dice." At the same time, courts in the United Kingdom, for instance, have historically taken a varied position on games of chance, such as in *Regina v. Kelly*,[115] where the predominance test was set aside for a test that states that a game of chance that includes a skill element continues to be a game of chance unless chance is "so insignificant" for it to be qualified as such.[116] Such cases pertaining to the UK, however, need to be confined to their facts and legal context, especially because the statutory language in their gambling legislation is clear in its *inclusion* of games of skill within the regulatory ambit.[117]

Between such varied positions and tests, the dominant factor test has been widely adopted for determining skill-based games, both in the United States and globally. The material element test on the other hand, although adopted by a handful of states in the US, is generally considered to be overtly subjective in that it blurs the lines of legality even further, and has not been widely embraced on account of its indifference to skill altogether.[118]

US courts have also laid down considerable guidance on this subject in the specific context of online FSL games. Most notably, in *Humphrey v. Viacom, Inc.*,[119] before a federal US court was a plaintiff suing ten online pay-for-play FSL game operators including Viacom, Walt Disney, CBS Corp, ESPN, for having violated the anti-gambling and gambling-loss recovery laws of New Jersey by offering such games to residents of the state. He alleged that, in essence, such games constituted gambling in that they allowed participants to wager the entry or registration fee they paid for a 'chance to win' a prize, and that the winner of such games was determined predominantly by chance, given the potential for player injuries and the overall vicissitudes of sporting events.[120] The defendants, on the other hand, had filed for a motion to discuss, on the grounds that a mere payment of entry fees for participating in an FSL game, as per law, did not by itself constitute wagering, betting, or staking money.

Affirming the defendants' arguments, and ultimately dismissing the plaintiff's suit, the court made a significant finding of fact about FSL games; success depended on "the participants' skill in selecting players for his or her team, trading players over the course of the season, adding and

114 1968 CanLII 21 (SCC).

115 2008 EWCA Crim 137.

116 *Ibid*.

117 See Section 6, Gambling Act, UK General Public Acts, 2005 c. 19. https://www.legislation.gov.uk/ukpga/2005/19/section/6

118 Okerberg, Erica. "What's in a Game: A Test under Which We May Call a VGT a Gambling Game Is Not So Sweet: Why Courts Should Not Apply the Material Element Test to VGTS." *UNLV Gaming LJ* 5 (2014): 27.https://scholars.law.unlv.edu/cgi/viewcontent.cgi?article=1070&context=glj

119 2007 WL 1797648.

120 *Ibid.*

dropping players during the course of the season, and deciding who among his or her players will start and which players will be placed on the bench. The team with the best performance-based upon the statistics of the players chosen by the participant-is declared the winner at the season's end."[121] Further, while the court also went into the question of whether the defendants could be considered 'winners' for receiving and keeping the pay-to-play net consideration; which it answered in the negative, it also observed that dismissing the suit was also consistent with the Unlawful Internet Gambling Enforcement Act (UIGEA) 2006, which in prohibiting internet gambling and related transactions, excludes from the scope of an illegal 'bet' or 'wager,' participation in any fantasy or simulation sports game where *first*, all prizes offered to winning participants made known to them in advance of the game; *second*, all winning outcomes reflect the relative knowledge and skill of participants and are determined predominantly by accumulated statistical results of the performance of individuals/athletes in real-world sporting or other events; *third*, no winning outcome is based on the score, or any performance of any single real-world team, or solely on any single performance of an individual athlete in any single real world sporting event.[122]

Similarly, in Dew Becker v. Wu,[123] the Illinois Supreme Court officially adopted the predominant factor test, ruling that daily fantasy sports are in fact, games of skill, and therefore permissible under Illinois law. In laying down this decision, the court reversed an opinion issued by the Illinois Attorney General that had concluded daily fantasy sports violated state gambling laws.

In this matter, Dew Becker had invited Andrew Wu to participate in a USD 100 head-to-head daily fantasy sports contest on a platform where Becker lost the contest and subsequently filed suit against Wu. Becker had argued that daily fantasy sports was unlawful gambling, making him entitled to recover the money he had lost. While Becker's argument did not prevail in the circuit court, subsequently, the appellate court concluded that, as per Illinois state gambling laws, the daily fantasy sports contest at issue was a "game of chance, game of skill, or some combination thereof," and that none of the exceptions in the law applied.

The matter then went before the Illinois Supreme Court, where whilst rejecting the appellate court's reasoning, the court examined three general tests, namely, the predominant purpose test, the material element, and the any chance test. The court went on to reason that since every contest inevitably had some element of chance, the predominant factor test provided a "workable rule that allows for greater consistency and reliability in determining what constitutes a game of skill."

It proceeded to determine that the issue before it was whether head-to-head daily fantasy sports contests were predominantly determined by the skill of participants in using their knowledge of statistics and the relevant sport to select a fantasy team that will outperform the opponent. The court cited several peer-reviewed studies including Daniel Getty's 'Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests, Brent Evan's 'Evidence of Skill and Strategy in Daily Fantasy Basketball,' to conclude that daily fantasy sports games were in fact determined by skill.[124]

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121 *Supra* note 119.

122 *Supra* note 119.

123 2020 IL 124472.

124 Getty, Daniel, Hao Li, Masayuki Yano, Charles Gao, and A. E. Hosoi. "Luck and the Law: Quantifying Chance in Fantasy Sports and Other Contests." *SIAM Review* 60, no. 4 (January 2018): 869–87. https://doi.org/10.1137/16M1102094.
Evans, Brent A., Justin Roush, Joshua D. Pitts, and Adam Hornby. "Evidence of Skill and Strategy in Daily Fantasy Basketball." *Journal of Gambling Studies* 34, no. 3 (September 2018): 757–71. https://doi.org/10.1007/s10899-018-9766-y.

