The State Of Tamil Nadu vs Junglee Games India Private Limited on 27 May, 2026

2026 INSC 594

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 6124-6131 OF 2023

STATE OF TAMIL NADU & ORS. …APPELLANTS

VERSUS

JUNGLEE GAMES INDIA PVT. LTD. & ORS. ...RESPONDENTS

WITH

CIVIL APPEAL NOS. 8275 – 8279 OF 2026
(ARISING OUT OF SLP(C) NOS. 1588-1592 OF 2024)

WITH

C.A. NOS. 6132 - 6143 OF 2023
WITH
C.A. NO. 6144 OF 2023

JUDGMENT

J. B. PARDIWALA AND R. MAHADEVAN, JJ.

For the convenience of exposition, this judgment is divided into the following parts:

1. Leave granted.

2. Since the issues involved in all the captioned appeals are the same those were taken up for hearing analogously and are being disposed of by this common judgment and order.

A. FACTUAL MATRIX C.A. NOS. 6124-6131 OF 2023 @ SLP(C) NOS. 19981-

19987 OF 2021 (STATE OF TAMIL NADU & ORS. vs. JUNGLEE GAMES INDIA PVT. LTD. & ORS.) AND CIVIL APPEAL NOS. 8275 – 8279 OF 2026 OF 2026 @ SLP(C) NOS. 1588-1592 OF 2024 (STATE OF TAMIL NADU & ORS. vs ALL INDIA GAMING FEDERATION & ORS.)

3. The aforesaid appeals, i.e., C.A. Nos. 6124-6131 of 2023, arise from the judgment and order passed by the High Court of Madras dated 03.08.2021 in WP No. 18022 of 2020, WP NO. 18029 OF 2020, WP NO. 18044 OF 2020, WP NO. 19374 OF 2020, WP NO. 19380 OF 2020, WP NO.7354 OF

2021, WP NO. 7356 OF 2021, WP NO. 13870 OF 2021 by which the High Court struck down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 (for short, "the 2021 TN Amendment Act") as ultra vires on the ground that "betting" under Entry 34 List II cannot be divorced from "gambling". In other words, the High Court took the view that the words "betting" and "gambling" should be read conjunctively.

4. SLP(C) Nos. 1588-1592 of 2024 are directed against the impugned judgment and order passed by the High Court of Madras dated 09.11.2023 in WP No. 13203 of 2023, WP No. 13593 of 2023, WP No. 13720 of 2023, WP No. 13722 of 2023, WP No. 14704 of 2023, by which the High Court:

> a) Struck down the Schedule to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022/2023 ("the TN Online Gambling Act 2022/23"), including poker and rummy as prohibited games of chance; and
>
> b) Read down Sections 2(i) and 2(l)(iv) to exclude rummy and poker from "online games of chance".

i. Legislative framework in Tamil Nadu

5. The State of Tamil Nadu enacted the 2021 TN Amendment Act, which amended the Tamil Nadu Gaming Act, 1930 (hereinafter, "the 1930 Gaming Act"). The 2021 TN Amendment Act was introduced in order to curb the growing menace of online betting and gambling and also to hinder the rise of virtual gambling houses, for which there was no regulation under the 1930 Gaming Act.

6. Paragraph 1 of the Statement of Objects and Reasons for enacting the 2021 TN Amendment Act is reproduced hereunder:

> "Gaming by means of cards, dice etc. in the form of betting or wagering has been banned in the cities of Chennai, Madurai, Coimbatore, Salem, Tiruchirapalli and Tirunelveli by the Chennai City Police Act, 1888 (Tamil Nadu Act III of 1888) read with Tamil Nadu Act 32 of 1987 and Tamil Nadu Act 51 of 1997 and in the rest of the State by the Tamil Nadu Gaming Act, 1930 (Tamil Nadu Act III of 1930). Playing games like Rummy, Poker etc, using computers or mobile phones, for money or other stakes, which are addictive in nature, had developed manifold, in the recent times. As a result, innocent people got cheated and incidents of suicide were reported. In order to prevent such incidents of suicide and protect innocent people from the evils of online gaming, it was decided to ban wagering or betting in cyber space by suitably amending the relevant enactments. Therefore, the Government decided to amend the Tamil Nadu Gaming Act, 1930 (Tamil Nadu Act III of 1930) and to extend its application throughout the State and to make consequential amendments to the Chennai City Police Act, 1888 (Tamil Nadu Act III of 1888) and the Tamil Nadu District Police Act, 1859 (Central Act XXIV of 1859)." (Emphasis Supplied)

7. The 2021 TN Amendment Act introduced a few modifications to the 1930 Gaming Act in order to prohibit online betting and gambling activities. The modifications are as follows:

a) Section 3(b), which defined gaming, was amended to include all forms of betting or wagering on any game played, even in cyberspace, using electronic transfer of funds. The provision is reproduced hereunder:

"(b) "gaming" does not include a lottery, but includes any game involving wagering or betting in person or in cyber space.

Explanation.— For the purposes of clause (b) and section 3-A, 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, including through electronic transfer of funds, in respect of any wager or bet, or any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt, or distribution;" (Emphasis Supplied)

b) Section 3-A was introduced to the 1930 Gaming Act for the first time. The provision placed a restriction on the activity of betting, in cyberspace using computers and computer networks, in relation to rummy, poker or any other game. The provision also places a restriction on facilitating or organizing any wagering or betting activities on cyberspace, which is exactly what the online gaming companies do. The people involved in the aforementioned activities were made liable to be punished with imprisonment for up to two years. The provision is reproduced hereunder:

"3-A. Wagering or betting in cyber space.— (1) No person shall wager or bet in cyberspace using computers, computer system, computer network, computer resource, any communication device or any other instrument of gaming by playing Rummy, Poker or any other game or facilitate or organize any such wager or bet in cyberspace.

(2) Whoever wagers or bets in cyberspace using computers, computer system, computer network, computer resource, any communication device or any other instrument of gaming by playing Rummy, Poker or any other game or facilitates or organizes any such wager or bet in cyberspace, shall be punished with imprisonment which may extend to two years or with fine not exceeding ten thousand rupees or with both." (Emphasis Supplied)

c) More importantly, Section 11 of the 1930 Gaming Act, which hitherto protected the application of the Act to games of skill played with stakes, was amended to extend the application of the penal provisions under the 1930 Gaming Act to games of mere skill played with stakes. The amended provision is reproduced hereunder:

> "Notwithstanding anything contained in this Act, Sections 3A and Sections 5 to 10 shall apply to games of mere skill, if played for wager, bet, money or other stake." ii. Legal Consequences of the 2021 TN Amendment Act

8. The Amendments carried out categorically laid down that wagering or betting on any game using cyberspace and a computer system would constitute gaming under the 1930 Gaming Act, and whosoever engages in such gaming or facilitates such gaming would be liable for punishment in the form of imprisonment and fine under Section 3A of the 1930 Gaming Act.

9. Prior to the amendment, Section 11 of the 1930 Gaming Act had protected games of skill by an express carve-out clause that exempted the application of the Act to games of mere skill. Prior to the amendment, the Section read as follows:

> "Nothing in sections 5 to 10 of this Act shall be held to apply to games of mere skill wherever played."

10. In lieu of the amendment, this protection clause was removed. By removing the protection clause and amending the definition of gaming to extend to cyberspace as well, the State made it an offence to wager or bet on any game, which includes a game of skill.

iii. Findings of the High Court of Madras in Junglee Games

11. The online gaming companies had challenged the constitutional validity of the 2021 TN Amendment Act on the ground that it was infringing their fundamental rights and also because the legislation was manifestly arbitrary as it clubbed together games of skill and games of chance under one bucket.

12. The High Court first held that the term gambling connotes taking a chance and also acknowledged that, in the usual sense, there is no distinction between skill or chance in order for it to amount to gambling. It was also held that betting, by its very nature, cannot be distinguished from gambling as betting merely denotes the risk-taking element in gambling.

13. The High Court opined that the words gaming and gambling have developed secondary meanings in judicial parlance and therefore nomen juris must be given preference irrespective of the meaning ascribed to the term in dictionaries. Further, it was held that gambling was equated with gaming and the activity of gambling, therefore, necessarily involves chance as a predominant element.

14. Further, it was held by the Court that the sweeping words of Section 3-A read with the expansive definition of "gaming" eliminated all chances for display of skill in virtual platforms, even if it is played for little stakes. The Court also considered that the word "gaming" was given a Midas touch in the form of a legal fiction to include betting on games of skill as well.

15. After having opined that the activity of gambling and the inextricable element of betting have a negative impact on society, the High Court questioned the 2021 TN Amendment Act for completely negating skill.

16. While striking down the amendments to the legislation, the Court held that the term "betting" cannot be divorced from gambling and treated as an additional field for the State to legislate on. The High Court relied on State of Bombay v. R.M.D. Chamarbaugwala reported in AIR 1957 SC 699 ("RMDC-I"), R.M.D. Chamarbaugwala v. Union of India reported in AIR 1957 SC 628 ("RMDC II"), and Dr. K.R. Lakshmanan v. State of Tamil Nadu & Anr. reported in (1996) 2 SCC 226, respectively and concluded that Entry 34 List II does not cover games of skill.

17. The High Court also held that the State could be said to have failed the proportionality test by imposing a wide-ranging blanket ban on games of skill played with stakes.

18. It was held that since the expansive definition of gaming, as amended, runs through the entire 1930 Gaming Act, the doctrine of severability cannot be applied, and therefore, the entire Part II of the 2021 TN Amendment Act came to be struck down on the ground of being ultra vires the Constitution.

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19. These appeals arise from the common judgment and order passed by the High Court of Karnataka dated 14.02.2022 by which the writ petitions preferred by the respondents herein (original petitioners/gaming companies) seeking to challenge the validity of the Karnataka Act No. 28 of 2021 came to be allowed in the following terms:

> "a. The provisions of Sections 2, 3, 6, 8 & 9 of the Karnataka Police (Amendment) Act 2021 respectively, i.e., the Karnataka Act No.28 of 2021 are declared to be ultra vires the Constitution of India in their entirety and accordingly struck down.
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> b. The consequences of striking down of the subject provisions of the Karnataka Police (Amendment) Act 2021 i.e., Karnataka Act No.28 of 2021 shall follow. However, nothing in this judgment shall be construed to prevent an appropriate legislation being brought about concerning the subject i.e., 'Betting & gambling' in accordance with provisions of the Constitution. c. A Writ of Mandamus is issued restraining the respondents from interfering with the online gaming business and allied activities of the petitioners." iv. Legislative framework of the 1963 Police Act

20. The Karnataka Police Act, 1963 (hereinafter, "the 1963 Police Act"), was amended by the Karnataka Police (Amendment) Act, 2021 ("the 2021 Karnataka Amendment Act") in order to curb the growing menace of online betting and gambling and also to hinder the rise of virtual gambling houses, for which there was no regulation under the 1963 Police Act.

21. The Statement of Objects and Reasons of the 2021 Karnataka Amendment Act clearly record the reason as follows:

> "It is considered necessary further to amend the Karnataka Police Act, 1963 (Karnataka Act 4 of 1964) to provide for-
>
> xxx xxx xxx
>
> (ii) include the use of cyberspace including computer resources or any communication devise as defined in Information Technology Act, 2000 in the process of gaming to curb the menace of gaming through internet, mobile app;"

22. The 2021 Karnataka Amendment Act introduced a few modifications to the 1963 Police Act in order to prohibit online betting and gambling activities. The modifications are as follows:

> a) The scope of Section 2(7) of the 1963 Police Act, which defined the term gaming, was enlarged to include online games that involved wagering or betting. Moreover, the Explanation clause to the definition clarified that the term wagering or betting includes the collection or soliciting of bets, the receipt and distribution of winnings or prizes in money, which is intended to facilitate the act of risking money on any games, including in a game of skill. This explanation was included to bring the online gaming companies that provide these games within the ambit of the 1963 Police Act. Section 2(7), as amended by the 2021 Karnataka Amendment Act reads as follows:
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> "Section 2(7): "gaming" means and includes online games, involving all forms of wagering or betting, including in the form of tokens valued in terms of money paid before or after issue of it, or electronic means and virtual currency, electronic transfer of funds in connection with any game of chance, but does not include a lottery or wagering or betting on a horse-race on any race course within or outside the State, when such wagering or betting takes place]. Explanation (i) to Clause 7: 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, any act or risking money, or otherwise on the unknown result of an event including on a game of skill and any action specified above carried out directly or indirectly by the playing any game or by any third parties." (Emphasis Supplied)
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> b) The definition of "instruments of gaming" under Section 2(11) was amended to include computers, computer systems, mobile apps, internet, cyberspace and other virtual communication devices. Section 2(11), as amended by the 2021 Karnataka Amendment Act is reproduced hereunder:
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> "Instruments of Gaming" includes any article used or intended to be used as a subject or means of gaming, including computers, computer system, mobile app or internet

or cyberspace, virtual communication device, electronic applications, software and accessory or means of online gaming, any document, register or record or evidence of any gaming in electronic or digital form, the proceeds of any online gaming as or any winning or prizes in money or otherwise distributed or intended to be distributed in respect of any gaming. Explanation- The words 'computer', 'communication device', 'computer network', 'computer resource', 'computer system', 'cyber café' and 'electronic record' used in this Act shall have the respective meaning assigned to them in the Information Technology Act, 2000 (Central Act 21 of 2000)." (Emphasis Supplied)

c) A new provision, Section 2(12A), was introduced to define the term online gaming. The provision reads as follows:

"Online gaming" means and includes games as defined in clause (7) played online by means of instruments of gaming, computer, computer resource, computer network, computer system or by mobile app or internet or any communication device, electronic application, software or on any virtual platform."

d) Section 2(3) of the 1963 Police Act, which defined common gaming house, defined it to be any place in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying or keeping such place or the person using such place by way of a charge for the instruments of gaming or of the place as a subscription or other payment for the use of such facilities for the purpose of gaming. This definition has to be read along with the definition of "place" in Section 2(13) of the 1963 Police Act. On a cumulative reading of both the provisions, it would be amply clear that the online gaming platforms would come under the ambit of common gaming houses. Section 2(3) is reproduced hereunder:

"Common Gaming House"; means a building, room, tent, enclosure, vehicle, vessel or place in which any instruments of gaming are kept or used for the profit or gain, [or otherwise] of the person owning, occupying, or keeping such building, room, tent, enclosure, vehicle, vessel or place, or of the person using such building, room, tent, enclosure, vehicle, vessel or place, whether he has a right to use the same or not, such profit or gain, [or otherwise] being either by way of a charge for the use of the instruments of gaming or of the building, room, tent, enclosure, vehicle, vessel or place, or otherwise howsoever or as subscription or other payment for the use of facilities along with the use of the instruments of gaming or of the building, room, tent, enclosure, vehicle, vessel or place for purposes of gaming.

(Emphasis Supplied)

e) Section 2(13) of the 1963 Police Act, which defined the term "place" was amended to include all kinds of virtual platforms, apps, software and communication devices.

The provision, as it stands amended by the 2021 Karnataka Amendment Act, reads as follows:

> ""Place" includes a building, a tent, a booth or other erection, whether permanent or temporary, or any area, whether enclosed or open including a recreation club or on virtual platform, mobile app or internet or any communication device, electronic application, software, online gaming and computer resource as defined in Information Technology Act, 2000 (Central Act 21 of 2000) or under this Act." (Emphasis Supplied)
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> f) Section 78(1)(a) of the 1963 Police Act was amended to punish the owner of online gaming platforms that involve wagering or betting when such a platform is used for the purpose of gaming. Sub-clause (vi) of Section 78(1)(a) penalized any transaction or scheme of wagering/betting in which the receipt or distribution of winnings or prizes in money or otherwise is dependent on chance or skill of other. Sub-clause (vii) of Section 78(1)(a) penalized any act of risking money or otherwise on the unknown result of an event, including on a game of skill. The punishment for the aforementioned offence was imprisonment for up to one year or a fine that may extend up to rupees one thousand or both. The provision, to the extent it is relevant, is reproduced hereunder for the kind perusal of this Court:
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> "Section 78 : Opening, etc., of certain forms of gaming.— (1) Whoever,—
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> (a) being the owner or occupier or having the use of any building, tent room, enclosure, vehicle, vessel or place [or at cyber cafe or online gaming involving wagering or betting including computer resource or mobile application or internet or any communication device as defined in the Information Technology Act, 2000 (Central Act 21 of 2000)] opens, keeps or uses the same for the purpose of gaming,— .....
>
> (vi) on any transaction or scheme of wagering or betting in which the receipt or distribution of winnings or prizes in money or otherwise is made to depend on chance or [skill of other];
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> (vii) On any act on risking money or otherwise on the unknown result of an event including on a game of skill; or .....

shall, on conviction, be punished with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both:

> Provided that in the absence of special reasons to be recorded in writing, the punishment to be imposed on an offender on conviction for an offence under this sub-section shall be imprisonment for not less than one month or fine of not less than five hundred rupees or both."

> g) Section 176 of the 1963 Police Act had previously explicitly protected wagering or betting on games of skill.

Post the amendment it protects only games of skill from the rigors of Section 79 and 80 and does not protect wagering or betting on games of skill. The amended provision reads as follows:

> "For the removal of doubts it is hereby declared that the provisions of Sections 79 and 80 shall not be applicable to the playing of any pure game of skill."

23. The Amendments have been captured comprehensively, side by side, in the judgment of the High Court of Karnataka in All India Gaming Federation (AIGF) v. State of Karnataka reported in (2022) 1 KCCR 513.

v. Legal consequences of the 2021 Karnataka Amendment Act

24. As is evident from the Statement of Objects and Reasons, the Karnataka Legislative Assembly wanted to curb the menace of online betting and gambling and therefore amended the provisions of the 1963 Police Act. The consequences of the amendments are as follows:

> a) The platforms of the online gaming companies, which are virtual software applications, were brought under the ambit of common gaming houses by amending the definition of the phrase "place".
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> b) Computers, mobile phones, internet and cyberspace have now been brought under the ambit of the definition "instruments of gaming".
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> c) The phrase "gaming" under Section 2(7), means all forms of wagering or betting using money, tokens valued in terms of money and every other form of virtual currency and electronic transfer of funds. The explanation to the provision makes it very clear that collection, soliciting, receipt or distribution, any act or risking money, or otherwise on the unknown result of an event including on a game of skill would constitute wagering or betting and would therefore squarely fall within the definition of gaming.
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> d) Section 2(12A) introduces the definition for online gaming. The provision makes it very clear that all forms of gaming, as defined under Section 2(7), when played with instruments of gaming like computers, applications and mobile phones or other virtual platforms, would constitute online gaming.
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> e) Section 78(1)(a) of the 1963 Police Act makes it an offence for the owner and occupier of online gaming platforms, that involve betting or wagering, and which is opened for the purpose of gaming. When such a platform is used for the following two purposes (as given in sub-clause (vi) and (vii)), then the offender is liable to be imprisoned for a period of upto one year or fine or both.

(i) on any transaction or scheme of wagering or betting in which the receipt or distribution of winnings or prizes in money or otherwise is made to depend on chance or skill of other.

(ii) on any act of risking money or otherwise on the unknown result of an event including on a game of skill.

f) Therefore, from the above provision, it is abundantly clear that when money is risked on an uncertain event, even while playing a game of skill, it would constitute an offence under the 1963 Police Act.

g) Section 176 saved the application of Section 79 and 80 to games of skill. Previously, the provision extended protection to wagering or betting on games of skill as well. Now, only games of skill are protected under the 1963 Police Act and wagering or betting on games of skill is not covered by the protection. The provision prior and post the 2021 Karnataka Amendment Act is reproduced hereunder:

"Pre-amendment

176. For the removal of doubts it is hereby declared that the provisions of Sections 79 and 80 shall not be applicable to the playing of any pure game of skill and to wagering by persons taking part in such game of skill.

Post 2021 Amendment

176. For the removal of doubts it is hereby declared that the provisions of Sections 79 and 80 shall not be applicable to the playing of any pure game of skill." (Emphasis Supplied)

h) Any offence committed under Section 78 would now be cognizable and non-bailable in lieu of Section 128A of the Act.

vi. Findings of the High Court of Karnataka in AIGF (supra)

25. The High Court of Karnataka held that the terms betting and gambling under Entry 34 List II have to be read conjunctively, and one cannot be divorced from the other. That is to say, the entry has to be read as betting on gambling activities, which alone fall within the legislative competence of the State.

26. The Court further held that gambling is something, by its very nature, that does not depend upon the exercise of skill. Therefore, as a natural corollary, anything that depends on skill cannot be termed as gambling.

27. Games of skill do not metamorphize into games of chance merely because they are played online. Therefore, the judgment of this Court in MJ Sivani & Ors. v. State of Karnataka & Ors. reported in AIR 1995 SC 1770, cannot be the best guide to distinguish online games and physical games.

28. Games of skill and games of chance are two distinct legal concepts of constitutional significance.

29. The High Court opined that when the State is planning such a drastic measure to curb online games of skill when played with stakes, it had to conduct a scientific and empirical study to analyze the ill-effects of online gaming and its socio- economic impact.

30. The Court held that online gaming activities, whether played with or without stakes, do not fall under Entry 34 List II if they predominantly involve skill, knowledge or judgment. These activities partake the character of business activities which have constitutional protection under Article 19(1)(g). Games of skill are entitled to protection under Article 19(1)(g).

31. The High Court held that the State had failed to justify such an extreme measure and had therefore failed the test of proportionality.

32. Accordingly, Sections 2, 3, 6, 8 and 9 of the 2021 Karnataka Amendment Act, respectively, were struck down for being ultra vires to the Constitution and a writ of mandamus was issued to the State of Karnataka to not interfere with online gaming business and allied activities of the appellants. B. SUBMISSIONS ON BEHALF OF THE STATE OF TAMIL NADU

33. Mr. Kapil Sibal, the learned Senior counsel assisted by Mr. Sabarish Subramanian, the learned AOR appearing for the State of Tamil Nadu vehemently submitted that the High Court committed an egregious error in passing the impugned judgment and order.

34. Mr. Sibal gave us more than a fair idea as regards the legislative and litigation history to demonstrate continuity of the State's policy right from the notification of the 2020 Ordinance, the challenges posed in 2020-21, the enactment of the 2021 TN Amendment Act, the 2021 TN Amendment Act being declared ultra vires by the High Court in the matter of Junglee Games India Private Limited v. State of T.N., reported in 2021 SCC OnLine Mad 2762, the constitution of the Justice Chandru committee on 10.06.2022, its report dated 27.06.2022 and the enactment of the TN Online Gambling Act 2022/23 on 07.04.2023 respectively.

35. Mr. Sibal would submit that the rapid digitization and technological development have caused significant online gaming addiction among its consumers, leading to unsustainable debt, financial distress, and suicides. This "gaming disorder" has been recognised by the WHO in ICD- 11 as a persistent or recurrent pattern of online gaming behaviour with impaired control and negative priority over other interests, including continued gaming despite adverse consequences.

36. He submitted that the online platforms transcend traditional physical boundaries, enabling instantaneous, large scale participation and thereby amplifying risks of social disruption, financial exploitation, and addiction-related disorders which directly impact public welfare, and therefore call

for robust State regulation.

37. He argued that "public order" in the context of online gaming includes the State's compelling interest in preventing digitally mediated social unrest, protecting vulnerable populations from predatory online practices, and preserving economic stability through regulation of virtual gambling activities. The physical sense of "public order" in Entry 1 List II must, therefore, be interpreted broadly to address the cross border and exponential impact of online gaming platforms.

38. Mr. Sibal placed strong reliance on the decision of this Court in Rev. Stainislaus v. State of Madhya Pradesh, reported in (1977) 1 SCC 677 to contend that "public order" in Entry 1 List II has a wide connotation. He highlighted that in this judgment, a law against forcible conversions was upheld under Entry 1 without requiring any further proof of widespread incidents, demonstrating that preventive legislation can be justified under "public order" without epidemic evidence of harm.

39. He submitted that the factual basis for invoking public order includes: (1) suicides linked to online gaming and gambling addiction; (2) financial distress of families; (3) exploitation arising from the addictive design of online games and inducement to squander money; and (4) psychological and physiological harms such as aggressive behaviour, poor eyesight, reduced concentration, diminished analytical thinking, and decreased productivity among youth in the State.

40. He submitted that the Legislature, being convinced that online gaming and gambling addiction pose a serious threat to public order, enacted the TN Online Gambling Act 2022/23 both to regulate online gaming and to prohibit online gambling, inter alia by creating an Online Gaming Authority with regulatory powers. The said Act, as a whole, is directed at curbing the threat of public disorder arising from online gambling and gaming.

41. In light of the specific risks of online gambling and the complexity and financial burden of designing a framework that is regulatory and not prohibitory in nature, the Legislature reached a conscious conclusion that the most effective way to prevent public disorder was to prohibit (a) online gambling by persons within the State; and (b) the provision of online gambling services by online game providers altogether. Such a scheme is defended as within the State's legislative competence and as a rational response to the demonstrated harms.

42. As regards "public health" (Entry 6 List II), Articles 37, 39(f) and 47 of the Constitution respectively cast a duty on the State to protect and improve public health, including the obligation to protect children and youth from exploitation, and to raise the level of nutrition and standard of living and to improve public health as a primary duty, drawing an analogy with the State's power to prohibit intoxicating drinks and harmful drugs in the interest of health.

43. He submitted that assuming without admitting that Articles 19(1)(g) and 21 respectively are available to the respondent gaming companies and their shareholders, in 'X' v. Hospital 'Z' reported in (1998) 8 SCC 296, it was held that wherever there is a clash between fundamental rights & public morality the public interest has primacy, and in a conflict between the two Articles, courts should apply the test of larger public interest or greater community interest. This view, according to Mr.

Sibal, supports prioritising public health and safety over business interests in online gambling.

44. With reference to Entry 33 List II ("theatres...sports, entertainments and amusements"), he submitted that the TN Online Gambling Act 2022/23, which prohibits gambling and regulates online games, is also referable to subjects of "sports, entertainments and amusements". Online games and online gambling are characterised as modern forms of entertainment, thereby squarely falling within this entry and therefore within the State's legislative competence.

45. He submitted that the impugned orders are per incuriam to the extent it holds that, under Entry 34 List II, the State lacks competence unless both "betting" and "gambling" are involved. The High Court has misapplied the dictum laid in K.R. Lakshmanan (supra) because the said decision nowhere lays down that a State Legislature cannot legislate on "betting" independent of "gambling".

46. He submitted that the impugned orders are incorrect in two tangents: (a) its reading of RMDC I (supra), RMDC II (supra), and K.R. Lakshmanan (supra) as foreclosing the State's power over betting on games of skill; and (b) its conclusion that "betting" on a game of skill is itself an activity where success depends on skill, so that Entry 34 does not cover betting on games of skill. Both these strands are asserted to be contrary to this Court's jurisprudence and thus per incuriam.

47. He argued that the Entries in the Seventh Schedule must receive a broad and purposive interpretation and there is a presumption of constitutional validity. The restrictive construction adopted by the High Court for Entry 34 violates the interpretive approach endorsed in Anjum Kadari v. Union of India reported in (2025) 5 SCC 53, State of U.P. v. Lalta Prasad Vaish reported in 2024 SCC OnLine SC 3029: 2024 INSC 812 and Asst. Director of Inspection (Investigation) v. A.B. Shanthi reported in (2002) 6 SCC 259, respectively, all of which underscore a wide reading of entries and strong presumptions in favour of legislation.

48. The semantic argument that the conjunction "and" in "betting and gambling" in Entry 34 requires both elements together deserves to be outright rejected as contrary to the established approach. The word "and" appears in many other entries (e.g., Entry 48 List I: "Stock exchanges and futures markets"), where such a reading would produce irrational outcomes (e.g., the Parliament being disabled from legislating on stock exchanges where no futures are traded). This illustrates that "and" cannot be read as rigidly conjunctive to defeat legislative competence.

49. On the High Court's view that betting on a game of skill is itself an activity where success depends on the player's skill, he submitted that the court should bear in mind and distinguish two different scenarios: (a) a player betting on his or her own success in a game of skill; and (b) a third-party betting on another person's success. In the latter case, although the game is one of skill for the player, yet the bettor's success depends on guessing the outcome rather than exercising skill in the game itself, thereby falling within the realm of betting activity that a State can regulate as "betting" under Entry 34.

50. As regards Article 246, Mr. Sibal's primary contention is that there is no conflict between List II Entries 1, 6, 33 and 34 respectively and any Union List entry. Even if some overlap exists, the

decision in Hoechst Pharmaceuticals Ltd. & Ors. v. State of Bihar & Ors. reported in (1983) 4 SCC 45 holds that the non obstante clause in Article 246(1) operates only when there is an "irreconcilable" conflict, which is absent here. Therefore, the competence of the State according to the learned Senior counsel remains unscathed and intact and the TN Online Gambling Act 2022/23 is traceable to State entries.

51. He argued that the statute imposes reasonable restrictions in the interest of the general public and the State seeks to rely on the doctrine of proportionality, as applied in M.R.F. Ltd. v. State of Kerala reported in 1998 (8) SCC 227, and subsequent cases wherein it was held that the restrictions balance the right to carry on business with the State's obligation to protect public interest from the harms of online gambling.

52. He argued that in K.S. Puttaswamy v. Union of India reported in (2017) 10 SCC 1 and (2019) 1 SCC 1, it has been held that no fundamental right, including the right to privacy, is absolute and that the proportionality test governs restrictions. The TN Online Gambling Act 2022/23 could be said to satisfying the legitimate aim, rational connection, necessity, and balancing, given the documented harms of online gambling and availability of empirical material placed by the State, including the various instances of suicides and addiction-related debt.

53. In the last, the learned Senior counsel submitted that the respondents' argument that the TN Online Gambling Act 2022/23 fails the "least intrusive" limb of proportionality deserves to be rejected as the State has produced cogent material that describe the suicides in Tamil Nadu due to online gaming related debt and its own empirical studies. Nothing has been produced by the respondents to show arbitrariness, much less "manifest arbitrariness," and consequently the statute is said to satisfy the proportionality test.

54. In such circumstances referred to above, Mr. Sibal prayed that the impugned judgments passed by the High Court of Madras be set aside, and Part II of the 2021 TN Amendment Act as well as the Schedule to the TN Online Gambling Act 2022/23 be held intra vires to the Constitution.

C. SUBMISSIONS ON BEHALF OF THE STATE OF KARNATAKA

55. Mr. Prateek K. Chadha, the learned AAG of the State of Karnataka, vehemently submitted that the High Court committed an egregious error in passing the impugned judgment and order.

56. The learned counsel would submit that on a cumulative reading of the amended provisions and the Statement of Objects and Reasons, the 2021 Karnataka Amendment Act does not impose an outright prohibition on online gaming because there is no legal embargo on organising or playing games of pure skill without risking money such as rummy, carrom, chess, pool, bridge, cross-word, scrabble, fantasy sports etc., Instead, it merely regulates:

a) Organising and participating in online gaming involving wagering or betting with stakes in games of chance; and

b) Acts of risking money on the unknown result of games of skill.

57. He submitted that the respondents' two-fold challenge is identified as such:

a) Online gaming is asserted not to amount to "gambling" and, therefore, the State allegedly lacks the legislative competence to regulate on the subject;

b) Even if competence is assumed, the provisions allegedly violate Articles 14 and 19(1)(g).

58. He would argue at the outset, there are two broad structural types of games where money is staked on unknown outcomes:

a) Games where players bet inter se as a private group and the platform/house takes a rake or commission for enabling the betting medium like in poker, rummy etc.;

and

b) Games where many players participate not directly against each other but against the house/platform like in online roulette and online slots.

59. Online gaming operates in both structures but because of anonymity and the "veil of ignorance" in the online environment, a player is always placing a bet on an inherently unknowable outcome, including uncertainty on whether opponents are individuals, prodigies, or bots, or are even aided by AI. This heightens the gambling-like character of such activity and justifies regulatory intervention.

60. The State can trace its legislative competence to enact the impugned legislation primarily under Entry 34 of List II ("Betting and gambling"), and, alternatively or cumulatively, under Entries 1 (Public order), 2 (Police), 6 (Public health), 26 (Trade and commerce), and 33 (Sports, entertainments, amusements) of List II, together with Article 246(3).

61. Even if the respondent's plea is accepted that the impugned subject matter does not fall under Entry 34, that does not negate competence because the subject may still fall within other State entries. If the legislation can be traced to even one valid State entry, competence is established. Reliance is placed on Mineral Area Development Authority v. SAIL reported in 2024 INSC 554, wherein this Court had held that:

a) entries in the Seventh Schedule are to be interpreted broadly and liberally, covering all reasonable facets and ancillary matters,

b) legislative fields can overlap with competence deriving from multiple entries, and

c) the doctrine of pith and substance requires examination of the true nature and character of the law, not its form or label.

62. Irrespective of it being online or offline, gambling is rex extra commercium and States have competence to regulate such activity under Entry 34 of List II. The central controversy is whether Entry 34 also authorises the regulation of online games of skill when money is staked on uncertain outcomes.

63. The impugned order has erred in holding that "betting and gambling" in Entry 34 must be read conjunctively, i.e., as confining State competence to "betting on gambling", thereby excluding betting anchored in skill. The High Court's observation that "chance pervasively animates betting" is a misreading of the constitutional text and history.

64. As regards Entry 34, the learned counsel argued that:

> "Betting and gambling" covers all acts of wagering or staking money on uncertain outcomes, irrespective of whether the underlying games involves elements of skill; and once money is staked on the unknown outcome (including of a game of skill), the activity falls within "betting", which the Constitution places within State control under Entry 34."

65. Section 176, which historically carved out a saving for "pure games of skill", including wagering by persons taking part in such game, is retained, and this is relied upon to show that the law does not prohibit pure skill games per se but targets the act of risking money on uncertain outcomes. The legislative focus remains on betting and gambling, not the game in abstraction.

66. Independent of Entry 34, the State can still validly legislate on online gaming with stakes because they easily fall within the composite regulatory space created by the following Entries:

> a) Entry 1 (Public order) and Entry 2 (Police) to address law and order disturbances, vice, and associated criminality linked with organised online betting;
>
> b) Entry 6 (Public health) to tackle addiction and indebtedness harms associated with online gambling behaviour;
>
> c) Entry 26 (Trade and commerce) to regulate the business and commercial exploitation of gaming platforms within the State; and
>
> d) Entry 33 (Sports, entertainments and amusements) to regulate games and entertainment activities offered online to the public.

67. The 2021 Karnataka Amendment Act amends the following definitions to bring the online architecture of gaming within the enforcement ambit of the Act:

> a) "Common gaming house" in Section 2(3) covers any place where instruments of gaming are kept or used for profit or "otherwise" of the person owning or using such place, including subscription or other payment based models;

b) "Gaming" in Section 2(7) explicitly covers "online games involving all forms of wagering or betting" and defines "wagering or betting" to include any act of risking money on unknown results of any event, "including on a game of skill";

c) "Instruments of gaming" in Section 2(11) includes computers, computer systems, mobile apps, internet, cyberspace, virtual communication devices, electronic applications, and associated software and digital records of gaming proceeds;

d) "Online gaming" in Section 2(12A) and "place" in section 2(13) are extended to virtual platforms and computer resources as defined in the IT Act, 2000.

68. Sections 78, 79, 80, and 87 of the 1963 Police Act respectively, are strengthened to criminalise opening, keeping, or using any physical or virtual place (including online platforms) for gaming involving wagering or betting and "any act of risking money or otherwise on the unknown result of an event, including on a game of skill". It also enhances penalties for keeping common gaming houses and for persons found gaming therein up to three years' imprisonment and fines up to Rs. 1 lakh, with graded minimum sentences for repeat offences. Section 80, specifically, aligns public-street gaming penalties when gaming consists of wagering or betting and provides for forfeiture of money found on such persons.

69. Section 128A declares all offences under Chapter VII (except section 87) and certain Chapter VIII offences (including section 114) to be cognizable and non bailable, with Section 87 being cognizable and bailable, to ensure effective enforcement against online gaming related offences.

70. The enhanced penalties provided by Section 114 of the 1963 Police Act for entering areas from which a person has been directed to remove himself (up to two years' imprisonment and fines up to Rs. 1 lakh with a minimum fine of Rs. 25,000) are presented as part of the broader control framework strengthened by the amendment.

71. The learned counsel made the following submissions in relation to the respondents' contending violation of Article 14 and Article 19(1)(g):

a) Article 19(1)(g) protection is not available to body corporates in the same manner as natural persons, which affects standing and the nature of rights asserted;

b) In any event, the restrictions imposed are reasonable, in the interests of the general public, and thus saved by Article 19(6), given the objective of combating gambling addiction, indebtedness, and social ills;

c) The classification drawn by the Act, focusing on wagering/betting and acts of risking money (rather than pure skill games without stakes), is non arbitrary and bears rational nexus to the legislative object, thereby satisfying Article 14.

72. The learned counsel advanced the same contentions as those urged on behalf of the State of Tamil Nadu.

D. SUBMISSIONS ON BEHALF OF THE GAMING COMPANIES IN THE TAMIL NADU AND KARNATAKA AMENDMENT GAMING BATCH D.1. Submissions of Ld. Senior Counsel Mr. Abhishek Manu Singhvi appearing for respondent No.1 (Gameskraft) in C.A. Nos. 6132-6143 of 2023:

73. The impugned Tamil Nadu and Karnataka amendments, and the TN Online Gambling Act 2022/23, define "gaming" as the playing of online games for winning money or other stakes thereby obliterating the distinction between games of skill and games of chance.

74. The impugned enactments impose a blanket ban on online rummy, are not regulatory in character, and fall outside the State legislative competence.

75. The States' claim to legislate on all online games under Entries 1, 2, 6, 26, 33 and 34 of List II is incorrect because they may legislate only on "betting and gambling" (Entry 34, List II), which is confined to games of chance. Games involving a substantial or preponderant degree of skill, on the other hand, fall outside this Entry and are protected as legitimate business under Article 19(1)(g) of the Constitution, not as res extra commercium gambling activities.

76. The expressions "betting and gambling", "gaming", "games of skill" and "games of chance" stand conclusively interpreted in the following cases:

- RMDC I (supra), which interpreted "betting and gambling" in Entry 34, List II and upheld taxation of gambling but excluded competitions involving substantial skill;

- RMDC II (supra), which reiterated that prize competitions substantially dependent on skill are not gambling and are protected under Article 19(1)(g);

- K.R. Lakshmanan (supra), which held horse racing to be a game of skill and construed "gaming" as wagering or betting on games of chance, not on games of skill.

77. These landmark cases have essentially clarified that "betting and gambling", "gaming" and "games of chance" in Entries 34 and 62 of List II are all held to exclude games of skill, which form a separate category outside the State's gambling power.

78. From the Public Gambling Act 1867 onwards, State "gaming"/"gambling" statutes traceable to Entry 34, List II have prohibited betting or wagering only on games of chance and have consistently carved out exceptions for "games of mere skill".

79. The presence of stakes or money does not change its essential character or convert it into "betting and gambling".

80. There is no substantive difference between online and offline rummy or poker for purposes of characterisation. The nature of the game, rules, and requirements of skill remain identical in both formats, as found by the Madras and Karnataka High Courts when invalidating the impugned bans.

81. The respondent company operates as an "online gaming intermediary" within the meaning of the Information Technology Act, 2000 ("IT Act") and the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("IT Rules"), offering a platform on which players compete in online rummy. The company itself does not participate as a player or wager on game outcomes.

82. The platform's revenue model is limited to charging a fixed "platform fee" or commission of about 7–10% on players' buy in amounts, with no fee levied on the players' winnings. Again, the respondent does not engage in betting on the games played, unlike a gambling house that shares in wins or losses.

83. The impugned laws were framed without any empirical data or due diligence regarding the platform's features or alleged harms. The Madras High Court in AIGF (supra) specifically took notice of the absence of any study or material justifying a total ban on online rummy.

84. In construing Entry 34, List II, "betting" must take colour from "gambling". The State's competence under Entry 34 extends only to betting in relation to gambling (games of chance), and not to betting in relation to games of skill, which remain constitutionally distinct.

85. The States' main counter contention is that "betting and gambling" in Entry 34 should be read disjunctively as "betting or gambling", so that "betting" covers all betting, including on games of skill, while "gambling" covers games of chance. On this reading, the State claims competence over both classes of games.

86. This disjunctive reading is flawed because it implies that any game played for stakes, including skill based games like rummy or even chess, would fall within "betting and gambling", directly contradicting RMDC I (supra), RMDC II (supra) and K.R. Lakshmanan (supra) and nullifying long recognised statutory and judicial exceptions for games of skill.

87. The States' disjunctive construction is also inconsistent with the Parliament's own usage in Section 65B(15) of the Finance Act 1994, where "betting" and "gambling" are used together to denote staking money or otherwise on outcomes determined by chance or accident. The Parliament does not treat "betting" on games of skill as falling within "betting and gambling" for tax and regulatory purposes.

88. The High Courts' interpretation of "betting and gambling" as "betting on a game of chance" is in line with six decades of binding Supreme Court precedents, beginning with RMDC I (supra), RMDC II (supra), State of Andhra Pradesh v. Satyanarayana reported in 1967 INSC 269: 1968 (2) SCR 387 and K.R. Lakshmanan (supra). On this settled law, rummy, being a game of skill, when played online cannot be treated as a game of chance for the purposes of Entry 34. D.2. Submissions

of Ld. Senior Counsel Mr. Arvind P. Datar appearing for Head Digital Works in Civil Appeal No. 6124 of 2023:

> 89. The 2021 Tamil Nadu and Karnataka amendments to the respective States' Police Acts criminalised all online games, whether of skill or of chance, and removed the statutory exception that had protected games of skill since 1867.

These provisions were consequently correctly struck down by the respective State High Courts.

90. The TN Online Gambling Act 2022/23 is ostensibly a statute to prohibit online gambling and regulate online gaming, but its provisions, including the Schedule, in fact extend to the games of skill such as rummy and poker.