The court also disagreed with an Illinois Attorney General's opinion letter where he had concluded that such contests were akin to illegal gambling, on the grounds that said opinion did not take into consideration any of the recent research that established the predominance of skill in such contests. In its final determination, the Illinois Supreme Court held that the outcomes of head-to-head FSL contests are predominately skill based, and therefore not akin to gambling under state laws.

It is therefore the predominant purpose or dominant factor test, as it is called in different jurisdictions, that has been the most widely adopted for determining skill-based games in India, the United States, and even more globally. In contrast, tests such as the material element test, although adopted by a handful of states in the US, have generally been considered to be overtly subjective in that they blur the lines of legality even further, and have not been widely embraced on account of their indifference to skill altogether.

Chapter 4:
Opinion Trading's Legal Standing

Dr. Ananth Padmanabhan, Shruti Mittal

The conceptual analysis of the legal determinations by Indian courts while distinguishing 'games of skill' from those of chance, undertaken in Chapter 3 of this booklet, identifies *two* fundamental aspects of games that have shaped this judicial exercise: *structure* and *function*. It is posited that in determining specific games as 'games of skill,' courts have effectively based their assessments on the underlying structures of the games in question and how they advance skill elements of various kinds, and the function that they serve, i.e. advancing skill over pure chance or luck.

This chapter refers to the core structural components of games identified, and highlights the structural and functional analysis undertaken by courts in the context of specific games, notably rummy, horse racing, and fantasy sports league (FSL) games, which have been explicitly determined as 'games of skill' in *K Satyanarayana, KR Lakshmanan,* and *Varun Gumber,* respectively. It proceeds to shed light on how these very structural and functional aspects, particularly those found in FSL games, are intrinsic to opinion trading platforms too, thereby locating 'opinion trading' in the same category or at the very least, the same neighborhood as that of games already determined judicially to be "games of skill."[125] Before delving into this analysis however, it is helpful to first appreciate the underpinnings of structuralism and functionalism, particularly as they apply to the discipline of law.

Structuralism and Functionalism as Tools for Interpretation and Analysis

Structuralism is a method of analysis widely used across the social sciences to ascertain the *true* nature of *specific* conceptions of human activity – be it an element of human culture, a phenomenon, an event, or a text – by uncovering the underlying *structures* that define, govern, or constrain them. Philosopher Simon Blackburn has succinctly defined structuralism in the *Oxford Dictionary of Philosophy (2008)* in the following manner:[126]

The belief that phenomena of human life are not intelligible except through their inter-relations. These relations constitute a structure, and behind local variations in the surface phenomena there are constant laws of abstract structure.

As a method of constitutional interpretation, structuralism attempts to derive constitutional *rules* from the relationships and interactions between various constitutional institutions or *structures*.[127]

125 Nandan Kamath, a leading expert on sporting law, has argued that such a neighborhood analysis or proximity analysis, is hugely influential in categorizing new games as games of skill or games of chance. See Kamath, Nandan. "How To Recognise Games Of Skill - A Principles-Based Framework - LawInSport," September 2022.https://www.lawinsport.com/topics/item/games-of-skill-vs-games-of-chance-a-principle-based-framework-to-recognise-the-difference.

126 Blackburn, Simon. "The Oxford Dictionary of Philosophy," 353. Oxford University Press, 2008. https://www.oxfordreference.com/display/10.1093/acref/9780199541430.001.0001/acref-9780199541430.

127 Padmanabhan, Ananth. "Rights: Breadth, Scope, and Applicability." In *The Oxford Handbook of the Indian Con-*

Structuralists conceptualise the Constitution as a document creating an overall structure of governance containing sub-structures, and *devices* such as checks and balances including separation of powers and federalism, governing the relationship between such sub-structures.[128]

Functionalism, in contrast, stems from the sociological school of thought which posits that whether something can be considered to be a mental state or behaviour of a *particular* type is based *not* on its internal constituents i.e. what it is made of, but on what it *does*, or how it *functions*.[129] In the context of constitutional interpretation, functionalism serves as an invaluable tool in that by focusing more on the function or purpose of law, and putting strictly textual interpretations in *context*, it can infuse desirable values such as justice, adaptability, and efficacy in law.

These two approaches to understanding social phenomenon, or the meaning of certain words through interpretation in the specific context of adjudication, can serve well in various situations to remove the ambiguity surrounding the inherently value-laden meaning of words. For instance, when analyzing the meaning of "State" under Article 12 of the Indian Constitution and categorizing institutions as falling within or outside the contours of this term, one needs to assess both the structure of such institutions - how they are set up and the structural features that characterize them including personnel, funding mechanisms, legal status and other such features, how they interact with the rest of the wings of State as well as with citizens through these structural features, and other structural dimensions - as well as the functions served by the same institutions and how close they are to the functional objectives of bodies that we already categorize as "State" within Article 12.[130] As seen in this example itself, structure and function are not watertight, mutually exclusive compartments, as much as conceptual categories interdependent on each other, helping identify one or the other as the case may be. In simpler terms, the function that a body is meant to serve could well help identify the structural features that matter, and similarly, its structural features could well help identify the function it is meant to perform.

Structure and Function in Indian Judicial Analyses on Gaming

In making the determination on games of skill, functionalism permeates through all the decisions of Indian courts discussed thus far, simply on account of the predominance test. The predominant function of any game must be to advance or test skill over chance, and this is its very function. As a consequence of this analytical reality, this section does not separately address the question of function when analyzing the court's analytical moves that led to the ultimate categorization of the game in question as being one of skill. What is relevant however, and therefore discussed in greater detail, are the structural features of each game - particularly the player strategies, payoffs, and information made available to each player - that led to the respective court convincingly concluding that the function - predominance of skill over chance - would be served.