91. Under Article 19(1)(g), if a game is a game of skill, it cannot be treated as gambling, which is the premise upon which both the Karnataka and Madras High Courts respectively have proceeded in their rulings.

92. No interference by this Court is warranted in the present matter because the High Courts have merely applied and followed the long standing Supreme Court precedents on the distinction between games of skill and games of chance, and could not, in law, have upheld the impugned provisions that criminalised games of skill.

93. As regards the TN Online Gambling Act 2022/23 (dealt with in SLP(C) Nos. 1588 1592 OF 2024):

> a) The Statement of Objects and Reasons states that the statute is to prohibit online gambling and regulate online gaming. However, the operative provisions go further and expressly prohibit rummy and poker, which are recognised games of skill.
>
> b) Through provisions such as Section 2(1), Section 7 and the Schedule, a legal fiction is created by which the games listed in the Schedule are deemed to be "games of chance". At present, only rummy and poker are included in this list, which are games of skill.
>
> c) The remaining provisions of the TN Online Gambling Act 2022/23 regulating online gaming, other than those that which deem games of skill to be games of chance, are not under challenge and are upheld. In substance, the TN Online Gambling Act 2022/23 is tailored to overcome and nullify the earlier decision in Junglee Games (supra), rather than to genuinely address online gambling.

94. With respect to stakes, betting and gambling, the jurisprudence over the last 150 years demonstrates that there has never been any legal objection or controversy to the presence of stakes or consideration in games of skill. The only consistent controversy has been whether an activity is a game of skill or a game of chance, and legislative prohibitions have historically targeted only games

of chance.

95. If the Parliament or a State Legislature cannot, for regulatory purposes, reclassify games of skill as games of chance, they equally cannot do so for taxation purposes. Treating games of skill as gambling would require an appropriate constitutional amendment. The mere fact that there is betting, staking or consideration involved in playing a game of skill cannot by itself convert such activity into "gambling". D.3. Submissions of Ld. Senior Counsel Shri. Aryama Sundaram appearing for the All India Gaming Federation in C.A. Nos. 6124 of 2023:

96. A statute's character as regulatory or prohibitory depends on the nature of the act being targeted and whether it is res extra commercium. Games of skill are not res extra commercium. Treating games of skill as res extra commercium when played for stakes is contrary to RMDC II (supra) and K.R. Lakshmanan (supra) respectively and impermissibly removes them from Article 19(1)(g) protection.

97. Legitimate prize competitions and games of skill cannot be equated with gambling since the legislative fields for taxing games of skill and games of chance are distinct (being Entries 60 and 62).

98. The 2021 TN Amendment Act expands "common gambling house" to include computers, computer systems, networks, resources and communication devices, and criminalises "wagering or betting in cyberspace". Therefore, in pith and substance, the enactment regulates online platforms and intermediaries operating in cyberspace (provision of access, transmission, modification of content) which is a subject that is exclusively within the legislative domain of the Parliament under the IT Act and Entry 31 List I.

99. The 2021 Karnataka Amendment Act removes offline games (skill and chance) from the 1963 Police Act and prohibits only online games of skill and chance, thereby targeting online activity as such rather than gambling per se, again trenching on the Union field and creating irrational discrimination between online and offline formats.

100. The impugned legislations cannot be justified under Entry 1 (public order) of List II because law-and-order infractions like cheating or breach of trust do not ipso facto amount to "public order". However, disturbances affecting the community or public at large fall within that entry.

101. States cannot rely on Entry 2 (police) of List II to regulate games of skill per se because mere potential for individual misuse (addiction, cheating) is a law-and-order concern, not a sufficient constitutional basis for broad prohibitions framed as public order measures.

102. Playing games of skill is also a leisure activity and a vocation for many, constituting both a livelihood and a form of expression. Therefore, in addition to Article 19(1)(g), it is also protected by Article 19(1)(a), subject only to Article 19(2). The 2021 TN Amendment Act, by which Section 3A was inserted to the 1930 Gaming Act and Section 11 of the said Act was amended as well as the 2021 Karnataka Amendment Act by which Section(s) 2(7), 78(1)(a)(vi)–(vii) and 176 of the 1963 Police Act respectively were amended, in effect penalise staking on games of skill and thus, directly restrict

protected expression and profession, requiring strict justification under Articles 19(2) and 19(6) respectively.

103. The State has failed to relate the restrictions to any Article and to justify their proportionality. Criminal penalties and complete bans on online games of skill played for stakes are wholly disproportionate, particularly when detailed regulatory mechanisms under the IT Act demonstrate less restrictive alternatives.

104. The IT Rules already provide calibrated measures to address concerns such as sovereignty, public order, user harm, child protection, gaming addiction, financial loss and fraud (through warnings, self-exclusion, parental controls, and age-rating), illustrating that a complete ban under State laws is unnecessary and excessive.

105. The impugned Acts are discriminatory and manifestly arbitrary under Article 14 because they lack a coherent determining principle and have the direct and inevitable effect of targeting legitimate gaming businesses under the guise of regulating "gambling".

106. Constitutional scrutiny must address the actual effect of the law on the fundamental rights rather than its stated object. By that measure, the impugned laws directly impair the rights of operators and players engaged in games of skill, thereby attracting review of Articles 14 and 19, respectively as per Rustam Cavasjee Cooper v. Union of India reported in 1970 (1) SCC 248.

107. The TN Online Gambling Act 2022/23 is overbroad because it seeks to prohibit all forms of games of skill played for stakes via its wide definition of "online game of chance" and its Schedule, including tournaments conducted within the State of Tamil Nadu, thereby sweeping in constitutionally protected skill-based activities far beyond any rational objective.

108. The 2021 Karnataka Amendment Act is discriminatory and arbitrary because, by using a "means and includes" definition of gaming, it excludes offline games (skill and chance) from the 1963 Police Act while prohibiting only online games of skill and chance, without any intelligible differentia linked to a legitimate objective.

109. The TN Online Gambling Act 2022/23 discriminates between online and offline games of skill by preserving the protection under the 1930 Gaming Act for offline skill-games but denying the same protection to online skill-games and further deeming online games of skill to be games of chance, rendering the classification irrational and violative of Article

14.

110. The 2021 TN Amendment Act contained inherent contradictions leading to absurd results, as held by the Madras High Court, justifying its being struck down. Re- enacting substantially similar defects in subsequent legislation perpetuates these constitutional infirmities.

111. The specific legislative classification of rummy and poker as games of chance is erroneous in law, contrary to established precedents on the predominance-of-skill test and to the factual nature of these games as involving skill in strategy, probability, psychology and rule-mastery. D.4. Submissions of Ld. Senior Counsel Mr. Mukul Rohatgi appearing for respondent No. 18 (Federation of Indian Fantasy Sports) in C.A. Nos. 6132-6144 of 2023:

112. A "game of chance" is one where no skill is involved and which depends on the outcome of an uncertain event, whereas a game of skill (such as bridge or rummy) involves memorising cards, testing the strength of the other side and using strategy. Rummy has been judicially recognised as a game mainly and preponderantly of skill, despite an element of chance in the deal of the cards.

113. For the last 75 years, games like rummy, earlier played physically, have been held to be games "predominantly of skill", and therefore games like poker, rummy and Fantasy Sports ("FS") are completely games of skill.

114. FS is an internet-based team-selection contest, played over a predetermined number of rounds (from a single match/event to an entire league/series), in which the user acts as a coach/selector of a virtual team of real players from real teams, and competes against other users' virtual teams, not against the FS platform (no house).

115. Outcomes in FS contests are tabulated solely on the basis of statistics, scores, achievements and performance of real players in designated professional sporting events, with users selecting and curating teams using parameters such as player form, pitch conditions, historical data, venue performance and other factors, thereby involving significant skill and analysis.

116. FS contests operate independently of the final result of the underlying real-world match (including if the match ends in a draw) because winners in FS are determined by accumulated fantasy points based on predefined scoring metrics (runs, wickets, catches, etc.) and not on who wins or loses the real match.

117. All participants pay a standard entry fee, which goes into a pre-declared prize pool. These prizes are distributed according to a pre-declared rank-based chart, with typically more than 60% contestants emerging as winners, and the entry fee is therefore a contribution towards a competition of skill (akin to chess or quiz tournaments) and not a wager on an uncertain event.

118. A "bet" necessarily involves placing stakes on an uncertain event with a fixed return. FS contests, being skill-based fixed-prize competitions where the operator charges only a base entry fee and does not compete, do not constitute "betting and gambling" or "betting" or "gambling".

119. The FS platform merely hosts skill-based prize contests and provides administrative, statistical and analytical services in exchange for fixed entry fees, does not participate in contests, does not place bets, does not have winnings contingent on outcomes, and therefore cannot be considered a "winner" under gambling statutes.

120. Foreign courts such as the United States District Court, New Jersey, have distinguished bona fide entry fees from bets or wagers and have held that entry fees paid unconditionally for participation in contests with guaranteed, pre-declared prizes (in which the operator is not a contestant) are not bets or wagers. This reasoning squarely applies to FS.

121. Under the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA), participation in FS contests that meet specified conditions such as (a) pre-declared prizes not linked to number/amount of fees, (b) winning outcomes reflecting relative knowledge and skill based on accumulated statistical performance in multiple real-world events, and (c) no winning outcome based on a single team or single athlete's single performance is expressly excluded from the definition of illegal "bets" or "wagers", thereby affirming that such FS contests are not gambling.

122. The US Court of Appeals in White v. Cuomo reported in 2022 NY Slip Op 01954 held that "gambling" encompasses staking value on a game where chance predominates over skill or risking value through bets/wagers on contests of skill where the wagered pool is awarded based on future events outside the wagerer's control, and clarified that games in which skill predominates and skill-based competitions for predetermined prizes where participants influence outcomes do not constitute gambling. FS falls within this non- gambling category.

123. The Illinois Supreme Court in Colin Dew-Becker v. Wu reported in 2020 IL 124472 examined three tests (predominant factor test, material element test, any-chance test) to distinguish skill from chance, rejected the any- chance and material-element tests as overbroad/subjective, adopted the predominant factor test as the most appropriate, and concluded that head-to-head DFS contests are predominantly determined by skill, and thus do not amount to "gambling" under the relevant statute.

124. Since 1822, Indian gambling legislation has consistently excluded games of skill from the ambit of "gambling" and "betting", this long-standing legislative policy confirms that skill-based activities, including FS, fall outside "betting and gambling".

125. The concept of "bet" was introduced legislatively in the 1922 amendment to the Madras City Police Act, 1888, and these developments were precursors to the inclusion of "betting and gambling" in Entry 36, List II of the Government of India Act, 1935 and, subsequently, Entry 34, List II of the Seventh Schedule to the Constitution, indicating that "betting and gambling" is a term of art tied to monetary stakes and not to mere participation in skill contests.

126. "Betting and gambling" are always associated with money or property in lieu of money (a "bet" or "stake"). Even where games of skill are played, betting is an optional overlay, whereas games of pure chance cannot be played without a bet, indicating that the true test is whether the underlying activity is a game of skill or a game of chance, and not merely whether money is involved.

127. Early Indian enactments such as Act IX of 1851 and the Public Gambling Act, 1867, while penalising gambling in common gaming houses and staking money on cards/dice, contained explicit savings provisions excluding games of skill, and later state enactments (e.g., the Bombay Prevention

of Gambling Act) followed the same model, reinforcing that games of skill have always been legislatively distinguished from gambling.

128. Moreover, regulation of online gaming and FS is primarily within the Parliament's domain under Union List Entry 31 ("posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication") because FS platforms are entirely dependent on the internet, which falls within "communication" in Entry 31, for every key functional aspect of their operation.

129. Matters related to online gaming have been specifically assigned to the Ministry of Electronics and Information Technology (MeitY) under the Government of India (Allocation of Business) Rules, 1961, and MeitY has expressly stated on affidavit that its power to regulate online gaming flows from Union List Entry 31, reinforcing that the subject is located in the Union List.

130. In addition to Entry 31, the Parliament has competence over online gaming and FS under Union List Entry 42 ("Inter- State trade and commerce") because online fantasy sports platforms are transboundary, virtual in nature, operate seamlessly across State borders, and enable user participation irrespective of location. They inherently constitute inter-State trade and commerce, which States cannot regulate under their intra-State trade entry.

131. The Parliament is also competent under Union List Entry 97 (residuary power) because no specific entry in any of the three Lists directly addresses online gaming or FS. Given the technological complexity and novelty of online gaming and the absence of an express State List entry, regulation of such platforms necessarily falls within the Parliament's residuary domain.

132. Independent regulation of online gaming by individual States, by invoking State List entries, would result in regulatory chaos and duplicative compliance obligations for pan-India online platforms, which is inconsistent with the constitutional allocation of such cross-border, technology-based activities to the Union under Entries 31, 42 and 97 of the Union List.

133. The entries in the Lists of the Seventh Schedule are fields of legislation, not self-standing powers, and one entry cannot be interpreted so expansively as to cancel, obliterate, or render meaningless another entry in the same or another List. The States' construction of their entries would make Union enactments on online gaming under Union List entries redundant.

D.5. Submissions of Ld. Senior Counsel Mr. Neeraj Kishan Kaul appearing for respondent No. 2 (Galactus) in C.A. Nos. 6132-6143 of 2023:

134. The challenge in these proceedings is to the 2021 Karnataka Amendment Act, Sections 2, 3, 6, 8 and 9 of which amended various provisions of the 1963 Police Act, resulting in a common judgment of the Karnataka High Court dated 14 February 2022 striking down those provisions as unconstitutional.

135. By amendments to definitions in Section 2 and to offence creating provisions (including Sections 78, 79, 80, 87, 114, 128A and the saving clause in Section 176), the 2021 Karnataka

Amendment Act, read with its Statement of Objects and Reasons, effectively imposes a complete embargo/ban on organising and playing all forms of online gaming where wagering or betting with stakes (monetary or otherwise) is involved, expressly covering both games of chance and games of skill.

136. The questions raised and subsequently addressed are:

> 1. Whether the State of Karnataka had legislative competence to enact a law (regulating or prohibiting) relating to online games of skill with monetary stakes, under any entry in List II of the Seventh Schedule, particularly Entry 34 ("betting and gambling")?
>
> 2. Whether, even assuming there is competence, a total prohibition on online games of skill with stakes satisfies the strict tests of reasonable restriction under Article 19, particularly Article 19(1)(g) and 19(1)(a) read with Articles 19(6) and 19(2)?
>
> 3. Whether the 2021 Karnataka Amendment Act is consistent with Article 14, including principles of reasonable classification and non arbitrariness, or whether it is manifestly arbitrary and lacking rational nexus with its professed objectives?

137. The State asserts competence under Article 246(3), read with Entry 34 of List II of the Seventh Schedule ("betting and gambling"). However, Article 246 and Entry 34 limit State power to matters enumerated there, and Entry 34 only covers "betting and gambling". The mere involvement of money or stakes in a game of skill does not change its essential character into a game of chance and does not automatically bring such activity within "gambling" or Entry

34. Therefore, games of skill, even when played for stakes, fall outside this entry.

138. It is contended that Entry 34 is a single composite expression. Therefore, "betting" is not a distinct, free standing subject but is conjunctively linked with "gambling", and the use of "and" (instead of "or") shows legislative intent to regulate betting only when it is integrally connected with gambling activities. Since the impugned amendments extend their operation to games of skill (including online skill based formats with monetary stakes), they travel beyond "betting and gambling" in Entry 34 and therefore lie outside State legislative competence under Article 246(3).

139. The 2021 Karnataka Amendment Act, by imposing a blanket embargo on all online games with stakes (including those that are games of skill), directly impacts the fundamental right to carry on trade or business under Article 19(1)(g) of operators like respondent No. 2 who exclusively conduct skill based online gaming and e sports activities. This amounts to a total ban, and, therefore, fails the test of reasonable restrictions under Article 19(6).

140. Insofar as the 2021 Karnataka Amendment Act imposes a total embargo on offering or participating in such online games of skill for stakes, it restricts this expressive activity, and that restriction neither fits within the specific grounds enumerated in Article 19(2) nor meets the

requirement of reasonableness, especially given the overbroad sweep of the prohibition.

141. The amendment is violative of Article 14 for drawing no constitutionally valid distinction between games of chance (gambling in the proper sense) and games of skill (whether or not played for stakes, including online skill based games), by treating both categories identically, conflating games of skill with gambling, and subjecting them to a common total prohibition when played with stakes.

142. There is no intelligible differentia justifying the singling out of the online mode of playing skill based games with stakes for a complete embargo, particularly when the mischief sought to be addressed is "gambling" and "menace of gaming", and skill based operators like MPL are demonstrably distinct in character and operation. Thus, the legislation lacks rational nexus to its stated objective.

143. Given the Supreme Court's consistent treatment of games of skill as a distinct non gambling category (for example, rummy, horse racing, and other competitions in RMDC-II (supra), Satyanarayana (supra), and K. R. Lakshmanan (supra), it is arbitrary for the legislature to ignore this jurisprudence and to subject online games of skill to an outright ban under a statute which is, in pith and substance, directed at "prevention of gambling".

144. It is also contended that, apart from Entry 34, no alternative entry in List II can justify the impugned legislation, because in pith and substance the amendment is directed at "betting and gambling", as reflected in the history of the parent Act and the wording and structure of the amendments, and once games of skill are excluded from "gambling", they cannot be drawn in by resort to any other State List entry. D.6. Submissions of Ld. Senior Counsel Mr. Sajan Poovayya appearing for Play Games 24x7 Ltd. and Junglee Games India Pvt. Ltd in C.A. Nos. 6124-6131 of 2023, C.A. Nos. 6132-6143 of 2023 and SLP (C) Nos. 1588-1592 of 2024:

145. The 2021 TN Amendment Act is unconstitutional because it:

> a) Expands "gaming" to include any game involving wagering or betting, whether in person or in cyberspace, thereby illegitimately bringing even online games of skill within the statute;
>
> b) Introduces Section 3A, imposing a blanket prohibition on wagering or betting in cyberspace for rummy, poker or any other game, without distinguishing games of skill from games of chance;
>
> c) Amends Section 11 to remove the exemption for games of mere skill and subjects them to a total ban when played for wager, bet, money or stakes, notwithstanding their skill based nature.

146. The Madras High Court's judgment dated 03.08.2021 correctly held that:

a) The business of organising or offering games of skill is a protected occupation under Article 19(1)(g), while the game of skill itself may attract protection under Article 19(1)(a);

b) Competitions involving substantial skill are not "gambling" and thus fall outside Entry 34 List II, being protected as trade or business under Article 19(1)(g), in line with K.R. Lakshmanan (supra);

c) The 1930 Gaming Act's original scheme, which confined "gaming" to games of chance, was impermissibly inverted by outlawing all games played for stakes, ignoring the constitutionally relevant distinction between skill and chance.

147. The Madras High Court correctly held that under Entry 34 List II, "betting and gambling" must be read conjunctively. "Betting" cannot be divorced from "gambling" so as to create an independent, broader head of competence covering betting on games of skill:

a) "Betting and gambling" refers only to betting integral to gambling, i.e., betting on games of chance;

b) Judgments in RMDC (both decisions) and K.R. Lakshmanan (supra) make it clear that "betting" in Entry 34 does not extend to skill games;

c) If the State seeks to rely on Entries 1, 26 or 33 List II instead, it must satisfy the doctrine of proportionality, which it has not done.

148. The blanket prohibition on games of skill in the 2021 TN Amendment Act fails the "least intrusive measure" test and violates Article 19(1)(g), because:

a) The State did not adopt calibrated regulation but imposed a wide ranging, indiscriminate ban;

b) The prohibition runs contrary to the Supreme Court's settled jurisprudence protecting games of skill as business activity.

149. The 2021 Karnataka Amendment Act is unconstitutional for the following reasons:

a) It removed the exemption in Section 176 for "games of skill and wagering by persons taking part in such game of skill", thereby criminalising the act of staking money on games of skill;

b) By amending Sections 2, 78, 79, 80, 87, 124A and 176, it imposed a prohibition on any game, including games of skill, when played for stakes in cyberspace, directly targeting online rummy, poker and daily fantasy sports.

150. Consequently, the Karnataka High Court's judgment dated 14.02.2022 correctly:

a) Held that applying the "evil test" (focusing only on perceived social evil) to ban all online games of skill amounts to "throwing the baby with the bath water" and is impermissible;

b) Rejected any functional distinction between physical and online formats that would convert games of skill into games of chance merely due to digitisation; the decision in MJ Sivani (supra) was confined to specific facts of tampering and cannot override RMDC (supra) and K.R. Lakshmanan (supra);

c) Held that the State's creation of a "medium based" prohibition on online games of skill tramples the permissible limits of restriction on business activities protected by Article 19(1)(g).

151. As regards legislative competence, the Karnataka High Court correctly concluded that:

a) Games of skill are business activities protected under Article 19(1)(g), as recognised in RMDC-II (supra);

b) Regulation of games of skill lies under Entry 26 List II (trade and commerce), not under Entry 34 ("betting and gambling");

c) Recourse to Entry 1 (public order) and Entry 2 (police) is unjustified because an activity that is not res extra commercium cannot intrinsically generate a public order issue merely by being online.