While considering the game of rummy, the Supreme Court placed significant emphasis on, in particular, the *strategies* that a player must adopt throughout the game in order to achieve a

stitution, edited by Sujit Choudhry, Madhav Khosla, and Pratap Bhanu Mehta, Chapter 32. Oxford University Press, 2016. https://doi.org/10.1093/law/9780198704898.003.0032.

128 Brown, Kimberly. "Government by Contract and the Structural Constitution." *Notre Dame Law Review* 87, no. 2 (December 1, 2011): 491.

129 Levin, Janet. "Functionalism." In *The Stanford Encyclopedia of Philosophy*, edited by Edward N. Zalta and Uri Nodelman, Summer 2023. Metaphysics Research Lab, Stanford University, 2023. https://plato.stanford.edu/archives/sum2023/entries/functionalism/.

130 *Supra* note 127.

winning outcome. The court laid specific emphasis on strategies such as the *memorisation of the fall of cards* as well as *holding* and *discarding* cards by players, in the absence of which the game of rummy cannot build up. It is based on *these* very structural components of rummy, that the Supreme Court found rummy to require *considerable* skill, and determined it to be mainly and preponderantly a game of skill, in spite of the element of chance introduced owing to the random shuffling and dealing out of cards.[131]

While considering the game of horse racing, the Supreme Court defined games of skill, at the outset, to be those in which success depends principally upon the superior knowledge, training, attention, experience, and adroitness of the player.[132] However, to ascertain whether horse race betting could be categorised as a game of skill, it made note of the different structural constraints within which horse race betting was taking place, right from the point of *admission* to the race course - which is allowed upon the purchase of an entry ticket prescribed by the club, to *participation* in betting on horse races by placing bets on specific horses - which can be done by purchasing tickets at the club's totalizator or with bookmakers who are *licensed* by the club and operate *within* its enclosure.[133] Further, it noted that 75% of the tote-collections of each race were distributed as prize money for winning tickets, 20% paid in betting tax to the State government, and the remaining 5% retained by the club as commission. It also noted that the club pays prize money to the winning horses from its own funds, up to the horse that wins the fifth or sixth place.[134]

The Supreme Court considered various secondary sources on the subject of horse racing, which referred to it as a *systematic* sport where the participant was required to possess full knowledge about the horse, jockey, trainer, owner, turf of the race track, and the composition of the race.[135] It also considered foreign case law in which courts have observed that the bettor in a horse race has the *opportunity* to exercise his reason, judgement, and discretion in determining which horse he thinks will win.[136] Significantly, subsequent to having considered such sources, the Supreme Court specifically noted how the *breed*, *upbringing*, *training*, and *past records* of race-horses are prominently published and circulated for the benefit of prospective bettors.[137] Finally, the Supreme Court based its assessment of horse racing as a 'game of skill' on the *special ability* involved in horse racing itself, be it the *speed* and *stamina* of the horse or the art of riding *experted* by jockeys, acquired via *training*.[138] The Court also observed that "between two equally-fast horses, a better trained jockey could touch the winning-post."[139]

In making the aforementioned observations, the Supreme Court implicitly recognised that winning in horse racing is determined by the bettor's judgement pertaining to the special ability of the horse and jockey; and that such ability is discernible, at least in part, from relevant *public information* about horses and their past records.

While considering FSL games, in effect, the Punjab & Haryana High Court gave material importance to the structural constraints that govern how players can participate and succeed in

131 *Supra* note 94, Para 12.

132 *Supra* note 97, Para 3.

133 *Supra* note 97, Para 17.

134 *Supra* note 97, Para 18.

135 *Supra* note 97, Paras 22-24.

136 *Supra* note 97, Paras 25-26.

137 *Supra* note 97, Para 24.

138 *Supra* note 97, Para 30.

139 *Supra* note 97, Para 30.

FSL games, including the rules laid down by FSL game providers which dictate, limit, and shape the user's decision making with respect to the composition of his virtual team. As explained in the factual submissions made about FSL games that were relied on by the High Court to arrive at its final assessment, such constraints placed on the decision making ability of users act not only as *guardrails* against circumstances resembling gambling, but also *enablers* of a gameplay in which success is substantially determined by the user's application of skill, judgement, and discretion, through the cost-benefit analysis he would inevitably have to undertake both during the drafting and playing stage of the game.[140]

Opinion Trading as a Game of Skill

From a functional point of view, there are two elements that make opinion trading stand apart as a game of skill. The *first* is the same as in the case of rummy and the other games discussed in the previous section - the predominance of skill over chance in its gameplay, as suggested by the data analysis in Section II. To validly assert this, the structural features of opinion trading games are identified below and discussed in greater detail. The *second* however is more specific to the very idea of opinion trading, which is to promote informed decision-making in society through the placing of financial stakes. Such placement of financial stakes, in turn, qualifies as an expressive activity, protectible under Article 19(1)(a) of the Indian Constitution.

Therefore, platforms that promote such games are qualified to additional constitutional protection over and above the protection that all game organizers of games of skill receive under Article 19(1)(g), provided there are structural features *within the platform*, as opposed to those *within any specific opinion trading game*, that advance the idea of expression through information. In this regard, opinion trading platforms are no different from social media sites where people express their opinion through posts or tweets. The difference, if any, is only one of degree arising from the fact that opinion trading games indirectly bring out the expression of the player's opinion through the placement of financial stakes, ie. a form of symbolic speech, while social media sites do so more directly in the form of written words. Both are protected under Article 19(1)(a), and extend such protection to the hosting platform as well. Therefore, the below discussion on structural features will examine both the features of specific games as well as those of the platforms that host them, for the purpose of the "game of skill" ascertainment.