152. The TN Online Gambling Act 2022/23 is also unconstitutional in part because:

a) Sections 2(i), 2(j), 2(l) read with Sections 7-10 and 23 and the Schedule presumptively classify rummy and poker as "online games of chance" when played for money, despite consistent judicial recognition of these games as games of skill;

b) The law perversely permits physical rummy for money while targeting the same game online, without cogent justification.

153. The Madras High Court's judgment dated 09.11.2023 correctly held that:

a) There is a consistent line of decisions of this Court and the High Courts holding rummy and poker to be games of skill. Consequently, a heavy burden lies on the State to demonstrate how the online versions cease to be games of skill, a burden which the State has not discharged;

b) The inclusion of rummy and poker in the Schedule as online games of chance is based merely on presumption, is unreasonable and contrary to binding precedent, and therefore the Schedule must be set aside;

c) Sections 2(i) and 2(l)(iv) must be read down so that they apply only to games of chance, not to games of skill.

154. Entry 34 of List II ("betting and gambling") is limited to gambling on games of chance, and does not encompass games of skill even when played for stakes because this Court has consistently interpreted "betting and gambling" as referring to betting or wagering on games of chance alone, in RMDC-I (supra), RMDC-II (supra) and K. R. Lakshmanan (supra). Further, competitions involving substantial skill are business activities protected under Article 19(1)(g). D.7. Submissions of Ld. Senior Counsel Mr. Abhishek Malhotra appearing on behalf of respondent No. 17 (Paavan Nanda) in C.A. Nos. 6132-6143 of 2023:

155. Unlike most States that prohibit only "games of chance", Karnataka has imposed a blanket ban on all games "played for stakes", including games involving skill, thereby departing from the long standing national legislative policy of treating games of skill differently from gambling.

156. This blanket prohibition violates the respondent's fundamental right to practice any profession or to carry on any occupation, trade or business under Article 19(1)(g), and also infringes his freedom of speech and expression under Article 19(1)(a).

157. Jurisprudence under Article 19(1)(a) protects not only speech and expression but also the medium through which expression is conveyed. Reliance placed on decisions such as in Indian Express v. Union of India and Tata Press Ltd. v. MTNL reported in 1995 AIR 2438, 1995 SCC (5) 139, respectively, which recognise that freedom of the press and commercial speech are integral aspects of Article 19(1)(a), and that the right covers both dissemination and receipt of content, which applies equally to online games as a medium of content.

158. Restrictions on speech are constitutionally permissible only if they fall within the specific grounds in Article 19(2) and qualify as "reasonable" in a qualitative, quantitative, and contextual sense. They must be proportionate and cannot amount to total prohibition. The TN Online Gambling Act 2022/23 by imposing a blanket ban on online games for stakes, fails this test of reasonableness and proportionality.

159. The Karnataka High Court in AIGF (supra) has already held that games involve psychology, behaviour, emotions, and motivations, that they have artistic and recreational value, and that games of skill fall within the protection of Articles 19(1)(a) and 21 (subject to reasonable regulation). The TN Online Gambling Act 2022/23 ignores and contradicts this binding reasoning.

160. For over two centuries, Indian legislative policy has consistently distinguished games of skill from "gambling" and has purposefully excluded games of skill from gambling legislation, as evidenced by nineteenth century enactments and subsequent statutes that repeatedly preserve this

distinction.

161. “Betting and gambling” was incorporated into Entry 36 of List II of the Government of India Act, 1935 and retained as Entry 34 of List II of the Seventh Schedule to the Constitution. The concept under this Entry is premised on the staking of money or property, i.e. wagering or stake, as the central element.

162. Even in games of skill, participants may choose to wager, but wagering is neither indispensable nor inherent to the nature of skill based contests. Therefore, skill games do not, by their nature, fall within “betting and gambling” under Entry 34.

163. Under Article 246 read with Entry 34 of List II, State legislatures are competent only in respect of the composite activity of “betting and gambling”, which, by necessity and design, excludes “mere games of skill”. The conjunctive drafting (“betting and gambling”) is used for precision, similar to other conjunctive expressions in the Constitution, and does not permit the State to extend its competence to all games involving stakes, regardless of their skill based character.

164. Several States have adhered to this constitutional and statutory understanding by maintaining a clear dichotomy between games of chance and games of skill, as seen in the Haryana Prevention of Public Gambling Act, 2025, which defines “bet”, “betting”, “gambling”, “game of chance”, “game of skill” and “gaming” so that gambling is confined to betting on chance and games of skill are expressly excluded from “gaming”.

165. Nagaland’s regime under the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, similarly prohibits gambling but provides a regulatory framework for online games of skill and expressly defines “gambling”, “games of skill”, “games of chance” and “wagering/betting” so as to exclude games of skill (including those involving strategic selection or analysis) from the category of gambling.

166. The Madras High Court in Junglee Games (supra) held that while the State has competence to legislate on betting and gambling, the State cannot expand the field beyond the scope of the Entry by including legitimate games of skill within its prohibitory sweep, and that such expansion amounts to usurpation of authority and reflects unreasonableness and disproportionality.

167. In light of the foregoing, the TN Online Gambling Act 2022/23 attempt to subsume games of skill played for stakes within “betting and gambling” is ultra vires Entry 34 of List II and constitutionally invalid.

D.8. Submissions of Ld. Counsel Mr. Badri Narayanan for Play Games 24*7 in Civil Appeal 6132-6143 of 2023:

168. Gambling or lottery is a specific legal category which necessarily requires the cumulative presence of three elements: (a) prize, (b) chance, and (c) consideration. If any one element is missing, the activity is not gambling or lottery.

169. This three element definition is the precise legal (nomen juris) conception of "lottery, gift enterprise, or similar scheme" and has been expressly adopted by courts such as the US Supreme Court in FCC v. American Broadcasting Co. reported in 347 U.S. 284 (1954) and the Supreme Court of Alaska in State of Alaska v. Pinball Machines reported in 404 P.2d 923.

170. The phrase "betting and gambling" in Entry 34, List II of the Seventh Schedule to the Constitution (and its predecessors) is not defined in the constitutional text or the Government of India Act, 1935, and therefore must be construed according to its precise legal meaning (nomen juris), and not in a loose, popular sense.

171. By analogy to India's federal structure, in the United States, the primary power to regulate betting, gambling and lotteries lies with the States, as recognized in Murphy v. NCAA reported in 584 U.S. 453 [138 S. Ct. 1461], where a federal restriction on State authorization of sports betting was held to violate the Tenth Amendment.

172. Within that federal scheme, both State and federal enactments use the three element test of prize, chance and consideration to identify and regulate gambling activities, reinforcing the centrality of this test to the legal concept of gambling.

173. Among the three elements, "chance" is the basic, core ingredient of gambling and lottery and constitutes the "evil principle" which the law condemns, without which the activity is not lottery or gambling.

174. Decisions such as City of Wink v. Griffith Amusement reported in 100 S.W.2d 695 (1936) describe "chance" as the very basis of the "lottery principle". Schemes which lack operative chance fall outside the constitutional and statutory condemnation of lotteries and gambling even if other elements are present. Where chance is wholly absent, the activity cannot be equated with gambling or lottery in law.

175. Betting or wagering, in law, is not every agreement about an uncertain event. It refers to staking on an uncertain future event beyond the control of the parties, where the outcome of that event decides who wins and who loses.

176. Consequently, betting is grouped with gambling and lottery only where chance forms the basis of prize distribution. If the underlying activity is one of predominant skill, it does not become gambling merely because betting occurs on its outcome.

177. The submissions adopt the test articulated by this Court in the RMDC line of cases, namely that the distinction between a "game of chance" and a "game of skill" turns on whether chance or skill predominates in determining the result.

178. Wagering on the outcome of a game does not alter the inherent character of that game. If the underlying game is one of skill, it remains a game of skill even when played for stakes or when bets are placed upon its result.

179. The contention that "once there is betting, all games become gambling" is liable to be rejected on the basis of the concurring opinion in Utah State Fair Assn v. Green, which reasons that betting or the method of betting (including pari mutuel systems) does not determine whether the game itself is one of chance or skill. Games such as football, baseball or horse racing remain games of skill irrespective of wagering on their outcomes.

180. Since betting or wagering does not determine or affect how the game is played or who wins, the character of the game is not changed merely because stakes are involved. Therefore, betting on a game of skill does not convert that game into "gambling".

181. The decision in Rohan v. Detroit Racing Assn. reported in 314 Mich. 326 (1946), similarly holds that wagering on the outcome of inherently skill based activities does not transform them into games of chance, reinforcing the above contention. It is therefore incorrect to assert that playing a game of skill "for stakes" renders it a game of chance or "gambling"; the legal character of a game of skill is preserved irrespective of the presence of stakes.

E. SUMMARY OF THE SUBMISSIONS CANVASSED ON BEHALF OF THE RESPONDENTS

182. The learned counsel appearing for the in this batch of petitions have consistently submitted that treating games of skill as res extra commercium when played for stakes is contrary to the established jurisprudence in RMDC-I (supra), RMDC-II (supra), and K. R. Lakshmanan (supra). They all have also collectively emphasized on the protection under Article 19(1)(g).

183. Another common submission canvassed by Mr. Aryama Sundaram and Mr. Mukul Rohatgi is on the regulation of online gaming and FS to primarily lie within the exclusive domain of the Parliament under Entries 31, 42, and 97 of List I since State-wise prohibitions would yield regulatory chaos.

184. However, regardless of the determination of whether the power to regulate online gaming platforms should lie with the Union or not, all learned counsel for the assessee have categorically submitted that the States do not have the legislative competence under Entry 34 of List II as it only extends to "betting and gambling" in the sense of games of chance and not games of skill.

185. In addition to these common submissions, some of the more specific submissions that each of the learned counsels appearing for the assessees in this case have made are as follows:

> E.1. Ld. Senior Counsel Mr. Abhishek Manu Singhvi appearing for respondent No.1 (Gameskraft) in C.A. Nos. 6132-6143 of 2023, contended the following in the regulatory batch:

186. The impugned Tamil Nadu and Karnataka amendments, and the TN Online Gambling Act 2022/23 obliterate the settled distinction between games of skill and games of chance by defining "gaming" as playing online games for money or stakes and by imposing a blanket ban on online rummy.

187. Reliance placed on RMDC I (supra), RMDC II (supra), and K.R. Lakshmanan (supra) to contend that "betting and gambling", "gaming", and "games of chance" exclude games of skill. The presence of stakes or money does not change its essential character or convert it into "betting and gambling".

188. The disjunctive reading of Entry 34 as "betting or gambling" is submitted to be flawed, as it would subsume games of skill and is inconsistent with the Parliament's own usage in Section 65B(15) of the Finance Act, 1994 is cited to show that "betting and gambling" denotes staking on chance based outcomes and not skill-based outcomes.

189. The respondent company operates as an "online gaming intermediary" within the meaning of the IT Rules charging a fixed platform fee without wagering. Therefore, the platform itself does not participate as a player or wager on game outcomes.

E.2. Ld. Senior Counsel Mr. Arvind P. Datar appearing for Head Digital Works in Civil Appeal No. 6124 of 2023, submitted the following:

190. The 2021 Tamil Nadu and Karnataka legislations criminalised all online games, skill and chance alike, by removing the long-standing statutory exception for skill games, and were correctly struck down.

191. Submissions with regards to the TN Online Gambling Act 2022/23 dealt with in SLP (C) Nos.1588-1592 of 2024 are that though they were enacted to ostensible prohibit online gambling and regulate online gaming, it in substance proscribes games of skill such as rummy and poker by deeming them games of chance through provisions including Section 2(1), Section 7 and the Schedule.

192. Therefore, both the Madras High Court and the Karnataka High Court have rightly applied long-standing Supreme Court precedents on the distinction between games of skill and games of chance, warranting no interference by this Court in the present matter.

E.3. Ld. Senior Counsel Mr. Aryama Sundaram appearing for the All India Gaming Federation in C.A. No. 6124 of 2023, contended the following:

193. A statute's character as regulatory or prohibitory depends on the nature of the act being targeted and whether it is res extra commercium. Games of skill are not res extra commercium. Treating games of skill as res extra commercium when played for stakes is contrary to RMDC II (supra) and K.R. Lakshmanan (supra) and impermissibly removes them from Article 19(1)(g) protection.

194. The 2021 TN Amendment Act expands "common gambling house" to include computers, computer systems, networks, resources and communication devices, and criminalises "wagering or betting in cyberspace". Therefore, in pith and substance, the enactment regulates online platforms and intermediaries operating in cyberspace (provision of access, transmission, modification of

content) which is a subject that is exclusively within the legislative domain of the Parliament under the IT Act and Entry 31 List I.

195. Playing games of skill is also a leisure activity and a vocation for many, constituting both a livelihood and a form of expression. Therefore, in addition to Article 19(1)(g), it is also protected by Article 19(1)(a), subject only to Article 19(2). The TN Amendment Act (Sections 3A, 11) and 2021 Karnataka Amendment Act (Sections 2(7), 78(1)(a)(vi)–(vii), 176) in effect penalise staking on games of skill and thus directly restrict protected expression and profession, requiring strict justification under Articles 19(2) and 19(6). E.4. Ld. Senior Counsel Mr. Mukul Rohatgi appearing for respondent No. 18 (Federation of Indian Fantasy Sports) in C.A. Nos. 6132-6143 of 2023, contended that:

196. It is contended that rummy, poker and Fantasy Sports (FS) are predominantly skill based. FS, particularly so, because it involves analytical team selection and outcomes based on predefined statistical performance metrics. Entry fees are stated to be bona fide participation charges into pre-declared prize pools. Operators do not wager or share in winnings by charging a base entry fee and hence FS does not constitute "betting and gambling".

197. Reference is made to United States jurisprudence and the UIGEA, which exclude skill based fantasy contests from gambling and have held that entry fees paid unconditionally for participation in contests with guaranteed, pre-declared prizes (in which the operator is not a contestant) are not bets or wagers.

198. Reference is also drawn to Indian legislative history since 1822 that has consistently excluded games of skill from the ambit of "gambling" and "betting", confirming that skill- based activities (including FS) fall outside "betting and gambling".

199. Regulation of online gaming and FS is submitted to lie primarily in the Union domain under Entries 31, 42 and 97, given the cross border, internet based nature of such platforms. State wise prohibitions would only yield regulatory chaos.

E.5. Ld. Senior Counsel Mr. Neeraj Kishan Kaul contended the following while appearing for respondent No. 2 (Galactus) in C.A. Nos. 6132-6143 of 2023:

200. The challenge is directed to the 2021 Karnataka Amendment Act, which, read with its Statement of Objects and Reasons, is said to impose a complete embargo on organising and playing online games with stakes, covering skill as well as chance.

201. It is contended that Entry 34 is a single composite expression. Therefore, "betting" is not a distinct, free standing subject but is conjunctively linked with "gambling", and the use of "and" (instead of "or") shows legislative intent to regulate betting only when it is integrally connected with gambling activities. Since the impugned amendments extend their operation to games of skill (including online skill based formats with monetary stakes), they travel beyond "betting and gambling" in Entry 34 and therefore lie outside State legislative competence under Article 246(3).

202. The amendment is violative of Article 14 for drawing no constitutionally valid distinction between games of chance (gambling in the proper sense) and games of skill (whether or not played for stakes, including online skill based games), by treating both categories identically, conflating games of skill with gambling, and subjecting them to a common total prohibition when played with stakes. There is no intelligible differentia justifying the singling out of the online mode of playing skill based games with stakes for a complete embargo, particularly when the mischief sought to be addressed is "gambling" and "menace of gaming", and skill based operators like MPL are demonstrably distinct in character and operation. Thus, the legislation lacks rational nexus to its stated objective E.6. Ld. Senior Counsel Mr. Sajan Poovayya appearing for Play Games 24x7 Ltd. and Junglee Games India Pvt. Ltd in C.A. Nos. 6124-6131 of 2023, C.A. Nos. 6132-6143 of 2023 and SLP (C) Nos. 1588-1592 of 2024

203. The 2021 TN Amendment Act is assailed for expanding "gaming" to cyberspace, introducing Section 3A to impose a blanket prohibition on wagering or betting for rummy, poker or any other game, and removing the exemption for games of skill. In dealing with the same, the Madras High Court vide judgment dated 03.08.2021 have correctly held that organising or offering games of skill is protected under Article 19(1)(g), the game itself attracting Article 19(1)(a), Entry 34 must be read conjunctively, and the prohibition fails the least intrusive measure test.

204. The 2021 Karnataka Amendment Act is similarly assailed for criminalising staking on games of skill and imposing prohibitions in cyberspace. The Karnataka High Court vide judgment dated 14.02.2022 has rightly rejected medium based distinctions and held the ban impermissible.

205. The TN Online Gambling Act 2022/23 is challenged insofar as it presumptively classifies rummy and poker as online games of chance while permitting physical rummy for money. Again, the Madras High Court vide judgment dated 09.11.2023 has correctly set aside the Schedule and read down definitions to apply only to chance based games.

206. Entry 34 of List II ("betting and gambling") is limited to gambling on games of chance, and does not encompass games of skill even when played for stakes because this Court has consistently interpreted "betting and gambling" as referring to betting or wagering on games of chance alone, in RMDC-I (supra), RMDC-II (supra) and K.R. Lakshmanan (supra). Further, competitions involving substantial skill are business activities protected under Article 19(1)(g). E.7. Ld. Senior Counsel Mr. Abhishek Malhotra appearing on behalf of respondent No. 17 (Paavan Nanda) in C.A. Nos. 6132-6143 of 2023

207. It is submitted that Karnataka's blanket ban on games played for stakes, including skill games, violates Articles 19(1)(g) and 19(1)(a), as online games constitute expressive content. Jurisprudence under Article 19(1)(a) protects not only speech and expression but also the medium through which expression is conveyed. Reliance placed on decisions such as in Indian Express (supra) and Tata Press Ltd. (supra), which recognise that freedom of the press and commercial speech are integral aspects of Article 19(1)(a), and that the right covers both dissemination and receipt of content, which applies equally to online games as a medium of content.

208. Restrictions on speech are constitutionally permissible only if they fall within the specific grounds in Article 19(2) and qualify as "reasonable" in a qualitative, quantitative, and contextual sense. They must be proportionate and cannot amount to total prohibition. The TN Online Gambling Act 2022/23, by imposing a blanket ban on online games for stakes, fails this test of reasonableness and proportionality.

209. Further, under Article 246 read with Entry 34 of List II, State legislatures are competent only in respect of the composite activity of "betting and gambling", which, by necessity and design, excludes "mere games of skill". The conjunctive drafting ("betting and gambling") is used for precision, similar to other conjunctive expressions in the Constitution, and does not permit the State to extend its competence to all games involving stakes, regardless of their skill based character.

E.8. Ld. Counsel Mr. Badri Narayanan made the following submissions:

210. The submission proceeds on the three element conception of gambling/lottery, which includes (a) prize, (b) chance and (c) consideration, contending that absence of "chance" excludes the activity from gambling. "Betting" is staking on uncertain future events beyond parties' control and only grouped with gambling where chance forms the basis of prize distribution.

211. Adopting the RMDC test, wagering on the outcome of a skill game does not alter its inherent character; skill games remain skill based notwithstanding stakes.

212. Reliance placed on several United States judgments, for its analogy to India's federal structure, to reject the proposition that "once there is betting, all games become gambling", and to affirm that wagering on skill-based activities does not transform them into games of chance.

213. Since betting or wagering does not determine or affect how the game is played or who wins, the character of the game is not changed merely because stakes are involved. Therefore, betting on a game of skill does not convert that game into "gambling". It is therefore incorrect to assert that playing a game of skill "for stakes" renders it a game of chance or "gambling"; the legal character of a game of skill is preserved irrespective of the presence of stakes.

F. ISSUES FOR CONSIDERATION

214. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

> (i) Whether the conjunction "and" appearing in the expression "betting and gambling" in Entry 34 of the List II of the Seventh Schedule to the Constitution is to be interpreted to mean that the competence of the State Legislature extends only to betting on gambling activities? In other words, whether betting on games of pure skill falls outside the purview of the legislative competence of the State Legislature under the said entry?

(ii) Whether the two impugned state legislations failed to correctly infer and apply the decisions of this Court in RMDC-I (supra), RMDC-II (supra) and K.R. Lakshmanan (supra), respectively?

(iii) Whether the two impugned state legislations are manifestly arbitrary insofar as they treat both the games of skill and games of chance in the same manner?

(iv) Whether the two impugned state legislations, by imposing a blanket prohibition on online games with stakes, failed to adopt the least intrusive measure for regulation of the online gaming activities and entities, and as such could be said to be constitutionally invalid for being disproportionate?

(v) Whether the decision of the State Legislatures to regulate and prohibit online gaming with stakes by way of the impugned legislations is supported by any empirical finding or research?

(vi) Whether the expression "gaming" could be said to have acquired the status of nomen juris and as such includes only games of chance and excludes games involving substantial skill?

(vii) Whether there is any rational nexus between the decision of the State Legislature to prohibit the playing of online games with stakes and the object sought to be achieved by the State Governments?