The structural features of opinion trading are similar to the features inherent in other established games of skill such as horse-race betting and fantasy sports. It would be helpful to undertake a point-by-point comparison between skill-based games such as horse-race betting and fantasy sports on one side and opinion trading on the other.

In the first stage of gameplay in both horse-racing and fantasy sport games, the participant must make a set of significant *decisions* or *choices* pertaining to the *subject* of the game. In the context of horse racing, the subject is the horses and the corresponding jockeys participating in the race, and in the context of fantasy sports games, it is the set of players available for drafting. More specifically, in the case of horse racing, a participant must first make a decision about which horse and corresponding jockey to place her bets on, taking into account the breed, speed, fitness, training, past records of the horses and jockeys in previous races, relative to one another. In the context of fantasy sports, a participant must draft a virtual team, and for that, she must assess the relative worth of each athlete or sportsperson available for selection, taking into account the

140 *Supra* note 100, Paras 3-10.

strengths and weakness of players, their age, current form, past injuries, their performance statistics in particular stadiums, and other relevant factors. In both games, this first stage of decision making requires the exercise of considerable skill, for it involves the simultaneous evaluation of several critical factors which can ultimately determine the winning outcome of the game.

Similarly, an individual game of opinion trading is kickstarted by a participant's skill to discern which specific event or events, out of a plethora of live events on the platform, to trade on. In turn, a participant is required to accumulate knowledge of current events, analyse the implications that flow from them, and finally determine which events to trade on so as to maximise the probability of getting a winning outcome. In fact, if players are serious about maximizing their chances of winning, they will have to undertake a detailed analysis of the facts, data, and circumstances of the event in question much like they might in the other mentioned games. So for example, in a game based on a question "Will India win the Champions Trophy?," players will need to study the current line-up of the Indian cricket team, its recent performances, the statistics of individual players, their history in the venues where matches will be played, and compare these with similar data points for every other team in contention and also account for extraneous factors like weather conditions. As can be seen these points of analyses are remarkably similar to what is used in fantasy sports and parallel to the factors that need to be evaluated in horse race betting. In the case of opinion trading, a participant is also required to exercise considerable skill in determining *which side* of the event to purchase; Yes or No, in addition to *how much* quantity to purchase at a given price point.

In subsequent stages of gameplay in fantasy sport games, once the virtual team is drafted, a participant is required to continually *interact* with the game, at a periodicity determined by the participant herself, so as to *monitor* the scores accumulated by the athletes drafted by her and the overall performance of the teams. Similarly, in the context of an individual opinion trading game, a participant must discern *how often* to monitor the fluctuating value of the event as well as the release of new information that could materially impact the final outcome of the event. By monitoring such fluctuations, a participant is then able to determine if and *when* to purchase additional quantities at different price points, given that a participant may purchase multiple orders at different prices instead of as part of one single order at a single price point.

Significantly, in the case of fantasy sports games, a participant also continues to exercise skill during this stage by utilising feedback on how athletes are faring towards making a decision about whether to substitute athletes with others. This stage of course-correction in fantasy sports is comparable with the stage in the game of opinion trading where a participant must carefully monitor fluctuations in price and quantity of purchase for the event in question, and make an assessment about the fluctuating risk of losing any portion of the event value. Ultimately, such exercise of skill may culminate in a participant choosing to hedge their losses by exiting the event early, by choosing to invest in both sides of the event, or choosing to invest in a less-risky event parallel to the event in question.

The outcome of success, in both skill-based games like horse racing and fantasy sports on one hand, and opinion trading on the other, substantially depends on a range of decisions or choices made by a participant, where each such decision has an opportunity cost of its own, in different permutations and combinations, all of which are structurally permissible by way of player strategy. An overview of these decision choices is given below:

1. Determining *how much* quantity, and which side of it to purchase (could entail collating their overall knowledge/ideas on the subject, assessing prevailing attitudes on it, making a decision about which side of the event is a 'smarter' choice);

2. Determining *when* to purchase additional quantities at different price points (a player might purchase multiple orders at different prices instead of as part of one single order at one price only);

3. Determining *how often* to monitor the fluctuating value of the event;

4. Calibrating the fluctuating risk level of ultimately losing any portion of the event value;

5. Taking *action* on that calibration/assessment and exiting the event early (presumably indicative of a more skilled v. less skilled player);

6. Actively hedging losses both within the same contract (by investing in both sides of the event), or investing in a different event altogether (alongside the riskier event in question), or deciding when to exit a trade.

As discussed in Chapter 2, data suggests players use a number of well-calibrated strategies to make these choices and try to maximize their winnings. There is empirical basis to conclude that those who deploy them better have a better shot at earning positive payoffs, while those with lesser skill in their deployment have a stronger likelihood of negative payoffs. The ability to study and analyse real world information *and* read market sentiments to then deploy a combination of strategies to maximize winnings require a cornucopia of skills not commonly found. Winning consistently in opinion trading is therefore a direct outcome of the "*superior knowledge*, *training*, *attention*, *experience* and *adroitness* of the player" as required by the Supreme Court.[141] The use of strategies by players is also a key indicator of the preponderance of skill in opinion trading, similar to how the use of strategies is a central element in Rummy – an established game of skill.[142]

Acknowledging this fact, opinion trading platforms have therefore structured their **payoffs** in such a manner as to promote these skills. Moreover, these platforms usually carry on due diligence exercises to first and foremost eliminate those events with perfectly random probabilities of occurrence, as well as test each event on the touchstone of player strategy skills necessitated by the event.

Informational access to the players, provided at the front-end through the deployment of back-end algorithms and infrastructure, also play a major role in creating and nurturing further elements of skill. Key aspects of this structural feature of **information and information architecture** are as identified below:

1. Algorithms which automate the process of expediently matching trades, executing orders, settling events, as well as integrating real-time data or information collection, management, and analytics;

2. The determination of *which events* and more specifically which *specific articulations* of events, in statements or questions, are allowed to be displayed and subsequently traded on;

3. A transparent and data-driven experience for traders by providing simple, clear, and actionable insights on the changing trajectory of the event in question;

141 *Supra* note 97.

142 *Supra* note 94.

4. In particular, a range of visual and textual data insights on the prevailing market price, number of traders, the volume i.e. total quantity in price terms being traded, the start and end time for the event, and the single source that will be used to 'settle' the event, all of which present information in a cumulative and curated manner to the trader;

5. Interactive, easy-to-understand graphs that depict how trade volume and probability for a position has changed over a period of time, with this time frame varying depending on the event. Like stock trading platforms, opinion trading platforms also provide traders with an 'order book' for each event, which is a live, transparent list displaying the current buying interest for both positions of the event at various price points, revealing how strongly traders are leaning towards a particular outcome.

Together, the front and back-end architecture are designed to enable efficient data-driven decision making for both traders and platform providers. The presence of skill in opinion trading strongly suggested by gameplay data as seen in Chapter 2 therefore falls well within the legal requirement for preponderance of skill to determine a game of skill.

Finally, over and above these structural features that test and nurture the skills of individual players, reside key structural features within the platform that aim to make them a *meaningful space for player expression*. These features, highlighted below, amplify the justification for the protection that opinion trading platforms must constitutionally be guaranteed against excessive State action.

The *first* of such features is the system that some of the opinion trading platforms have put in place, wherein they rely on a community of experienced users to create the events over which traders can raise financial stakes. These are usually users who have achieved a high level of consistent participation, accurate predictions, and engagement with events on the platform. Upon being shortlisted, they get exclusive rights to create and settle their events, and with time, become 'Editors' too with the power to manage other creators. This feature serves as strong evidence for the fact that opinion trading platforms are committed to advancing the self-expression of individuals both by making them trade on opinions they hold as well as by permitting at least some of them to drive the conversation itself through the identification and creation of events.

In a similar vein, the checks and safeguards that most of these platforms offer can be understood as a mechanism to ensure *meaningful* expression, and one that keeps the platform shorn of potential illegality. These safeguards include a) two-step KYC verification, b) age verification through PAN linkage, c) caps on financial losses that traders may incur, d) daily and monthly limits on the recharge, withdrawal, and trading per event, e) options for traders to self-impose limits on their activity through recharge limits, trading limits, reminders about time spent trading, or self-blocking limits, f) free educational support to users in the form of English and Hindi based user guides, blogs, and video tutorials on the nuances of opinion trading, and g) tracking and alert mechanisms to account for cases where users might attempt to artificially inflate or deflate prices. Cumulatively, they work to ensure that the skill element in the game is not diluted in any manner, while equally seeking to secure additional protection under Article 19(1)(a) as a responsible and meaningful platform for symbolic speech expression. This is again similar to the guardrails placed by fantasy sports platforms to enable a gameplay in which success is substantially determined by the user's application of skill and judgement, instead of mere chance.

Conclusion

There can therefore be no doubt that success on opinion trading platforms is primarily dependent on a user's skill whether it be their ability to process information or develop strategies to take advantage of price fluctuations. Data from leading opinion trading platforms indicates that experience and the use of skills and strategies leads to greater winnings. On the other hand, it is also clear that opinion trading appears to meet the established legal threshold for being a 'game of skill'. The preponderance of skill over chance in such games is quite clear from the given data, and it contains almost all of the inherent structural elements that led the Courts to determine horse race betting and fantasy sports as games of skill.

Further, opinion trading platforms form an important node in information markets and are an efficient method to gauge public sentiment by relying on the "wisdom of the crowds". In many ways opinion trading platforms are to information markets what stock exchanges are to financial markets, in that they allow for a democratic, low-cost method of accurately judging the value of a specific piece of information. The "game" aspect of such platforms is simply the gamification of user experience, so individuals are incentivized to participate willingly and regularly. This helps develop a more accurate analysis of public sentiment on a specific issue than say traditional opinion polls, which have come under considerable scrutiny in recent times.

Opinion trading platforms create avenues for individuals to take positions on the possibility of various outcomes taking place (or not), based on their reasoning and opinions. By facilitating this, opinion trading platforms advance the idea that as a social collective, we not only hold firm opinions but also test them against the highest standards of reasoning by attaching financial consequences to these opinions. By doing so with the aid of data-driven decision making processes, opinion trading platforms generate a positive incentive for individuals to not only hold opinions but also reflect on why they hold them and to appreciate, in a deeper sense, the variables that can determine outcomes that they place money on.

Games of skill that test player strategies in an interactive and ever-evolving informational setting must therefore be kept out of the existing panoply of laws, both parliamentary and at the State level, that govern betting and gambling. Platforms that host such games should also be evaluated as a whole, alongside the various safeguards they have put in place to create a meaningful space for such interaction, rather than by examining the nuances of each of these trades (some of which may individually qualify to be judicially unenforceable wagers under existing law).

Besides this being a sensible regulatory approach backed by robust public policy, there are strong constitutional reasons in support of the same. The interactivity and symbolic speech elements advanced by opinion trading platforms place them and the games they host in a special zone of protection under Article 19(1)(a), in addition to the Article 19(1)(g) rights that extend to all games of skill. The constitutionalization of games of skill through various judicial pronouncements discussed in detail in the earlier Parts of this report also necessitates a separate framework for all such games.