(viii) Whether the competence of the State Legislature in passing the impugned legislations is to be derived solely from Entry 34 List II, or other entries like "public order", "police", "public health", etc. also empower the State Legislation to pass the impugned legislations?

G. ANALYSIS I. Scope of Entry 34 in List II of the Seventh Schedule to the Constitution

215. The prime object behind the enactment of the Public Gambling Act almost one and a half centuries back, was to curb the rise of public gambling houses. At that point of time, the Legislature had taken a policy decision to not apply the penal provisions of the Act to games of mere skill. With an exploding boom in the use of information technology and widespread accessibility to cyberspace, every mobile phone has the potential to be a virtual gambling space. Therefore, the States of Karnataka and Tamil Nadu respectively in lieu of the aforesaid change in technological landscape, enacted a statute that factors in online gaming and also prevent financial losses in the form of gambling debts that arise from betting and gambling on games of skill as well, besides creating widespread addiction among the masses, specially the younger population.

216. The High Court of Karnataka in AIGF (supra) and the High Court of Madras in Junglee Games (supra), respectively, while interpreting Entry 34 List II and striking down the legislations, rendered

the following findings:

> I. Findings in AIGF "The two words namely "Betting" and "gambling" as employed in Entry 34, List II have to be read conjunctively to mean only betting on gambling activities that fall within the legislative competence of the State. To put it in a different way, the word "betting" employed in this Entry takes its colour from the companion word "gambling". Thus, it is betting in relation to gambling as distinguished from betting that does not depend on skill that can be regulated by State legislation; the expression "gambling" by its very nature excludes skill. It is chance that pervasively animates it. This interpretation of the said Entry gains support from the six decade old CHAMARBAUGWALA jurisprudence." II. Findings in Junglee Games "118. It is in such light that "Betting and gambling" in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance. At any rate, even otherwise, the judgments in the two Chamarbaugwala cases and in K.R. Lakshmanan also instruct that the concept of betting in the Entry cannot cover games of skill. Although the State could contend with some degree of justification that its legislative competence extends beyond Entry 34 by drawing on, for instance, Entries 1, 26 or 33, in such event, the State should have discharged the burden of establishing proportionality. For reasons detailed in preceding paragraphs, by imposing a wide-ranging blanket ban, the State has completely failed to meet the "least intrusive" measure test and, therefore, the impugned amendment falls foul of Article 19(1)(g) of the Constitution."

217. The first question that needs to be addressed before proceeding forward pertains to the principal argument canvassed on behalf of the Online Gaming Companies as well as the findings of the High Courts of Karnataka and Madras respectively, that the scope of Entry 34 List II is limited to games of chance alone. We are of the view that the said finding returned by the High Courts in the impugned judgments deserves to be set aside, for the following reasons, each of which will be dealt with in some detail in the subsequent parts of this judgment:

> a) Intent of the Constituent Assembly, as can be discerned from a reading of the Constituent Assembly Debates suggests that the Constitution-makers did not intend to restrict the scope of Entry 34 to games of chance alone.
>
> b) The consistent legal position as has been propounded by several decisions of this Court suggests that entries in the Seventh Schedule have to be interpreted liberally, so as to confer wide jurisdiction on the Legislature.
>
> c) The decisions of this Court in the two RMDC cases did not decide the scope of the expression "betting and gambling" appearing in Entry 34 but was concerned with a very different factual situation.

d) The decision of this Court in K.R. Lakshmanan (supra) was passed in the unique facts of the case in that case and does not interpret the scope of Entry 34.

II. Constituent Assembly Debates on Entry 34 List II

218. The present Entry 34 List II was Entry 45 List II before the Constituent Assembly. The present Entry 33, which deals with "theatres and dramatic performances; cinemas, subject to Entry 60 of List I; sports, entertainments and amusements" was Entry 44 before the Constituent Assembly, though in a different form. It would be appropriate that any discussion on Entry 45 before the Constituent Assembly must emanate after examining Entry 44 because of what had transpired during the Constituent Assembly Debates. For the sake of conciseness, we have summarized the manner in which the debates unfolded, extracting only those portions that are of direct relevance to the issue at hand.

219. On 02.09.1949, the following transpired before the Constituent Assembly:

a) Shri T.T. Krishnamachari moved a motion to amend Entry 44 to include "entertainments and amusements" as part of the entry.

b) Shri H.V. Kamath raised an objection to such inclusion on the ground that the Government was trying to arrogate to itself far more powers to interfere with the lives of citizens and referred to a Report in the Bombay papers that the Government was trying to ban a harmless game like rummy. The relevant extract is as follows:

"I feel, Sir, that by including 'entertainments and amusements' in this entry - they were not there in the original draft - the Government are trying to arrogate to themselves far more powers to interfere with the lives of citizens than are necessary. The other day there was a report in the Bombay papers that that Government was trying to ban even a harmless game like rummy. I think that entertainments of this kind at least must be kept beyond the purview of Government."

c) In response to the objection, Shri T.T. Krishnamachari stated that this aspect of the matter comes in as Entry 45 in the List, for which Shri H.V. Kamath elaborated on the nature of the objection.

d) While addressing the action of the Bombay Government mentioned by Shri H.V. Kamath, Shri T.T. Krishnamachari explained that the recent Order of the Bombay Government was to stop the play of rummy because of the stakes involved. It was further stated that when people play the game for such high stakes, it takes the form of gambling, and it was for that reason that powers were available under Entry 45 to prohibit playing of Rummy for money. The relevant extract is as follows:

"Sir, I appreciate what my honourable Friend Mr. Kamath has said in regard to undue interference by the State in the activities of private persons in Clubs and other places, but I do not think that this entry relates to that matter at all. What it really

relates to is a certain amount of control which the States should have over places of public resort for purposes of health, morality and public order. These three matters of the State will have to safeguard in places of public resort. What my friend contemplates to do should be done under the powers conferred by the next item 45. The recent order of the Bombay Government is to stop the play of rummy because of the stakes involved. The people that play this game for such high stakes that it takes the form gambling, and it is for that reason that under the powers that the Bombay Government have under entry 45 they have sought to prohibit the playing of rummy for money. I do not think that this particular entry under discussion will be abused by any State Government to unduly restrict any pleasures or diversions that people have. The purpose of this entry is entirely different." (Emphasis Supplied)

e) It was assured by Shri T.T. Krishnamachari that Entry 44, by including entertainments and amusements, will not be abused by any State Government to unduly restrict any pleasures or diversions that people have.

220. What becomes clear from the above is that the founding Fathers of the Constitution clearly intended even Rummy, a Game of Skill, to be regulated and even be prohibited, when played with Stakes, by virtue of powers under the erstwhile Entry 45 before the Constituent Assembly and which is Entry 34 of List II at present in the 7th Schedule of the Constitution of India. A clearer intention of our makers of the Constitution cannot be derived from any other source. In fact, when one examines the discussion under Entry 45 that immediately followed the discussion under Entry 44, this position is only strengthened.

221. The following comes to light after an examination of the Constituent Assembly Debates on Entry 45 List II, as it then stood, on 02.09.1949:

a) Shri Shiban Lal Saksena moved a motion to delete the entry "betting and gambling" on the ground that it would be legalized by the entry and substantiated by stating that it goes against the principles to which the Constituent Assembly is committed.

b) Shri Lakshminarayan Sahu supported the deletion and even stated that the entry encourages betting and gambling and taxation on such items does not appear to be proper.

c) To the above objections, the following was stated by Dr. B.R. Ambedkar immediately after which the idea of deleting the entry was dropped and the Entry was adopted as part of our Constitution:

"Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was

> omitted, there would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter. I hope that they will realise what they are doing. If this entry was omitted, the other consequence would be that this subject will be automatically transferred to List I under entry 91. The result will be the same, viz. the Central Government may either permit gambling or prohibit gambling. The question therefore that arises is this whether this entry should remain here or should be omitted here and go specifically as a specified item in List I or be deemed to be included in entry 91. If my friends are keen that there should be no betting and gambling, then the proper thing would be to introduce an article in the Constitution itself making betting and gambling a crime, not to be tolerated by the State. As it is, it is a preventive thing and the State will have full power to prohibit gambling. I hope that with this explanation they will withdraw their objection to this entry." (Emphasis Supplied)

222. In short, what becomes apparent is that our founding fathers intended Betting and Gambling to be regulated and left it to the States to determine whether to permit them or prohibit them. While doing so, it was also categorically made clear that playing even skill-based games of rummy for money would tantamount to gambling, and the same would fall within the regulatory powers of Entry 34 List II, as it stands now. To shrink this Entry and limit it to regulate only games of chance, and to completely obliterate the significance of stakes from the purport of the entry, would not only violate the express scope of the entry but also the wisdom, intention and vision of our founding fathers.

223. The finding of the High Court of Madras as well as the High Court of Karnataka, respectively, that gives a narrow interpretation of the Entry, has failed to take into account the power intended to be bestowed upon the States under the Entry by the framers of the Constitution, and as such has rendered them powerless to prohibit the activity of betting and gambling. The extracts reproduced above indicate that Dr. B.R. Ambedkar was sceptical about the very same thing happening, which prompted him to push for the Entry to be included as part of the 7th Schedule. Despite the existence of such an entry, the State of Karnataka and Tamil Nadu continue to be powerless to regulate betting and gambling on games of skill in cyberspace in lieu of the judgments in AIGF (supra) and Junglee Games (supra).

224. The speech of Dr. Ambedkar in the Assembly clearly indicates that the intent behind the inclusion of the entry was to leave it to the wisdom of the State Legislatures the question and manner of regulation of betting and gambling activities. Thus, even if a State had followed a different approach towards regulation of betting and gambling for years, it would be open for it to change the approach to increase the regulation, or even prohibit certain betting and gambling enterprises, if a need to do so is felt. III. Entries in the Seventh Schedule must receive broad and liberal interpretation

225. The Entries under Schedule 7 of the Constitution of India have been drafted to be as broad, expansive and wide as possible. A few of these entries are reproduced below for the purpose of illustration.

List I Entry 15- War and peace Entry 42- Inter-State trade and commerce Entry 48- Stock exchanges and futures markets List II Entry 6- Public health and sanitation; hospitals and dispensaries.

Entry 25- Gas and gas-works.

Entry 28- Markets and fairs.

Entry 31- Inns and inn-keepers List III Entry 9- Bankruptcy and Insolvency Entry 10- Trust and trustees Entry 20- Economic and social planning Entry 20A- Population Control and family planning Entry 23- Social security and social insurance; employment and unemployment.

226. If the word "and" mentioned in all these entries are to be read as "on", by adopting an interpretive approach similar to the one adopted by the High Court of Karnataka and Madras respectively, it would shrink and limit the legislative scope of the Parliament as well as the State Legislature. We are afraid that an approach will not only militate against the fundamental principles of statutory interpretation but will also directly be violative of the law laid down by this Court in the following judgments.

227. The 9-Judge Bench of this Court, in Lalta Prasad Vaish (supra), vide paras 57 and 85 respectively held as follows:

> "57. The scope of Entry 8 must be interpreted in this background. If Entry 8 is a product-based Entry, it will only cover the consumable end-product. However, if it is an industry-based Entry, it would cover the production of the product as well. (See Tika Ramji v. State of UP, AIR 1956 SC 676) Entries 24, 26 and 27 of List II are general entries relating to industry and the products of the industries. A distinction between industry and product is made in List II to give effect to the legislative scheme by which certain industries may be controlled by the Union under Entry 52 of List I but products of those industries which are placed in the Concurrent list under Entry 33. To give effect to this unique demarcation, it was necessary to separate the entries relating to industries and products in List II. However, Entry 8 is a specific entry dealing only with 'intoxicating liquor'. The distinction made between industry and products in the general entries to give effect to the scheme of legislative distribution on industries is not adopted in Entry 8. We have in the preceding sections emphasised that the primary principle of interpreting entries in the legislative lists is to provide a wide meaning to them. A narrow interpretation must only be adopted when either (a) the scope of the Entry is limited by the use of language devices; or (b) a wide interpretation creates an overlap between entries within the same list or different lists. For example, Entry 25 of List II provides States the competence over "gas and gas-works". This Court in Calcutta Gas Company

(supra) did not interpret the Entry to only include the product of 'gas and gas works' but rather interpreted it to include the industry. This is the construction which is in consonance with settled principles of interpretation.

xxx xxx xxx

85. The judgment of this Court in Gannon

Dunkerley (supra) must be read in the context of the settled principle of interpreting legislative entries, that the entries must be conferred the widest meaning possible. Interpreting a phrase or words in the Legislative Lists based on the legal import of the phrase is, thus, in many ways an exception to the settled principle of interpreting entries. This is for the simple reason that the legislative entries delimit the scope of competence of the legislative bodies. If the entries are interpreted based on the meanings or definitions in a legislation, the purpose of the Seventh Schedule may become redundant. Further, the statute does not define phrases based on popular or common parlance meaning but rather based on the scope of the legislation and the manner in which the provisions are drafted. A deeming fiction is often used to define phrases by conferring artificial meanings. (See Ahmedabad Municipal Corporation v. GTL Infrastructure Limited (2017) 3 SCC 545 [13] "13. "... it would be self-defeating to understand the meaning and scope of Entry 49 of List II by reference to the definition clauses in the Gujarat Act. Definitions contained in the statute may at times be broad and expansive; beyond the natural meaning of the words or may even contain deeming provisions. Though the wide meaning that may be ascribed to a particular expression by the definition in a statute will have to be given effect to, if the statute is otherwise found to be valid, it will, indeed, be a contradiction in terms to test the validity of the statute on the touchstone of it being within the legislative entry, by a reference to the definition contained in the statute") The interpretation based on 'legislative meaning' elucidated in Gannon Dunkerley (supra), which narrows the interpretation of entries, thereby creating an exception to the rule of wide interpretation should only be employed by Courts when the twin tests highlighted above. The tests are (a) the phrase should have acquired a well-recognised, definite and precise meaning in law; and (b) the legal import of the word must be practically unanimous. Additionally, we also are of the view that the legislative meaning interpretation should be adopted only when the deviation from the popular meaning of the phrase is not too wide. The legislative meaning cannot be used to artificially narrow legislative entries. We also deem it necessary to note that we must be cognizant that the standard of 'legislative meaning' is employed to identify the 'intent' of the framers of the Constitution and belongs to the originalist school of thought, which has been consistently opposed by this Court over the years. See Gannon Dunkerley (supra) :

"... Sales tax was not a subject which came into vogue after the Government of India Act 1935. It was known to the framers of that statute and they made express provision for it under Entry 48." For these reasons, the principle of interpretation elucidated in Gannon Dunkerley (supra) must be used cautiously by Courts."

(Emphasis Supplied)

228. In Welfare Association v. Ranjit P. Gohil, reported in (2003) 9 SCC 358 this Court held as follows:

> "28. The fountain source of legislative power exercised by Parliament or the State Legislatures is not Schedule 7; the fountain source is Article 246 and other provisions of the Constitution. The function of the three lists in the Seventh Schedule is merely to demarcate legislative fields between Parliament and States and not to confer any legislative power. The several entries mentioned in the three lists are fields of legislation. The Constitution-makers purposely used general and comprehensive words having a wide import without trying to particularize. Such construction should be placed on the entries in the lists as makes them effective; any construction which will result in any of the entries being rendered futile or otiose must be avoided. That interpretation has invariably been countenanced by the constitutional jurists, which gives the words used in every entry the widest-possible amplitude. Each general word employed in the entries has been held to carry an extended meaning so as to comprehend all ancillary and subsidiary matters within the meaning of the entry so long as it can be fairly accommodated subject to an overall limitation that the courts cannot extend the field of an entry to such an extent as to result in inclusion of such matters as the framers of the Constitution never intended to be included within the scope of the entry or so as to transgress into the field of another entry placed in another list." (Emphasis Supplied) IV. The decisions in RMDC-I (supra), RMDC-II (supra) and K.R. Lakshmanan (supra) respectively

229. Substantial reliance has been placed by the Gaming Companies on three decisions - the two RMDC cases and K.R. Lakshmanan (supra). These decisions were also significantly considered by the High Courts in the respective impugned judgments. Thus, we first deem it necessary to trace the manner in which reliance on the said decisions was placed by the High Courts, and thereafter we propose to discuss our understanding of these decisions and whether and to what extent they hold relevance in the instant case.

230. The High Court of Madras drew references to the RMDC cases, and held that these cases laid down a determinative test which separate gambling from other activities on the basis of the existence of a 'substantial degree of skill'. The High Court also observed that the placement of "betting and gambling" in Entry 34 of List II and the principle that activities amounting to gambling are res extra commercium, and hence not protected under Article 19(1)(g), whereas the activities involving substantial skill fall within the constitutionally guaranteed protection. The relevant paragraphs are as follows:

> "23. The rummy petitioners first refer to the two Chamarbaugwala cases decided by a Constitution Bench and the distinction brought out therein between a game of skill and a game of chance. In the first of the two cases cited, reported at AIR 1957 SC 699 (State of Bombay v. R.M.D. Chamarbaugwala), the issue involved was the rationale of

declining the renewal of a licence to conduct a prize competition. The contention of the State before the Supreme Court was that there could be no business in promoting a prize competition and the violation of the writ petitioners' rights under Article 19(1)(g) of the Constitution did not arise. In the discussion on the validity of the Amending Act of 1952 that was before the Supreme Court, such court noticed that "Betting and gambling" as appearing in List-II in the Seventh Schedule to the Constitution was there in the Government of India Act, 1935. In the context of the definition of "prize competition" that included any competition in which the success did not depend to a substantial degree upon the exercise of skill, the Supreme Court referred to an English judgment that opined that even if a scintilla of skill was required for success the competition could not be regarded as of a gambling nature, but toned down the dictum and acknowledged that a game of substantial skill would not amount to gambling. The Supreme Court agreed with the proposition that "a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill." At paragraph 17 of the report, the court went on to say that a competition in which success does not depend to a substantial degree upon the exercise of skill "is now recognised to be of a gambling nature."

24. In the other Chamarbaugwala case, reported at AIR 1957 SC 628 (R.M.D. Chamarbaugwala v. Union of India), there is a more wholesome discussion on the skill versus chance aspect at paragraphs 3 to 6 of the report. The court also noticed that in the other Chamarbaugwala judgment it had held that "trade and commerce protected by Article 19(1)(g) and Article 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but res extra commercium and that it does not fall within the purview of those Articles." Paragraph 5 of the report is of some relevance:

"5. As regards competitions which involve substantial skill however, different considerations arise. They are business activities, the protection of which is guaranteed by Article 19(1)(g) and the question would have to be determined with reference to those competitions whether Sections 4 and 5 and Rules 11 and 12 are reasonable restrictions enacted in public interest. But Mr. Seervai has fairly conceded before us that on the materials on record in these proceedings, he could not maintain that the restrictions contained in those provisions are saved by Article 19(6) as being reasonable and in the public interest. The ground being thus cleared, the only questions that survive for our decision are (1) whether, on the definition of "prize competition" in Section 2(d), the Act applies to competitions which involve substantial skill and are not in the nature of gambling; and (2) if it does, whether the provisions of Sections 4 and 5 and Rules 11 and 12 which are, ex concessi void, as regards such competitions, can on the principle of severability be enforced against competitions which are in the nature of gambling."

25. At paragraph 10 of the report, the Supreme Court recorded the State's submission that the impugned Act in that case was relatable to Entry-34 in the State List.

However, on an overall appreciation of the legislation, the court observed that by virtue of "the declared object (of the Act) and the wording of the statute, we are of opinion that the competitions which are sought to be controlled and regulated by the Act are only those competitions in which success does not depend to any substantial degree on skill." The principle is summarised at paragraph 23 of the report:

> "23. Applying these principles to the present Act, it will not be questioned that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories. The difference between the two classes of competitions is as clear-cut as that between commercial and wagering contracts. On the facts, there might be difficulty in deciding whether a given competition falls within one category or not; but when its true character is determined, it must fall either under the one or the other. The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country and the courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be. Nor does the restriction of the impugned provisions to competitions of a gambling character affect either the texture or the colour of the Act; nor do the provisions require to be touched and re- written before they could be applied to them. They will squarely apply to them on their own terms and in their true spirit and form a code complete in themselves with reference to the subject. The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in Section 2(d) to all kinds of competitions, are severable in their application to competitions in which success does not depend to any substantial extent on skill." xxx xxx xxx
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> 48. The next set of petitioners, who are also mostly involved in offering betting on rummy on their platforms, seek to make a distinction between betting and gambling. ...
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> 49. They refer to the Chamarbaugwala cases where the use of skill has been seen to be permissible as a business activity and entitled to protection under Article 19(1)(g) of the Constitution. They refer to the history of the regulation of gaming and the prohibition in certain areas before copiously referring to the judgment in K.R. Lakshmanan.
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> xxx xxx xxx
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> 57. Of the several petitioners who have challenged the Amending Act, one is a federation or association of the entities that provide games on the virtual platform or cyberspace. ... (emphasis supplied) xxx xxx xxx

> 64. These petitioners refer to the principles enunciated in the Chamarbaugwala cases and specifically rely on paragraph 20 of the report in K.R. Lakshmanan, where the expression "mere skill" has been held to "mean substantial degree or preponderance of skill." (Emphasis Supplied)

231. The High Court of Madras also drew reference from the decision in K.R. Lakshmanan (supra) for its definition of "mere skill", which was held to mean "substantial degree or preponderance of skill". Relying on the decision in K.R. Lakshmanan (supra), the High Court went on to hold that the protection under Article 19(1)(g) of the Constitution shall be applicable to a game of skill that is distinct from a game of chance, on the preponderance of the skill element involved. The relevant observations made vide paragraphs 108 and 127 respectively are reproduced below:

> "108. Since the discussion here has to be confined to the validity of the impugned Amending Act, the several tests enunciated in the authoritative judicial pronouncements brought to bear on the subject by the parties need to be understood and applied. For a start, K.R. Lakshmanan instructs that when a game of skill is distinct from a game of chance, on the preponderance of the skill element involved, the activity would be protected by Article 19(1)(g) of the Constitution and competitions involving games of skill have to be regarded as business activities.
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> xxx xxx xxx
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> 127. At the same time, the Amending Act and the law laid down on the subject in a plethora of judgments are so inconsistent and irreconcilable that both cannot stand together. Even the Law Commission's recommendations stressed on regulation and not prohibition. In the chit fund case of Narayana Aiyangar that the State has relied on, the emphasis is on the need for regulation in the interests of the public.