While the IT Rules of 2021 provide some insightful policy guidance in this regard, there is a long way to go towards clearing the regulatory ambiguity and entrenching a strong self-regulatory model of governance for online games in general and opinion trading platforms in specific. In addition to a healthy respect for existing jurisprudence, policy makers need to therefore engage meaningfully with opinion trading platforms to better understand the nuances they bring to the table while providing a source of entertainment and information to the larger public.

Review:
The Question of Skill in Opinion Trading

Justice (Retd.) B. S. Chauhan

The present pocketbook authored by a team of experts from IIT Delhi, Vinayaka Mission's Law School, and Evam Law & Policy, deals with an interesting question of whether Opinion Trading is a skill-based game and if it is so, how its regularization is essential, in a concise yet insightful manner. The relevancy of Opinion Trading has been on a rapid increase due to exponential growth in the gaming industry which is fueled by the rise of affordable smartphones, cheaper internet plans and increased usage of digital payments.

This pocketbook provides a deep insight into the inner workings of Opinion Trading platforms, and provides constructive arguments for classifying Opinion Trading as a game of skill, backing up its arguments efficiently by providing necessary factual data regarding the same. In a world where information overload is common, this pocketbook distills complex concepts into an accessible and practical format.

This pocketbook is divided into chapters and each chapter proves its relevancy by itself. Notable questions have been dealt with in chapter 2 while explaining how Opinion Trading involves skills such as data analysis, determining exit strategies and implementation of the experience gained throughout. Relevant comparisons have been made with chance-based games, effectively proving how Opinion Trading is different from chance-based games. Real-world examples have been used to provide clarification on how the platform works. A detailed study has been provided of relevant landmark judgments that have carved the path for regularization of skill-based games. The authors also break down complex legal jargon into digestible sections, making it an ideal companion for professionals and laymen.

Overall, this pocketbook is a well-structured and informative resource for anyone interested in learning the mechanism of Opinion Trading platforms. It serves as a quick and practical reference, making it particularly useful for Legal professionals. It is an excellent starting point for anyone looking for a condensed yet insightful guide on opinion trading. Highly recommended for reference while formulating policies for a skill-based game.

Over the past two decades, the digital world has given rise to various innovations among which online gaming is one of the most significant. The exponential growth of this industry has been fueled by the rise in affordable smartphones, cheaper data plans and increased usage of digital payments. The Indian gaming market, currently valued at around USD 4 billion, is projected to hit USD 7.6 billion by 2028, with Real Money Games (RMGs) making up over 80% of the market. Among the many gaming formats, digitally native games like Fantasy Sports and Opinion Trading have gained immense popularity.

Opinion Trading allows individuals to back their opinions on real-world events with financial stakes, making it an interesting mix of skill, strategy, and prediction. However, this emerging sector faces legal uncertainty due to its classification – whether it is a game of skill or a game of chance.

Understanding Opinion Trading

Opinion Trading involves predicting real-world events on the basis of information flowing in the market. Players place bids on either 'Yes' or 'No' outcomes for a predefined question, with the contract value set (e.g., Rs. 10). The price of each option fluctuates based on market demand, influenced by real-time events. If a player's prediction is correct, they win the contract value; otherwise, they lose their stake.

Currently, Opinion Trading platforms in India boast nearly 50 million users, with annual transactions exceeding USD 6 billion. Investors have poured approximately USD 500 million into these platforms, signaling strong growth potential. However, legal uncertainties remain regarding its classification under Indian gaming laws, which distinguish between skill based and chance-based games.

Opinion Trading: Game of Skill or Game of Chance?

To get a better understanding of where Opinion Trading falls, it can be concluded from various studies that on the skill-chance spectrum, where a coin toss as a pure game of chance lies on one end, and chess (the closest we can get to a pure game of skill) on the other, Opinion Trading is closer to chess, and infact its skill quotient ranks higher than rummy, which Indian courts have ruled as a game of skill. A skill based game possesses characteristics which includes overtime improvement through experience, such experienced traders outperforming novice traders (skill gap) and the most important skill – strategic decision making regarding exits.

The win in such traders is determined by how effective one can make a profit on the investment made. A player can secure a win in two ways. They may choose to **exit** the game by selling their contract if the market price of their opinion rises above their initial investment, securing a profit. Conversely, if the price drops, they can sell early to minimize potential losses. Alternatively, they can opt to **stay in the game** until the event occurs, earning a profit if their prediction turns out to be correct. Another effective method is holding multiple opinion positions at different price points within the same trade.

The data from leading Indian Opinion Trading platforms provides that players who apply strategies such as buying and selling opinions at different price points or exiting trades strategically show higher success rates.

Opinion trading platforms are basically information markets where the players can exit even before the actual event occurs as the success and failure depends on following traits:

- **Forecasting Abilities:** Analyzing current events and predicting their impact.
- **Market Awareness:** Identifying mispriced opinions and capitalizing on market inefficiencies.
- **Exploiting Behavioral Biases:** Recognizing when traders make irrational decisions due to fear or overconfidence.

The parallels between Opinion Trading and stock market trading further reinforce its skill-based nature as both required analysis of market trends, calculated predictions, and management of risk. A 2020 MIT study even found that Fantasy Sports demand more skill than stock trading, suggesting that Opinion Trading, which shares many similarities with Fantasy Sports, is far from a pure game of chance.

The Legal Landscape: Regulating Skill-Based Games

The classification of games in India is based on whether it is a skill-based game or a chance-based game, whereby chance-based games are prohibited in their entirety. However, there is no standardized classification. The games on the skill side of the spectrum are more likely to be regularized than chance-based games. Various landmark judgments have carved the path for regularization of skill-based games.

Key Judicial Precedents

RMD Chamarbaugwala v Union of India, AIR 1957 SC 628: The Supreme Court ruled that games of skill, even when played for money, are distinct from gambling and deserve legal protection.

***Junglee Games India Pvt. Ltd v State of Tamil Nadu, AIR 2021 Mad 52*:** The Madras High Court struck down a state-wide ban on online rummy, emphasizing that excessive restrictions on skill-based games violate fundamental rights.

All India Gaming Federation v State of Karnataka, (2022) 2 AIR Kant R 422: The Karnataka High Court reaffirmed that skill-based games are protected under Article 19(1)(g) (right to practice any profession) and cannot be arbitrarily banned.

Indian Hotels Association v State of Maharashtra, (2019) 3 SCC 429: The Supreme Court ruled that the state cannot impose its moral views on activities not inherently immoral by societal standards.

It has been repeatedly held by the courts that skill-based games are not the same as gambling. Therefore, it is for the improvement of society that these games be regulated instead of banning them.

Opinion Trading's Legal Standing

From a legal perspective, Opinion Trading's skill classification can be analyzed using **structuralism** (examining game design) and **functionalism** (assessing its real-world impact).

Structural Aspects Supporting Skill Classification: Opinion Trading platforms ensure fairness and informed participation by creating events that are community driven and which can be resolved by experienced users. Strategic decision making is always rewarded and there exist built-in safeguards such as KYC verification, financial loss caps, and fraud detection.

Functional Aspects Supporting Skill Classification: Opinion Trading is driven by information on a peer-to-peer basis and therefore success is determined by knowledge and strategy. Similar to

financial markets, it allows its players to consistently improve their performance with experience and strategy and also allows traders to adjust their positions based on evolving information.

The Way Forward: Need for Clear Regulations

Despite its clear reliance on skill, Opinion Trading remains in legal grey areas due to a lack of specific regulations. The IT Rules of 2021 provided some guidance but do not address Opinion Trading explicitly. It is essentially that policy makers recognize the difference between Opinion Trading and Gambling i.e. skill based games, like Opinion Trading, can be regulated but not banned. On their part, Opinion Trading platforms must ensure transparency, prevent addiction and protect its users. A collaboration with industry stakeholders would result in creation of a balanced framework that supports innovation while mitigating risks.

Conclusion: A Shift Towards Recognition

To conclude, Opinion Trading is more than just a game, it holds opportunities for traders to earn money on the basis of their analytical skills which again is a skillset that can be developed through experience. It pushes its traders to develop efficient strategies and gain knowledge. It should not be treated as gambling due to the clear distinction explained above. Courts have consistently ruled in favour of skill-based games, and Opinion Trading fits well within this framework. With clearer regulations, India can foster a thriving Opinion Trading ecosystem that aligns with constitutional rights while ensuring consumer protection.

Annexure 1
State Gaming Regulations

	State Gaming Legislations	Definition of 'Gaming'	Comments
1.	Sikkim Online Gaming (Regulation) Act 2008, read with the 2005 Amendment, and 2009 Rules	'Online Games' defined in S. 2(d) as meaning all or any games of chance or a combination of skill and chance, including but not limited to Poker, Roulette, Black-jack, 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. 'Online Gaming' defined in S. 2(k) as 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 or may acquire a chance in any lottery, by means of a telecommunication device including the negotiating or receiving of any bet by any means of a telecommunica-tion device. 'Sports Gaming' defined under S. 2(p) as games 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 Act read with the Rules provides that online games and sports games may be operated and played under a license obtained by the State government, however, such offering must be restricted to the physical premises of gaming parlours through intranet gaming terminals within the geographical boundaries of the State.
2.	Goa, Daman and Diu Public Gambling Act, 1976	'Gaming' defined in S. 2(2) to include: (a) wagering or betting and includes wagering or betting on the digits of a numerical figure arrived at by manipulation in any manner whatsoever, or on the order of the digits, or on the digits themselves or on pictorial representations, (b) any transaction by which a person in any capacity whatever employs another person in any capacity whatever or engages for another in any capacity whatever, to wager or bet with any other person, (c) the collection or soliciting of bets, receipts or distribution of winnings or prizes in money or otherwise in respect of wagering or betting or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution, but does not include a lottery	Section 13 lays down a saving clause for games of mere skill, stating that nothing in the Act will be held to apply to any game of mere skill wherever played. Section 13A states that the Act notwithstanding, the Government may also authorise any game of electronic amusement/slot machines in five star hotels, and such table games, and gaming on board in vessels offshore as may be notified, subject to such condi-tions, including payment of such recurring and non-recurring fees as prescribed.

3.	Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015	'Gambling' is defined in S. 2(1) to mean and include wagering or betting on games of chance but does not include betting or wagering on games of skill. Explanation: Once a license has been obtained under this Act, wagering or betting on online 'games of skill' or making profit by providing a medium for playing 'games of skill' shall not amount to gambling so long as they are being provided to players and are being accessed by players operating from territories where 'games of skill' are exempted from the ambit of gambling. S. 2 (3) "Games of skill" shall 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 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. Explanation: For the purposes of this Act:- (i) All games provided in Schedule A of this Act shall fall under the category of "Games of skill;" (ii)'Games' which have been declared or determined to be 'games of skill' by Indian or international courts or other statues, or games where there are domestic and international competitions and tournaments, organelles which can be determined to be 'games of skill' shall further be entitled to be included in Schedule A. (iii) Games of skill may be (a) Card based and (b) action/ virtual sports/ adventure/mystery and (c) calculation/strategy/quiz based (4) "Games of chance" shall, subject to the provisions of sub-section (3) above, mean all such games where there is a preponderance of chance over skill. (5) "Wagering" or "Betting" shall mean the staking of money or virtual currency, whether or not it is equivalent to a recognized currency.	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." Schedule A to the 2015 Act, lays down a detailed list of games that are presumed to be games of skill, and are listed below: Chess, Sudoku, Quizzes, Binary Options, Binary Options, Bridge, Poker, Rummy, Nap, Spades, Auction, Solitaire, Virtual Golf, Virtual racing games, including virtual horse racing, Virtual Sports including virtual Soccer, virtual Cricket, virtual Archery, virtual snooker/bridge/pool, Virtual Fighting, Virtue wrestling, Virtue boxing, Virtue combat games, Virtual adventures games, Virtual mystery and detective games, Virtual stock/monopoly games, Virtual team selection games, Virtual sport fantasy league games.