There is no doubt that M.J. Sivani read the word "gaming" in a wider sense when it observed that "a game of pure chance or mixed chance and skill, it is gaming"; but such dictum of a two-Judge Bench rendered in 1995 must be seen to have been tempered by the clear enunciation of the law in such regard in the later judgment of K.R. Lakshmanan, rendered by a three-Judge Bench, when it observed that gaming would mean wagering or betting on games of chances and it "would not include games of skill ...". Again, M.J. Sivani upheld a legislation that the Supreme Court described to be "to regulate running of the video games".

(Emphasis Supplied)

232. Drawing from both the RMDC cases and K.R. Lakshmanan (supra) respectively, the High Court distilled the principle that Entry 34 in List II of the Seventh Schedule to the Constitution of India (dealing with "betting and gambling") has to be construed as 'betting on gambling' and is to be confined to betting integral to gambling, i.e., betting only upon games of chance and not games of skill. By doing so, the High Court equated the term 'gambling' with games of chance alone. It does not comprehend games of skill, which are lawful commercial activities protected by Article 19(1)(g).

On that construction, it went on to hold that a blanket proscription that indiscriminately sweeps in skill based games cannot be sustained and that the amendment, therefore, violates Article 19(1)(g).

233. In coming to this conclusion, the deductions from the RMDC cases in the High Court's view appear to be that the concept of 'betting' in Entry 34 of List II cannot cover games of skill because it cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. The observations at paragraph 125 of the judgment are reproduced below:

> "125. It is in such light that "Betting and gambling" in Entry 34 of the State List has to be seen, where betting cannot be divorced from gambling and treated as an additional field for the State to legislate on, apart from the betting involved in gambling. Since gambling is judicially defined, the betting that the State can legislate on has to be the betting pertaining to gambling; ergo, betting only on games of chance. At any rate, even otherwise, the judgments in the two Chamarbaugwala cases and in K.R. Lakshmanan also instruct that the concept of betting in the Entry cannot cover games of skill. Although the State could contend with some degree of justification that its legislative competence extends beyond Entry 34 by drawing on, for instance, Entries 1, 26 or 33, in such event, the State should have discharged the burden of establishing proportionality. For reasons detailed in preceding paragraphs, by imposing a wide-

ranging blanket ban, the State has completely failed to meet the "least intrusive" measure test and, therefore, the impugned amendment falls foul of Article 19(1)(g) of the Constitution." (Emphasis Supplied)

234. A Division Bench of the High Court of Karnataka in AIGF (supra), after having extensively discussed the two RMDC cases, invalidated the impugned Acts on the basis that the wording of Entry 34 must be read conjunctively such that "betting" derives its colour from "gambling", thereby confining the competence of the States to legislate only on activities characterised by chance rather than skill. It also went on to deduce from these decisions that a game that involves a substantial amount of skill cannot be construed as gambling. The relevant observations pertaining to the RMDC decisions are made in the following paragraphs as extracted below:

> "IX. SCOPE OF ENTRY 34 IN STATE LIST;
>
> CHAMARBAUGWALA JURISPRUDENCE; GAMES OF SKILL v. GAMES OF CHANCE:
>
> Learned advocates appearing for the petitioners submitted that the term 'Betting and gambling' employed in Entry 34, List II having been treated as a constitutional concept in CHAMARBAUGWALLA I & II and in the cases that followed, as distinguished from an ordinary legal concept this Court too has to construe it accordingly. They contended that substantially the Amendment Act being pari

materia with the statutes of other States, the approach of this Court to the matter needs to be consistent with the relevant decisions of several High Courts in the country. They also notified that some of these have been affirmed by the Apex Court on challenge. Justice Oliver Wendell Holmes in TOWNE v. EISNER, had said "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and time in which it is used...". The two words namely "Betting" and "gambling" as employed in Entry 34, List II have to be read conjunctively to mean only betting on gambling activities that fall within the legislative competence of the State. To put it in a different way, the word "betting" employed in this Entry takes its colour from the companion word "gambling". Thus, it is betting in relation to gambling as distinguished from betting that does not depend on skill that can be regulated by State legislation; the expression "gambling" by its very nature excludes skill. It is chance that pervasively animates it. This interpretation of the said Entry gains support from the six decade old CHAMARBAUGWALA jurisprudence, as discussed below:

(i) In CHAMARBAUGWALA-I, supra the Apex Court inter alia was considering whether the Bombay Lotteries and Prize Competition Act, 1948, is a legislation relatable to Entry 34, List II, i.e., "Betting and gambling". To answer this question, the definition of "prize competition" in the said legislation was examined with all its constituents & variants such as "gambling prize competition", "gambling adventure", "gambling nature" & "gambling competition". After undertaking this exercise, the Court observed: "...On the language used in the definition section of the 1939 Act as well as in the 1948 Act, as originally enacted, there could be no doubt that each of the five kinds of prize competitions included in the first category to each of which the qualifying clause applied was of a gambling nature. Nor has it been questioned that the third category, which comprised "any other competition success in which does not depend to a substantial degree upon the exercise of skill", constituted a gambling competition. At one time the notion was that in order to be branded as gambling the competition must be one success in which depended entirely on chance. If even a scintilla of skill was required for success the competition could not be regarded as of a gambling nature.

The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognized to be of a gambling nature." What emerges from the above observations is that : gambling is something that does not depend to a substantial degree upon the exercise of skill, and therefore something which does depend, ought not to be considered as gambling; as a logical conclusion, a game that involves a substantial amount of skill is not a

gambling.

(ii) In R.M.D. CHAMARBAUGWALA-II, supra the Court was treating the question, whether it was constitutionally permissible for section 2(d) of the Prize Competition Act, 1955, which defined "Prize Competition" to take within its embrace not only the competitions in which success depended on chance but also those wherein success depended to a substantial extent on the skill of player. What is observed in CHAMARBAUGWALA-I becomes further clear by the following observations in this case:

"... If the question whether the Act applies also to prize competitions in which success depends to a substantial degree on skill is to be answered solely on a literal construction of s. 2

(d), it will be difficult to resist the contention of the petitioners that it does. The definition of 'prize competition' in s. 2(d) is wide and unqualified in its terms. There is nothing in the working of it, which limits it to competitions in which success does not depend to any substantial extent on skill but on chance...that competitions in which success depends to a substantial extent on skill and competitions in which it does not so depend, form two distinct and separate categories ... The distinction between the two classes of competitions has long been recognised in the legislative practice of both the United Kingdom and this country, and the Courts have, time and again, pointed out the characteristic features which differentiate them. And if we are now to ask ourselves the question, would Parliament have enacted the law in question if it had known that it would fail as regards competitions involving skill, there can be no doubt, having regard to the history of the legislation, as to what our answer would be ... The conclusion is therefore inescapable that the impugned provisions, assuming that they apply by virtue of the definition in s. 2(d) to all kinds of competitions, are severable in their applications to competitions in which success does not depend to any substantial extent on skill..." xxx xxx xxx XIX. AS TO ARTICLE 19(1)(g) AND ENTRY 26 (TRADE AND COMMERCE) IN STATE LIST:

(a) The Apex Court while considering CHAMARBAUGWALA-II, supra opined that "...we find it difficult to accept the contention that those activities which encourage a spirit of reckless propensity for making easy gain by lot or chance, which lead to the loss of the hard earned money of the undiscerning and improvident common man and thereby lower his standard of living and drive him into a chronic state of indebtedness and eventually disrupt the peace and happiness of his humble home could possibly have been intended by our Constitution makers to be raised to the status of trade, commerce or intercourse and to be made the subject matter of a fundamental right guaranteed by the Article 19(1)(g)." It also reproduced the observation of the US Supreme Court in UNITED STATES v. KAHRIGER and LEWIS v. UNITED STATES:

"...there is no constitutional right to gambling..." In view of the settled position of law, it hardly needs to be stated that gambling, i.e., the 'games of chance' do not enjoy any Constitutional protection since they are mala in se. It is open to the legislature to absolutely prohibit them as is done to the trades in noxious or dangerous goods or trafficking in women. However, games of skill by their very nature stand on a different footing.

xxx xxx xxx

(j) The Apex Court in INDIAN EXPRESS supra extended protection to the Press with the following reasoning:

"...Newspaper industry enjoys two of the fundamental rights, namely the freedom of speech and expression guaranteed under Article 19(l)(a) and the freedom to engage in any profession, occupation, trade, industry or business guaranteed under Article 19(1)(g) of the Constitution, the first because it is concerned with the field of expression and communication and the second because communication has become an occupation or profession and because there is on invasion of trade, business and industry into that field where freedom of expression is being exercised..." The games of skill as we have reasoned out above involve elements of expression and therefore enjoy regulatable protection under Article 19(1)(a); it has long been settled that these games apparently having business characteristics are protected under Article 19(1)(g). Therefore the above observations in Indian Express equally apply to the case of petitioners. However, the Amendment Act does not critically adjust the boundaries of existing category of protected activities i.e., games of skill with the unprotected acts of gambling. Instead, State has created a wholly new category of medium-based-regulation when change of medium per se does not alter the true nature & content of the games. The permissible limits of restriction recognized by Chamarbaugwalas are thus trampled, by proscribing the online games by lock, stock & barrel. To scuttle the ship is not to save the cargo : to jettison may be.

(Emphasis Supplied)

235. Further, in dealing with the argument of the State that advancements in science, technology, and online gaming ecosystems had rendered the RMDC decisions obsolete, the High Court underscored that the RMDC principles have been repeatedly affirmed by this Court in decisions such as K.R. Lakshmanan (supra) and several High Courts across the country:

"XX. AS TO WHETHER CHAMARBAUGWALA JURISPRUDENCE HAS LOST RELEVANCE DUE TO ADVANCEMENT OF SCIENCE & TECHNOLOGY:

(a) Learned Advocate General appearing for the State in his imitable style and vociferously contended that :

> the provisions of an organic Constitution like ours have to be construed keeping in view contemporary socio- economic developments and the new challenges associated with the same. There has been a paradigm shift in the whole lot of activities in the society owing to advancement of science & technology. New implications and difficulties are cropping up in the society justifying innovative ventures on the part of the State to effectively manage them. A greater leverage needs to be conceded to the State in devising appropriate measures for curbing the menace of online gaming. He passionately submitted that what was true of things that happened in the bygone decades i.e., when CHAMARBAUGWALAS were decided, need to be examined afresh. In support of this, he cites the decision in SIVANI supra contending that the absolute embargo on videogames has been upheld by the Apex Court, despite CHAMARBAUGWALAS. He also refers to a Public Interest Litigation in W.P. No. 13714/2020 between SHARADA D.R. v. STATE OF KARNATAKA in which a direction was sought for banning of all forms of online gambling and betting disposed off on 26.10.2021 by this Court, and that the Amendment Act has been enacted keeping in view the same.

(b) We do appreciate the above submissions of the learned Advocate General. However, that does not much come to the rescue of respondents. True it is : Constitution is intended to enure for ages to come and consequently, to be adapted to the various crises of human affairs. It is unwise to insist that what the provisions of the constitution meant to the vision of its makers must mean to the vision of our time. They should be interpreted to meet and cover changing conditions of social and economic life. A Constitution states not rules for the passing hour but the principles for an expanding future. At the same time, the meaning of the Constitution does not change with every ebb and flow of economic events. A constitution is not a storehouse of fossilized principles. It is a living law of the people and accordingly its provisions need to be construed by all the organs of the State.

(c) However, the submission of learned Advocate General overlooks one important factor:

> CHAMARBAUGWALAS were decided decades ago is true, but that jurisprudence has been validated time and again by the Apex Court in K.R. LAKSHMANAN(1996) and other subsequent cases. Thus it is not that what was decided in CHAMARBAUGWALAS is being re-visited for the first time now. In the recent past, several High Courts in the country have followed the same after critical examination viz., VARUN GUMBER (P&H-2017), GURDEEP SINGH (BOMBAY-2019), RAVINDRA SINGH (RAJASTAN-2020), JUNGLEE GAMES (MADRAS-
>
> 2021), HEAD DIGITAL WORKS (KERALA-
>
> 2021), supra. Some of these cases went to Apex Court and came to be affirmed, the latest being AVINASH MEHROTRA, supra decided on 30.7.2021. All this is already discussed at paragraphs (IX) & (X) above. We need not refer to SIVANI again since it is already discussed in detail infra. The PIL case does not in any way come to the rescue of the respondents since the prayer therein is related to banning of all online

gambling as such. Apparently, case of the petitioners is not one of gambling; their business does not involve any act which is determined by the wheel of fortune." (Emphasis Supplied)

236. The High Court of Karnataka made a reference to the decision in K.R. Lakshmanan (supra) for its observations on the scope of Entry 34 in List II and the distinction drawn between a game of chance and a game of skill, echoing the RMDC jurisprudence. The same is reproduced hereinbelow:

"IX. SCOPE OF ENTRY 34 IN STATE LIST;

CHAMARBAUGWALA JURISPRUDENCE; GAMES OF SKILL v. GAMES OF CHANCE:

...

(iv) In K.R. Lakshmanan, a Three Judge Bench of the Apex Court was examining the vires of amendments to the Madras City Police Act, 1888 and the Madras Gaming Act, 1940 whereby the exception carved out for wagering on horse-racing from the definition of "gaming" was deleted, much like the effect of the Amendment Act herein which inter alia widens the definition of "gaming" to include "wagering on games of skill", that hitherto enjoyed constitutional protection. Having considered CHAMARBAUGWALAS-I & II, K. SATYANARAYANA and some notable decisions of foreign jurisdictions, the Court succinctly stated the difference between a game of chance and a game of skill, as under:

"3. The new Encyclopedia Britannica defines gambling as "The betting or staking of something of value, with consciousness of risk and hope of gain on the outcome of a game, a contest, or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by reason of the better's miscalculations". According to Black's Law Dictionary (Sixth Edition) "gambling involves, not only chance, but a hope of gaining something beyond the amount played. Gambling consists of consideration, an element of chance and a reward... Gambling in a nut-shell is payment of a price for a chance to win a prize. Games may be of chance, or of skill or of skill and chance combined. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards, are all modes of chance. In these games the result is wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill, on the other hand-although the element of chance necessarily cannot be entirely eliminated-is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player." "33. The expression 'gaming' in the two Acts has to be interpreted in the light of the law laid-down by this Court in the two Chamarbaugwala cases, wherein it has been authoritatively held that a competition which substantially depends on skill is

> not gambling. Gaming is the act or practice of gambling on a game of chance. It is staking on chance where chance is the controlling factor. 'Gaming' in the two Acts would, therefore, mean wagering or betting on games of chance. It would not include games of skill like horse-racing. ... We, therefore, hold that wagering or betting on horse-racing - a game of skill - does not come within the definition of 'gaming' under the two Acts. 34... Even if there is wagering or betting with the Club it is on a game of mere skill and as such it would not be 'gaming' under the two Acts."

237. Further, the decision in K.R. Lakshmanan (supra) was also relied on to draw the conclusion that games of skill do not metamorphise into games of chance merely because they are played online. Consequently, it refused to agree with the contentions of the Ld. Advocate General that gaming includes both a 'game of chance' and a 'game of skill'. "XII. AS TO DIFFERENCE BETWEEN ACTUAL GAMES & VIRTUAL GAMES, AND IF ALL ONLINE GAMES ARE GAMES OF CHANCE:

> The vehement contention of Learned Advocate General that gaming includes both a 'game of chance' and a 'game of skill', and sometimes also a combination of both, is not supported by his reliance on M.J SIVANI v. STATE OF KARNATAKA34. We are not convinced that M.J. SIVANI recognises a functional difference between actual games and virtual games. This case was decided on the basis of a wider interpretation of the definition of 'gaming' in the context of a legislation which was enacted to regulate the running of video parlours and not banning of video games; true it is that the Apex Court treated certain video games as falling within the class of 'games of chance' and not of 'games of skill'. However, such a conclusion was arrived at because of manipulation potential of machines that was demonstrated by the reports of a committee of senior police officers; this report specifically stated about the tampering of video game machines for eliminating the chance of winning. This decision cannot be construed repugnant to Chamarbaugwala jurisprudence as explained in K.R. LAKSHMANAN. We are of a considered view that the games of skill do not metamorphise into games of chance merely because they are played online, ceteris paribus. Thus, SIVANI is not the best vehicle for drawing a distinction between actual games and virtual games. What heavily weighed with the Court in the said decision was the adverse police report. It is pertinent to recall Lord Halsbury's observation in QUINN v. LEATHAM: that a case is only authority for what it actually decides in a given fact matrix and not for a proposition that may seem to flow logically from what is decided. This observation received its imprimatur in STATE OF ORISSA v. SUDHANSU SEKHAR MISRA." (Emphasis Supplied)

238. Finally, it relied on the classification of horse-racing as made by the three-judge bench in K.R. Lakshmanan (supra) as being 'neither gaming nor gambling' since it is a game of mere skill to hold that the amended definition of 'gaming' in the impugned Acts excludes lottery, wagering, betting on horse-race run on any race course etc., and offends the clause of 'equal protection of the laws' as enshrined in Article 14 by being unjustifiably selective. The relevant observations are as reproduced hereinbelow:

> "XXI. AS TO DISCRIMINATION AND VIOLATION OF EQUALITY UNDER ARTICLE 14:
>
> (b) The amended definition of 'gaming' excludes in so many words, 'a lottery or wagering or betting on horse-

race run on any race course' in a given circumstance. The Apex Court in K.R. LAKSHMANAN supra held that, horse-racing is a 'game of mere skill' and therefore, it is 'neither gaming nor gambling'. If the legislative policy is to protect the games of skill from being treated as proscribed, the Amendment Act being unjustifiably selective in that suffers from a grave constitutional infirmity. It offends the clause of 'equal protection of the laws' enacted in Article 14, since protection is unreasonably sectarian. The equal protection clause would be diluted into a mild constitutional injunction that the State shall treat as equal in law only the horse- racers who are equal in fact with other players of games of skill. For saving such a blatant discrimination, the respondents have failed to establish the reasonable basis on which such a classification is founded and the rational nexus identifiable between the differentia of and the object sought to be achieved by such a classification vide STATE OF WEST BENGAL v. ANWAR ALI SARKAR." (Emphasis Supplied)

239. In short, it appears that both the Madras High Court and the Karnataka High Court respectively read the RMDC decisions as a constitutional lodestar for the position that the expression "betting and gambling" in Entry 34 of List II is to be construed conjunctively and narrowly, such that "betting" takes its colour from "gambling," confining State competence to betting integral to games of chance. By contrast, games where success depends to a substantial degree on skill constitute lawful business protected by Article 19(1)(g). In light of the same, the statutes or blanket prohibitions that oversee this skill-chance divide are overbroad, disproportionate, and ultra vires to the extent they purport to regulate or proscribe skill based activities.

240. The question that, therefore, arises for our consideration is whether the interpretation of "betting and gambling" in Entry 34 of List II, as adopted by the respective High Courts by placing reliance on the judgments in RMDC-I (supra), RMDC- II (supra) and K. R. Lakshmanan (supra), can be construed as 'betting on gambling'. In other words, can the State's legislative competence under Entry 34 List II be confined exclusively to betting on games of chance alone, thereby rendering any prohibition or regulation of skill based games played with stakes unconstitutional.

241. To address the contentions as canvassed, we must first try to decipher what has been held in the aforesaid three decisions, and more importantly, the context in which the same has been held. What appears from a reading of the decision of this Court in RMDC–I (supra) is that the primary issue which the Constitution Bench was confronted with was as regards whether the 1952 Amendment to the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 would also cover in its ambit "innocent prize competitions". Elaborately dealing with the scheme of the 1952 Amendment Act, this Court observed that had the intention of the legislature been to include "innocent prize competitions" in the regulatory scheme of the 1948 Act, then the same would have been done by prescribing a different, and less stringent, set of regulations as compared to the ones

prescribed for the prize competitions which were of a gambling nature. The reason assigned by the Court for the observation was that while an innocent prize competition could be regulated under Entry 60 of the State List, it would be difficult to hold that it could be regulated under Entry 34 of the List II.

242. Further, what is evident from a reading of the aforesaid decision is that the Court was interpreting the effect of the amendment in the specific context of the legislative history of the impugned legislation and also the definition of "prize competition" enacted by the Legislature itself.

243. Thus, what can be discerned from a reading of RMDC–I (supra) is that first, innocent prize competitions were held to be not covered by "betting and gambling" as appearing in Entry 34 of the State List, and secondly, that such innocent prize competitions may be regulated under Entry 60 of the State List. What is further forthcoming from a reading of the said decision is that illegitimate prize competitions may be subject to taxation under Entry 62 of the State List.

244. However, the most pertinent observation made in the said decision, which bears a direct relevance to the present case, and directly covers the case before us, is the one which was made by the Bench after the discussion on the afore-stated aspects. The Court observed thus:

> "20. A similar argument was sought to be raised on a construction of clause (ii) of Section 2(1)(d). As already stated, in between the first and the third categories of prize competitions which, as already seen, are of a gambling nature the definition has included a second category of competitions in which prizes are 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. It is said that forecasts of such events as are specified in the section need not necessarily depend on chance, for it may be accurately done by the exercise of knowledge and skill derived from a close study of the statistics of similar events of the past. 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. Apart from the unlikelihood that the Legislature in enacting a statute tarring both lotteries and prize competitions with the same brush as indicated by Section 3 would squeeze in innocent prize competitions in between two categories of purely gambling varieties of them, all the considerations and difficulties we have adverted to in connection with the construction of the first category and the qualifying clause therein will apply mutatis mutandis to the interpretation of this second clause." (Emphasis Supplied)

245. The extract reproduced above indicates that the Court in RMDC-I (supra) considered as to whether events involving the forecast of an uncertain future event, if dependent on statistical skill, will amount to gambling or not. The Court held that although some members of the general public

who are invited to such events may exercise statistical skill in making an accurate forecast, yet most of the people could hardly be attributed with such degree of statistical expertise. The said observations of the Court show that it was not oblivious of the reality wherein in the garb of skill, common people would essentially be engaging in forecasting or betting endeavors, and specifically observed that such betting activities would not enjoy the constitutional protection under Article 19(1)(g) and the possibility of some experts exercising skill would not protect such activities from being declared as res extra commercium. What is further discernible from the said observations is that the Court was cognizant of the fact that while games of skill may be excluded from the term "gambling", they would still be covered under the expression "betting" as betting is nothing but staking money on the outcome of a future uncertain outcome.

246. The case of rummy as well as fantasy sports companies before us stands on a footing similar to the one that was expressly considered and rejected by this Court in RMDC-I (supra). While the game of rummy substantially depends on skill, betting on the outcome of a game of rummy is akin to making a forecast on the outcome of an unknown future event, and thus while in a limited number of cases an expert may be able to make an accurate forecast by exercising statistical skill, yet to say that on an open online platform, where common masses play the game with stakes, the nature of the game is anything but betting. Similarly, in the case of fantasy sports, while an expert may make a prediction with some degree of certainty, it is almost common knowledge that the majority of people who participate in such games do so on "gut feeling" rather than on the basis of some mathematical knowledge. Even otherwise, to say that the outcome of a game like cricket, for example, which has innumerable variables that decide the outcome of a given match, can be foreseen by a common person, would be nothing but closing our eyes to the practical reality that in the garb of making fantasy or dream teams, the players are merely taking a shot at a hidden target, merely in a more sophisticated manner, than a slot machine or roulette.

247. We are not unmindful of the fact that when even the best AI powered prediction models cannot predict with precision the outcome of a cricket match, it would be too much to believe that a common person may calculate, based on statistical knowledge, the best combination of players who would be the best 11 players to perform on a given day in a given match.

248. It is further important to mention that there is no discussion in the said decision as to what are the attributes of the expression "betting" and also whether the legislative competence of the State Legislature under Entry 34 is limited to betting on gambling activities.

249. Further, as regards the decision in RMDC–II (supra), the key expression in contention was "competitions which involve substantial skill" and whether they would fall within the regulatory purview of Entry 34 of List II.

250. The dispute that the court was resolving in RMDC–II (supra) was as regards whether the Prize Competitions Act, 1955, covered even competitions where substantial skill was involved, and as such was void for legislative excess. The Court observed that the impugned legislation was severable and thus was valid to the extent it applied to prize competitions of a gambling nature. It is important to underscore that the Court never held that a game of substantial skill played with stakes would be or

not be covered under the expression "betting and gambling" appearing in Entry 34. To put it differently, it never fell for consideration of the court as regards whether an event where the uncertain outcome of an event was to be predicted would be within the regulatory purview of Entry 34 or not.

251. Insofar as the decision in RMDC–II (supra) is concerned, paragraph no. 9 of the report assumes great significance in the context of the present case. The court observed therein that competitions of a non-gambling nature were not in the mind of the State Legislatures when they resolved that the Central Government should enact a uniform legislation for regulating gambling competitions. It was further observed therein that the competitions involving substantial skill "had not done any 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". The said observation of the Court clearly indicates that the decision was not curtailing the power of the State Legislature to legislate on a game of skill, in the event a need was felt to do so but was only deciding the dispute in the context of the legislative history of the legislation impugned before it.

252. Further, what also follows as a natural corollary of the aforesaid observations is that if games of substantial skill are conducted in a manner that they start to pose problems for the State or cause harm to the public, then the State will not be powerless to regulate such games of substantial skill as well. Such is the case in the present situation where betting on games of skill is posing a threat to the State and the well-being of the masses, and thus, even as per the dictum in RMDC–II (supra), the State Legislature cannot be held to be powerless to regulate the same.

253. The situation that the State of Karnataka and Madras respectively faced at the time of enacting the impugned legislation is starkly different from the situation that formed the backdrop in the two RMDC cases. The statement of objects of the impugned Acts indicates the widespread problems being caused by the prevalence of online gaming platforms allowing betting and gambling with real money at stake. In such circumstances, the decision in RMDC–II (supra) cannot be an impediment, as the decision dealt with a factual scenario entirely different from the current one, and also because the decision does not explain or curtail the scope of the word "betting" appearing in Entry 34 List II.

254. It needs to be pointed out that the nature of legislation under challenge before us is of a different nature. The legislations impugned in the two RMDC cases never intended to regulate betting on games of substantial skill. All that was sought to be regulated there were situations wherein a participant himself indulged in a game, success in which was not substantially dependent on skill, and it was such regulation which was challenged on the ground that the phrasing of the legislation left scope for regulation of games of skill too, which would be beyond the competence of the State Legislature under Entry 34 of the List II.

255. The Court in the said decisions never had the occasion to dwell upon the scope of the expression "betting and gambling" as appearing in Entry 34 List II for the simple reason that the factual situations in the said cases were covered by the expression "gambling" inasmuch as the games under consideration there were all where the participant himself took a chance at the "hidden target". Thus, there was no requirement for the Court to consider the scope of "betting" as it appears

in the expression “betting and gambling” and also the nature of the conjunction “and” joining the two words.

256. As such, we find it difficult to hold that the decisions in the two RMDC cases have taken away the power of the State Legislature to regulate games of skill altogether. It is trite law that the words of the legislature cannot be treated as mere surplusage and some meaning and weight must be ascribed to the words employed by the lawmakers while drafting the legislation. This principle only assumes greater importance when the words under consideration belong to a foundational document like the Constitution itself, whose draftsmen were none other than the founding fathers and mothers of our nation.

257. While it may be true that games of skill may not get covered by the expression “gambling”, it is not correct to say that even “betting” on games of skill would be out of the competence of the State Legislature to legislate upon.

258. We next turn our attention to the decision of this Court in K.R. Lakshmanan (supra). In the said decision, betting on horse-racing was held not to be a game of chance and thus entitled to the protection of Section 49 of the 1963 Police Act and Section 11 of the 1930 Gaming Act. It is pertinent to mention that the protection afforded to betting on horse- racing in the said decision flowed from the protection available to games of “mere skill” under the 1963 Police Act and the 1930 Gaming Act. It was held by the Court that, being a game of skill, wagering on horse-racing would not amount to gambling. Thus, it was not the scope of the expression “betting and gambling” as appearing in Entry 34 which was the subject matter of determination, rather, the issue pertained to whether horse racing would be entitled to the protection of the exception that the State Legislature had itself carved out for games of “mere skill”.

259. What follows from a reading of the decision as aforesaid is that where the State Legislature, in its wisdom, has deemed it appropriate to regulate games where monetary stakes are involved, without affording any special protection to games of mere skill, the decision in K.R. Lakshmanan (supra) will not be of much avail. In the absence of Sections 11 and 49 of the 1930 Gaming Act and 1963 Police Act, respectively, would the decision in K.R. Lakshmanan (supra) still be the same? We find the answer to be a ‘No’.

260. We also take note of the observation made by the Australian High Court in King v. Connara reported in 61 CLR 596, to the effect that whether an activity belongs to the category of commerce or to the category of gaming/gambling, is a matter of social opinion and not jurisprudence. The Constitution makers, by enacting a broad entry 34 have left ample scope for the State Legislatures to keep an eye on the efflux in social opinion as regards these activities and codify the regulations necessary to deal with a changing social order. As we have already discussed, with the disruption caused by the ushering of internet and mobile based gaming, the State Legislatures cannot be forced to remain tethered to the traditional understanding of gaming or gambling. It is also evident that the decisions relied upon by the Petitioners, were all rendered in specific factual scenarios, entirely different from the one in hand. Moreover, the approach adopted by this Court in all those decisions was to give true meaning and effect to the intent of the Legislature, as was forthcoming from the

tone and tenor of those specific legislations. However, in none of those decisions, has Entry 34 been interpreted to mean that the scope of the Entry excludes activities pertaining to skill from its scope – and while many of the State Legislatures deemed it appropriate to create exceptions in favour of skill in the earlier legislations, they cannot be held to be bound by what was once the understanding of the concept, and which understanding may not anymore align with the realities of the modern, technology driven social life.

261. A reading of the decision in K.R. Lakshmanan (supra) also indicates that the Court considered the manner in which the Club operated and conducted the horse-races, as well as the process by which betting happened. The observations of the Court point out that the entire process of conducting races and betting on them was highly regulated and organized, which is very different from the uncertainty and veil of invisibility associated with online gaming activities, whether of skill or of chance.

262. Further, as a reading of paragraph no. 37 would make evident, the Court held that wagering or betting on horse racing, when it takes place within the premises of the Club on the date when such a race is actually run on the turf of the Club, would not be illegal. However, the Court immediately added that betting at any place other than the Club, like the streets or bazaars would not enjoy immunity. Therefore, it appears that the idea of physical control and regulation over the aspect of betting was a predominant reason why the Court held betting inside the Club as being legal. Such physical boundaries or possibility of control are palpably missing from the online gaming landscape.

263. There is another aspect of the matter which requires some consideration. The nature of the legislation impugned in the two RMDC cases was such that the legislations were aimed at regulating/taxing “prize competitions” wherein the success of the participant did not substantially depend on the skill of the participant. Similarly, in K.R. Lakshmanan (supra), this Court was called upon to adjudicate whether betting on horse-racing could be prohibited by the legislation impugned therein, which had a specific provision conferring immunity to games of mere skill.

264. However, the situation in the present case is of a different nature. The question is not that whether games of substantial skill simpliciter can be prohibited by virtue of Entry 34 List II. This much is settled that such games would not amount to gambling and hence enjoy the protection of Article 19(1)(g) of the Constitution. The question is that when a player or third person places a bet on the uncertain outcome of a game of skill, with the hope of earning an amount more than he has staked, would such an act, which indubitably amounts to betting, not be covered by the expression “betting and gambling” used in Entry 34 and thus be amenable to regulation by the State Legislature. In view of the discussion as aforesaid, which indicates that even the much relied upon decisions in the two RMDC cases left scope for the State Legislature to regulate activities wherein the uncertain outcome of a future event is to be forecasted.

265. Even in a game of skill, the outcome of the game being played by multiple players is an uncertain future event, and even with much exercise of skill, can never be predicted with certainty. We would also like to observe that a game of skill, played without stakes dependent on the outcome is very different from a societal perspective as compared to a game of skill played with stakes on the

outcome of the game. The former does not amount to betting or gambling, but the latter amounts to betting, and thus falls within the purview of the legislative powers of the State.

266. Having elaborately discussed the decisions in the two RMDC cases and K.R. Lakshmanan (supra), we shall now proceed to analyse if the High Courts while passing the impugned judgments, correctly applied the dictum to the factual scenario before us. In other words, can the views of the respective High Courts in this regard that 'betting and gambling' by its very nature only pertains to games of chance be sustainable in law?

267. We are not in agreement with the ratio evolved in AIGF (supra) and Junglee Games (supra) respectively holding the view that the Entry 34 in List II which reads as "betting and gambling" should be read as "betting on gambling".

268. This finding is a clear Constitutional aberration, tinkering with the Constitution or actually rewriting the Constitutional text which Courts are not entitled to do. The expression betting and gambling is not strange, alien or unacceptable expression, requiring a course correction through a Court judgment. "Betting and gambling" is a common usage expression across the world and across several legislation within the country and outside. It is like usage of the expression in common parlance "pipes and tubes". "Betting and gambling" is a set expression and the two terms in the expression go with the flow. Both the High Courts erred seriously in rendering a finding that Entry 34 List II should be read as "betting on gambling" thereby meaning that only betting on a game of chance would tantamount to gambling, which can be regulated under the said Constitutional Entry and through this interpretation, both the High Courts have provided immunity to betting or putting stakes on game of skill once and for all from the purview of Entry 34 List II.

269. Once it goes out of the Constitutional scheme and therefore would remain unregulated is something which not only goes against the teeth of various judgments but the underlying Constitutional principle that betting on uncertain events irrespective of the underlying game being a game of skill or chance, would fall within the rigors of Entry 34 List II.

270. When the uncertainty remains the same and the constant factor in both these groups of games also remains the same, an interpretation taking one out of the regulation and retaining the other especially when the State Governments of Karnataka and Tamil Nadu tracing their power to Entry 34 List II had removed the protection to stakes played on games of skill, is an erroneous reading of Entry 34 of List II.

271. According to the High Courts, the act of staking would constitute "betting" and only when such betting takes place in relation to a gamble, i.e., taking a chance or in a chance- based game, would the States be entitled to exercise their legislative powers under Entry 34 List II. For the reasoning of the High Court to be logically correct, it must be correct to say that the element of gambling does not involve placing any stakes. However, such a statement would be incorrect. Both betting and gambling involve the aspect of staking. Therefore, to eliminate the aspect of staking from the element of gambling and attributing the aspect of staking only to the expression betting is incorrect. In the absence of staking, an activity can never constitute gambling. Merely taking a chance without

staking can never be a gamble. It is placing money to win more money that forms the bedrock of a gambling adventure.

272. The question that arises is what is then the difference between the scope of the terms "betting" and "gambling". Both betting and gambling are interchangeable expressions. They mean the same and are understood as an activity of placing money on an uncertain and unknown outcome of either an event or a sporting event or a random occurrence or non-occurrence of anything.

273. The expression "betting and gambling" cannot be split to mean that the staking angle alone would amount to betting whereas the risk angle or the chance element would amount to gamble. Both betting and gambling involve the aspect of staking money on an uncertainty. Merely because the risk element is commonly perceived as "taking a chance", it cannot mean an expression would cover only games of chances. In both Rummy, a game of skill, and Teenpathi, a game of chance, the persons staking on the uncertain outcome, equally risk and "take a chance" on their unknown and uncertain victory.

274. The protection afforded to games of skill under Entry 34 cannot be construed as protection to betting on games of skill, which essentially becomes a gambling enterprise. The protection is to games of skill, where such games are to be conducted not in a manner which essentially renders them into gambling activities by allowing the players to bet on the uncertain outcome of their victory.

275. As stated above RMDC-I (supra) neither dealt with a game of skill nor with persons staking on games of skill. The only ratio that can be deciphered from the ratio in RMDC-I (supra) is that a prize competition, which is chance-based and is played upon paying an entry fee, would constitute gambling with the stake amount being the entry fee. What follows, which is also the ratio in RMDC-I (supra), is that any prize competition or tournament which is skill based and is played upon paying an entry fee would not constitute gambling. Nothing more can be read into RMDC-I (supra).

276. Therefore, to even remotely suggest that RMDC-I (supra) re-

casted Entry 34 List II from "betting and gambling" to "betting on gambling" is incorrect, and such a finding emanates from a misreading of RMDC-I (supra).

277. The sheet anchor of the online gaming companies' submission is a far-fetched interpretation by interlocking a couple of sentences in the judgments of this Court in RMDC- I (supra), RMDC-II (supra), K.R. Lakshmanan (supra) and Satyanarayana (supra), respectively, without examining the underlying context.

278. The Online gaming companies have placed strong reliance on the following findings rendered by the Constitution Bench judgement in RMDC-I (supra):

> "At one time the notion was that in order to be branded as gambling the competition must be one success in which depended entirely on chance. If even a scintilla of skill

was required for success the competition could not be regarded as of a gambling nature. The Court of Appeal in the judgment under appeal has shown how opinions have changed since the earlier decisions were given and it is not necessary for us to discuss the matter again. It will suffice to say that we agree with the Court of Appeal that a competition in order to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill. Therefore, a competition success wherein does not depend to a substantial degree upon the exercise of skill is now recognised to be of a gambling nature." (Emphasis Supplied)

279. The contention canvassed on behalf of the online gaming companies is erroneous as the above finding in RMDC cannot be read to support their contention for the following reasons:

a) The first question that requires to be asked is whether in the facts of RMDC-I (supra), any game of skill was played with stakes. The answer to this question is an overwhelming 'No'. When in the facts of RMDC-I (supra), there was no element of staking on a game of skill by any player/participant, the judgment in RMDC-I (supra) cannot be a binding precedent for the principle that a game of skill when played with stakes would not be gambling.

b) However, the judgment in RMDC-I (supra) is crucial and lays down an important principle of law and must be understood in the light of the underlying facts.

c) The 1939 Act, the 1948 Act and the 1952 Act defined "prize competition". The 1952 Act, under Section 12A levied a tax on such "prize competitions". The State of Bombay traced the power to levy the tax to the erstwhile Entry 62 of List II of the 7th Schedule to the Constitution of India which permitted the State to levy taxes on Betting and Gambling. The endeavour of the Promoter in RMDC- I (supra) was to somehow establish that the definition of prize competition covered Skill based competitions, and the State was therefore incompetent to levy a Tax under Entry 62 List II as the same would not be gambling.

d) This Court examined the three limbs of the definition of prize competitions and came to a conclusion that in all the three categories the success in the competition was chance based and proceeded to uphold the levy of the State under Entry 62 List II by declaring them to be gambling adventures. At this juncture, the Department takes recourse to Sutra No.1 placed before this Court i.e. there is no gambling if no stakes are involved, irrespective of whether the underlying game is a game of skill or game of chance.

e) The question that therefore arises is what were the "stakes" in the facts of RMDC-I (supra). The answer lies in the underlying High Court judgment in RMDC-I (supra), placed on record by learned Senior counsel Mr. Gopal Sankaranarayanan.

f) In the first paragraph, the following was recorded as facts of the case:

"The registered office of the petitioners is situated in Bangalore. They own and run a weekly newspaper called the Sporting Star. This paper is printed and published in Bangalore and it contains a crossword prize competition called the R.M.D.C. Crosswords for which entries are received from various parts of India including the State of Bombay. The petitioners have agents and depots in various places in the territory of India including the State of Bombay to collect entry forms and fees for being forwarded to the petitioners at Bangalore. The petitioners advertise their crossword prize competition in various publications in various places in India including the State of Bombay." (Emphasis Supplied)

g) Therefore, every participant of the prize competition, which was subject matter in RMDC-I (supra), had paid an "entry fee" to participate in the Competition. Section 12A, which levied the tax on such prize competitions adopted the Gross Entry Fee (Total Entry Fee collected) as the measure of Tax.

h) In other words, the entry fee paid by a participant, for a prize competition covered under the respective Acts, which were inherently gambling adventures, constituted the stake amount. This is because the entry fee was paid only on the uncertain and unknown outcome of the event to gain an amount higher than what was staked. It is for this reason that the Department in Sutra No. 3 contended that a game of chance involving even a competition fee is gambling, because the entry fee paid for such a competition would constitute the stake amount.

i) The same is however not true when the underlying game is a game of skill. An entry fee paid for a competition, which is skill-based, would not be gambling. RMDC-I's ratio becomes pertinent only in this context.

j) In a prize competition involving an entry fee, when the underlying competition is skill-based, the entry fee would be for obtaining the right to participate in the competition. The entry fee cannot be construed as stake amount placed on the unknown and uncertain outcome of the competition. This is because, unlike an entry fee paid for a gambling adventure, in a skill-based competition, the prize money is never linked to the bet or stake amount. With utmost certainty, in a gambling adventure, the pool money assured to the winner is always linked to the bet or stake amount.

k) The online gaming companies, being aware of this subtle difference, attempted to treat both the scenarios as the same. In other words, the online gaming companies contend that in both the scenarios, the entry fee is only for the right to participate in the competition.