4.	Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015	'Gaming' defined in S. 2(2) to mean playing a game for winnings or prizes in money or otherwise and includes playing a game of mutka or satta, or playing online game for winning money or any other stakes, and lucky board and wagering or betting, except where such wagering or betting takes place upon a horse-race: (i) on the day on which the horse-race is to be run; (ii) in an enclosure which the stewards controlling the horse race or race meeting have, with the sanction of the Government set apart for the purpose; and (iii) a) with a licensed book maker; or b) by means of a totalisator; but does not include a lottery. Explanation: - For the purpose of this clause - [(i) Wagering or betting shall includes,- (a) collection or soliciting of bets; (b) the receipt or distribution of winning or prizes in money or otherwise in respect of any wager or bet; (c) any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution; (d) any act of risking money or playing stakes or otherwise on the result of a game or an event including on a game of skill; (e) any action specified in sub-clauses (a) to (d) carried out directly or indirectly by the players playing any game or by any third parties.]	Legal challenges to the 2020 amendments are currently pending before the Andhra Pradesh High Court pending a State Government Expert Committee Report on the legality of online rummy.
5.	Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act 2022	'Online Gambling' is defined in S.2(i) to mean online wagering or betting and includes playing of any online game of chance for money or other stakes, in any manner. Explanation.— For the purpose of this clause, wagering or betting shall be deemed to comprise the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt, or distribution; 'Online Game' defined in S. 2(k) to mean any game, whether or not there are other participants in the game, that is played on an electronic or a digital device and is managed and operated as a software through the internet or any other kind of electronic or other technology for facilitat-	S. 7 of the Act prohibits online gambling, and the playing of online games of chance specified in the Schedule, with money or other stakes. Per S. 23, any online game specified in the Schedule shall be presumed to be an online game of chance, and the State Government may add or omit games based on the recommendation of the Tamil Nadu Online Gaming Authority (TNOGA). The Schedule had enumerated rummy and poker. In November 2023, the TN Act 2022 was challenged before the Madras High Court for being ultra vires the Constitution. While the Court upheld the provisions of the

		ing communication. 'Online Game of Chance' defined in S. 2(l) to include any online game which,— (i) involves both an element of chance and an element of skill and the element of chance dominates over the element of skill; or (ii) involves an element of chance that can be eliminated only by superlative skill; or (iii) is a game that is presented as involving an element of chance; or (iv) involves cards, dice, wheel or such other device, which works on random outcome or event generator.	Act, it set aside the Schedule finding that the Act could not ban skill-based games like rummy and poker. On 7th February 2025, the State Government introduced the TNOGA (Real Money Games) Regulations 2025, which prohibit users under the age of 18 from playing online RMGs, and require online game providers to display pop up warnings when players engage for more than an hour of continuous play.[143]
6.	Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015	Per S. 2(7) "gaming" does not include a lottery but includes all forms of wagering or betting in connection with any game of chance, except wagering or betting on a horse-race run on any race course within or outside the State, when such wagering or betting takes place: (i) on the day on which such race is run; and [(ii) in an enclosure set apart for the purpose in a race course by the licensee of such race course under the terms of the licence issued under section 4 of the Mysore Race Courses Licensing Act, 1952 (Mysore Act VIII of 1952); and (iii) between any person being present in such enclosure, on the one hand and such licensee or other person licensed by such licensee in terms of the aforesaid licence on the other in such manner and by such contrivance as may be permitted by such licence. Explanation – In this clause: (i) 'wagering or betting,' includes the collection or soliciting of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any act which is intended to aid or facilitate wagering or betting or such collection, soliciting, receipt or distribution; (ii) 'game of chance' includes a game of chance and skill combined and a pretended game of chance or of chance and skill combined, but does not include any athletic game or sport;	Per S. 78, operating gaming on any transaction or scheme of wagering or betting in which the receipt or distribution of winning or prizes in money or otherwise is made to depend on chance is a punishable offence. In October 2021, the State Government had notified an Amendment Act to the 1963 Act, which prohibited wagering on games of skill in addition to games of chance, and additionally expanded the definition of 'instruments of gaming' to bring a prohibition on the operation of real money online gaming platforms from the state regardless of whether such platforms were offered to users in the state or not. In February 2022, a division bench of the Karnataka High Court struck down such amendments while a series of petitions on the constitutionality of the 2022 Amendment Act.

143 "Tamil Nadu Notifies Stricter Rules for Real-Money Gaming, Effective Immediately." Accessed February 22, 2025. https://www.moneycontrol.com/news/business/tamil-nadu-notifies-stricter-rules-for-real-money-gaming-effective-immediately-12941525.html.

7.	Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act 2015	Per S. 2 (2) '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 upon a horse race [..] Explanation-- For the purpose of this clause- [(i) Wagering or betting shall include (a) collection or soliciting of bets; (b) the receipt or distribution of winnings or prizes in money or otherwise in respect of any wager or bet; (c) any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution; (d) any act of risking money, or otherwise on the unknown result of an event including on a game of skill; (e) any action specified in sub-clause (a) to (d) carried out directly or indirectly by the players playing any game or by any third parties;	Per S. 3, any person who opens, keeps, operates, uses, or permits to use any common gaming or online gaming shall be punishable with imprisonment and fine under the Act.