It is at this juncture that the intention of the participant becomes pertinent.

l) In a chance-based competition or an inherently gambling adventure, the participant is merely taking a shot at a hidden target and it is for that reason that the entry fee would itself constitute the stake amount. However, in a skill-based competition, the entry fee would be paid towards obtaining a right to participate and the intention is not to take a shot at a hidden target. As stated earlier, in a skill-based competition, the prize money is never linked to the stake amount. The expression "entry fee" is a misnomer in a game of chance.

m) Here again, the online gaming companies contend that since rummy is a game of skill, the stakes placed by each participant must be treated akin to an entry fee for a skill-based competition. It was also argued that since the Revenue concedes that an entry fee for a skill-based competition is not gambling, the show-cause notices in the present batch of maters requires to be quashed.

n) This argument requires to be rejected outright because the online gaming companies in the facts and circumstances of the case have not called for participants to participate in any tournament conducted by them where there are winners announced and declared by the companies at the end of the competition. To the contrary, the terms and conditions is a clear invitation to place stakes on the uncertain and unknown outcome of each game and where each game has a winner, unlike a tournament. The companies cannot be permitted to state that there can be hundreds of tables (or virtual rooms) with varying amounts of pool money and each table is a tournament by itself. Such a contention would be too far-fetched and defies logic and what is commonly understood as a competition or tournament.

o) The aforesaid can also be looked into from one another angle. If one examines the online gaming platforms, it is nothing but a systematic inducement technique to ensure a player bet more and more. This is provided in the form of discounts, incentives for repeated betting, incentives for a particular number of victories and of course, as stated above, retaining the winnings upto a particular amount before it could be withdrawn and a prohibition to withdraw the deposited amount before it is turned into winnings by staking the deposited amount repeatedly. This never happens in a skill-based competition. A promoter or an organizer of a skill-based competition never induces a player or a participant to repeatedly stake. The amount collected as an entry fee in a skill-based competition would merely entitle a player or participant to participate in the game.

p) In short, an entry fee for a chance-based adventure and a skill-based competition boils down to the intention of the player and the intention of the promoter.

q) It is in the above context that the ratio in RMDC-I (supra) requires to be appreciated. If a promoter is floating a skill-based competition for an entry fee, that per se would not be gambling. If a promoter is floating a chance-based competition for an entry fee, that per se would constitute gambling. This alone is the inference that can be drawn from RMDC-I (supra).

r) RMDC-I (supra) cannot be relied upon by the online gaming companies to contend that games of skill, when played for stakes, would not amount to gambling, especially when the underlying facts in RMDC-I (supra) did not involve a game of skill and did not involve placing stakes on such games of skill.

280. In the context of Entry 34 List II, the ratio in RMDC-I (supra) is crucial. The States have the power to regulate a chance- based competition even for an entry fee since that would constitute the stake amount. The States do not have the power to regulate skill-based competitions for an entry fee since the entry fee will not constitute the stake amount. For example, the States cannot interfere with BCCI conducting IPL tournaments or a school Under-14 All India Cricket Tournament. However, powers under Entry 34 List II can be exercised by the States even on games of skill when they are played for stakes since the stake element would amount to betting and gambling, providing the basis for the States to interfere. RMDC-I's ratio merely seeks to achieve this purpose.

281. If for any reason, in a given set of facts and circumstances, it is found that the entry fee partakes the character of a stake or nothing but the stake based on the outcome of such a game or competition involving skill, then it would become betting and gambling. On the other hand, if it retains its character only as an entry fee and the organizers reward the winner with the trophy or a cash prize or prize money which is announced in advance, then it is in the nature of a reward for one who has succeeded in the competition and would not take the colour and character of a bet amount. This distinction is not academic or superficial and happens in reality.

282. Lastly, on a perusal of the judgment in RMDC-I (supra), the stand of the State is in fact, supported. This Court took recourse and examined the aspects of gambling from the ancient history perspective, the mythological perspective and the perspectives offered by various religions. After quoting extensively from the Rig Veda, the Mahabharata, Yajnavalkya, and Vrihaspati, this Court also took note of Hamilton's Hedaya and the following was quoted with approval:

> "...Hamilton in his Hedaya, Vol IV, book XLIV, includes gambling as a kiraheeat or abomination. He says "It is an abomination to play at chess, dice or any other game; for if anything is staked it is gambling, which is expressly prohibited in the Koran or if, on the other hand, nothing be hazarded it is useless and vain." (Emphasis Supplied)

283. Nothing could be more telling than the above reference to Hamilton's Hedaya by this Court. If this Court really intended to permit and constitutionally protect games of skill being played with stakes, it could not have possibly quoted Hamilton's Hedaya and in particular, the above extract in support of that proposition, since it says exactly to the contrary. There is nothing in RMDC-I (supra) to suggest that this Court took note of Hamilton's Hedaya and expressed its disagreement over the same. To the contrary, in what could be termed as a lecture on the aspects of Betting and Gambling and how the same could not be elevated to the level of a fundamental right under the Constitution, this Court took recourse to Hamilton's Hedaya as a supporting document and specifically quoted a portion which says that chess being played with stakes would amount to Gambling. There cannot be any doubt that chess is a Game of Skill. Therefore, to even remotely suggest that RMDC-I (supra) is good law for the proposition that a game of skill being played with stakes enjoys constitutional protection is incorrect and deserves to be rejected.

284. There is something else that has drawn our curiosity. When, according to the State, RMDC-I (supra)'s ratio would not be applicable in the present case, why is the State then placing reliance on

RMDC-I (supra)? The answer lies in the 2nd category of games covered by the definition of prize competition, which was subject matter of interpretation in RMDC-I (supra).

285. In the 2nd category of competition, prizes were offered for the forecast of results either of a future event or of a past event, the result of which is not yet ascertained or not yet generally known. This category was declared by this Court to be a gambling adventure. The State, in the facts of the present case, drew a parallel to contend that the players in the platform are doing nothing but forecasting their victory in a game of rummy, which event is unknown, uncertain and not known at the time of placing the stake. When this Court has held such forecasting to be gambling, the State contends that the players are equally gambling because the act of staking on the unknown and uncertain victory in the game is no less forecasting.

286. The online gaming companies contend that the interpretation of the State would overturn 70 years of jurisprudence, as all courts in India have understood RMDC- I (supra) in such a way that it protects games of skill to be played with stakes, and the same would not amount to gambling. With the greatest of respect, the above alleged ratio does not flow on an explicit reading of RMDC-I (supra). When what does not flow from RMDC-I (supra) has been canvassed for 70 years as if emanating from RMDC-I (supra), the same is erroneous and requires a course correction. There are multiple judgments rendered by various High Courts which hold that games of skill played with stakes amounts to gambling, and all these judgments have also considered RMDC-I (supra). It is therefore incorrect to say that the views of the gaming companies have alone been upheld or adopted throughout the country for 70 years. In fact, the contention of the State is truly in spirit with RMDC- I (supra) because the gaming companies are taking shelter under a game of skill while actually promoting gambling, which was frowned upon by this Court in RMDC-I (supra). Explicit gambling, though, while playing a game of skill, would remain gambling and taking protection under an assumed ratio of RMDC-I (supra) would be virtually undoing RMDC-I (supra).

V. Online Gaming Companies' Interpretation of RMDC-II

287. The online gaming companies before this Court treated the severability principle laid down in RMDC-II (supra) as an extension of RMDC-I (supra) to contend that games of skill move away from the regulatory sphere of Entry 34 List II. The State completely agrees with this contention. It is true that a genuine skill-based competition cannot be within the regulatory sphere of Entry 34 List II. However, to further stretch it to contend that since games of skill are outside the purview of Entry 34 List II, even staking on them would not be governed by the said entry is incorrect and cannot be accepted.

288. RMDC-II (supra) will apply and protect games of skill from the purview of Entry 34 List II only when they are not played for stakes. However, once stakes are introduced in a game of skill, the said entry would gain full relevance, and the States will be competent to regulate stakes being placed on a game of skill. It is incorrect to state that since games of skill enjoy constitutional protection, even staking on such games of skill enjoys equal protection. They do not, and such an interpretation must be eschewed at the outset, and such an interpretation would, in fact, be overturning what RMDC-I (supra) and RMDC- II (supra) intended to achieve.

289. Lastly, reliance placed by the gaming companies on the decision in K.R. Lakshmanan (supra) is also misplaced. As we have already discussed, the decision protected only such betting on horse-racing as took place within the club premises on the day of the race being run in the racing club. This protection can be drawn from the second category of games considered in RMDC-I (supra) wherein the forecasting of uncertain events on the basis of statistical expertise and skill was considered. When forecasting the outcome of a horse-race is considered, the people who are present inside the club on the day of the race being run definitely constitute a small group of persons who may be attributed with above- average expertise in the factors affecting the outcome of a horse race. The situation in K.R. Lakshmanan (supra) was entirely different from the situation before us, where there is no enclosure in the virtual world, and where the average participant cannot be credited with the expertise of a punter inside a racing club. Furthermore, the express declaration of betting from outside the club premises as illegal by the decision in the said case further reinforces that the decision was passed in the specific context of horse-racing, which is very different in scale, accessibility and outreach than online gaming activities.

290. Therefore, it is abundantly clear that there is no legal shelter for the online gaming companies to claim that placing stakes on games of skill would not amount to betting and gambling. The Authorities relied on by the Union and the States uniformly hold the contrary.

VI. The impugned legislations do not suffer from manifest arbitrariness

291. The concept of equality, as envisaged under Article 14, contains an interdiction against arbitrariness and discrimination. Insofar as the first part, it insists that the likes must be treated equally. Though the word discrimination is not used in the Article, the primary object behind the Article is to avoid discrimination not only at the point of framing a law but also at the point of execution. The embargo, therefore, is applicable to substantive as well as procedural laws. To withstand successfully to the challenge of discrimination, the law must be based on reasonable classification. There must be an object to such classification, which must be legal, and the very object itself must not be to discriminate. There must be a reasonable nexus between the classification and the object sought to be achieved.

292. The classification must be such that there must be a logical difference between the persons grouped together and the persons left out. Such classification must not only have a nexus to the object but must be determined towards achieving that object and must be rational. If the classification is reasonable, based on intelligible differentia, it is neither discriminative nor arbitrary. Anything that is discriminative is obviously arbitrary, but an arbitrary action need not be merely discriminative. Similarly, when the classification is found to be reasonable, just because it puts another class at a different pedal or a particular section at a disadvantageous position would not be a ground to treat is either as arbitrary or warranting interference. In the present case, we have already held that, irrespective of whether it is a game of skill or chance, when coupled with stakes would amount to betting and gambling. We have also clarified the judgments in RMDC-I (supra), RMDC-II (supra), K.R. Lakshmanan (supra) and explained the difference between online and offline games, although when coupled with stakes, there can be seldom any difference in the treatment. Hence, we do not find any arbitrariness or discrimination as envisaged so as to attract

Article 14. The treatment or definition in the act is a policy decision, which the state is entitled to take, while classifying an activity. In the present case, the classification is, as we have seen, based on a report. Therefore, we find a reasonable nexus between the classification/definition and the object sought to be achieved.

293. The terms betting and gambling which are often used interchangeably and carry a specific meaning in common parlance. The following are the ingredients of betting and gambling:

a) There must be a stake/bet.

b) The bet that is placed must be on the result of an uncertain outcome.

c) The stakes must be placed with a hope of gaining substantially more than what is being staked, depending upon the result of the uncertain event.

294. There is no question of manifest arbitrariness as betting and gambling are independent activities in themselves and it is not concerned with the nature of the game being played. The artificial construction that is sought to be created by the online gaming companies will denude the State of all the powers to regulate and prohibit betting and gambling for times to come. If such a contention is allowed to be sustained, it will cause grave injustice to the saintly ideals of the Fathers of our Constitution.

295. If one examines the judgments rendered across several jurisdictions, an inescapable conclusion that one would arrive at is that the underlying classification of a game as either skill or chance is immaterial and once any game is played with stakes, it would amount to betting and gambling.

296. The Queen's Bench had an occasion to examine Section 17 of the Licensing Act, 1872 in the case of Dyson v. Mason reported in [L.R.] 22 Q.B.D. 351. Section 17 of the Licensing Act penalized a licensed person if he suffers any gaming or any unlawful game to be carried on in his premises. The Licensing Act, however, did not define the expression gaming. What arose for consideration of the Court was whether playing skittle pool on a billiard table for money in places licensed for the sale of intoxicating liquors is gaming under Section 17 of the Act.

297. To escape from Section 17, the Licensees set up a plea that Games of Skill, though played with money, will not fall within the ambit of gaming and further contended that the expression gaming will only sweep within its ambit games of chance. The respondent therein contended that even though skittle pool may be a lawful game of skill, playing the same with stakes would render it "gaming", attracting Section 17.

298. After examining the rival contentions, the following findings were rendered by the Queen's Bench:

a) Justice Huddleston declared skittle pool to be a game of skill and formulated a question as to whether playing the same for money would be gaming. While

answering the question, he held that playing any game for money would amount to gaming. In support of this conclusion, he relied on Patten v. Rhymer, Danford v. Taylor, Luff v. Leaper, Reg v. Ashton. He also adopted the view of Justice Mellor in Bew v. Harston and categorically declared that the view of Chief Justice Cockburn in Bew v. Harston was unsupported by any authority.

b) Justice Wills agreed with the Decision rendered by Justice Huddleston and reiterated that playing of any game for money would be gaming, as per ordinary use of language and that there are many authorities in support of this proposition.

299. The High Court of Calcutta, in the case of King Emperor v.

Arjoon Singh reported in 6 C.L.J. 708: 6 Cr. L.J. 421 was examining the Bengal Public Gambling Act, 1867. The Act did not really define gaming but merely indicated what it is like and excluded wagering or betting on some particular occasions and particular circumstances and also excluded a lottery. Section 10 of the Act excluded the application of the Act to games of mere skill wherever played. The question before the High Court was whether, the game that was being played at the time when the Petitioners were arrested was gaming under the Act.

300. The High Court laid down a three-pronged test to determine whether the offence of gaming was made out or not. They are as follows:

a) First, it should be determined whether the game is covered by the definition of gaming meaning thereby, to determine whether a game was being played with stakes.

b) Secondly, if the game is a game of chance, it is hit by the Act.

c) Thirdly, if the game is a game of skill, it will not be hit by the Act since Section 10 protects gaming on games of skill.

301. As to when something would constitute gaming, the High Court, after referring to the Imperial Dictionary, Murray's Dictionary, Hari Singh v. Jadu Nandan reported in (1914) 23 I.C., 484, Ram Pratap Nemani v. Emperor reported in 1912 SCC OnLine Cal 161 and King Emperor v. Musa reported in AIR 1917 Mad 124 respectively, held that it is the existence of a stake and not the character of the game as one of skill or chance, that is regarded as constituting the distinction between playing a game and gaming. Entirely adopting the view of Justice Sadashiva Iyer in King Emperor v. Musa (supra), it was held that the question whether chance or skill does not enter into the connotation of the expression gaming. As a concluding remark, it was held that all that should be seen is whether the game that was going on was for money, which was staked on the result of the game, which was to be lost or won according to the success or failure of the person who had staked the money.

302. The High Court of Madras in the case of Re Musa & Ors.

was considering Section 3(10) of the Tamil Nadu Towns Nuisances Act, 1889. Three crucial ratios emanate out of this judgment and they are as follows:

> a) It is the existence of a stake and not the character of the game as one of skill or chance, that would determine what gaming is.
>
> b) The importance of identifying the game as one of skill or chance arises only because certain statutes protect "gaming" on Games of Skill.
>
> c) Games of Skill being protected throw no light on the meaning of the word gaming.

303. In fact, the ratio of Re Musa (supra) is fortified by the decision of the High Court of Allahabad in Panna Lal v. Emperor reported in AIR 1926 ALL 187. The question that arose in the said case for consideration was whether playing marbles, a game of skill, for stakes attracted the offence of gaming under the Public Gambling Act. Section 13A of the United Provinces Public Gambling (Amendment) Act, 1917, excluded games of mere skill from the scope of the Act. It is in this context that the High Court held that had it not been for the exclusion under Section 13A, the conviction would have been in order. While addressing the nature of exclusion, the High Court held that the playing of a game of mere skill for stakes in a public place is gaming, but it is not such gaming as falls under the Public Gambling Act. This is a categorical declaration that games of skill played with stakes is gambling and the protection will simply not attract the offence. The protection cannot be elevated to such a high pedestal to contend that it would not amount to gambling at all.

304. The ratios and propositions emanating from the above four judgments referred to by the State can be formulated as follows:

> a) The expression of the word "gaming" in its natural import would mean playing any game, whether skill or chance, for stakes. Gaming, wherever not defined by the statutes, is akin to betting and gambling.
>
> b) Wherever the expression gaming is defined in the statute, one has to go by the definition attributed to that expression. Almost in all instances it would still indicate it being akin to betting and gambling.
>
> c) The character of the underlying game is immaterial in determining whether there exists betting and gambling.

What is essential is the element of stake. Introducing stakes in any game amounts to betting and gambling.

d) The underlying character of the game gains relevance only when the statutes protect games of skill played with stakes from constituting an offence. Such a protection is immaterial to determine whether there exist gaming or betting and gambling. This is because protection is required only when it is betting and gambling in the first place.

e) Wherever players enjoy the protection, it merely indicates that it would not constitute an offence. The protection cannot be read to mean that staking on a game of skill would not amount to gambling at all.

305. A perusal of the judgments rendered pre-Constitution as well as post-Constitution clearly indicates that as far as betting and gambling are concerned, a differentiation cannot be made between games of chance and games of skill because the player staking the amount, in both cases, does it with a hope of winning more money than what is staked. That is the essence of gambling. An enquiry as to the nature of the game, as that of skill or chance, can be done only when the Statute in question protects a game of skill from penal prosecution. Only in such cases, a differentiation between a game of skill and a game of chance is required for the purpose of ascertaining conviction. In the absence of such a provision, the differentiation based on the underlying game pales into insignificance as the underlying activity is betting and gambling in both cases. When a particular statute does not differentiate between games of chance or games of skill, the gaming companies cannot possibly argue that even in the absence of a protection clause they continue to be a protected species. Rendering the states powerless to remove such clauses of protection would amount to a constitutional injustice and prohibit the state from exercising policy discretion towards public welfare.

306. Therefore, when the element of betting and gambling enters the picture, the nature of the game ceases to be of relevance. The common aspect of addiction and the desire to gain more and more looms large wherever staking money on an uncertain event is involved. When such is the case, there is no question of manifest arbitrariness since the States have always been permitted to regulate or prohibit betting and gambling. The States had hitherto permitted and protected betting and gambling on games of skill. When a technological boom happened and when the vicious activity of betting and gambling entered every household, the States wanted to remove such protection. While states like Telangana have proactively made it an offence to gamble (even on games of skill) in cyberspace, the judgments of the Madras High Court and Karnataka High Court have restrained the two States from preventing the destruction of the future of the youth. The judgments have not factored in the social evils and consequences that would accrue if betting and gambling are so rampant and prevalent in the society.

307. The judgment of the Division Bench in Director General of Police, State of Tamil Nadu v. Mahalakshmi Cultural Association reported in 2012 SCC OnLine Mad 1130 is of utmost importance as it lays down the correct position of law. The High Court of Madras held as follows:

> “21. Playing of cards perhaps may be for relaxing oneself or for an entertainment provided such play has limitations. Playing of cards with stakes has two evils i.e., it corrupts the mind of the players to become addict and it makes most of the players bankrupt. Discussions above undoubtedly point against the practice of indulging in gambling, be it rummy or other similar games, where wagering or betting is involved. We may also refer to the ordinary use of the expression "winning". The word "winning" has been given the following meaning in the Universal Dictionary of English Language, namely, "Amount won, esp. money won in betting." In the Oxford

> English Dictionary, the word "winning" is given the following meaning, namely, "Things or sums gained, gains, profits, earnings in mod. use chiefly applied to money won by gaming or betting." In Webster's Third International Dictionary, the word "winning" is given the following meaning, namely, "Something one wins esp. the money won by success in competition." Therefore, in the event a place is used for gambling, it will be termed to be a gambling house and such gambling would amount to an illegal activity in the event the member or the guests or the club/association make profit out of such gambling. The object of the Association is also to allow the members to play cards not amounting to gambling.
>
> 22. We may also refer to yet another aspect as to whether the guests can be also allowed to play rummy.

As per the objects of the Association, it is entitled to entertain members and guests. So long as the guests are allowed to use the association premises for an activity which is not illegal, the Police has no authority to proceed against them, as the Association would be entitled to allow them to avail the facilities. In the event the guests are found playing rummy (13 cards) with stakes, they would be also considered as indulging in gambling.

xxx xxx xxx

24. On the basis of the above discussions, we arrive at the following conclusions:-

> (1) The game of rummy (13 cards) is only a game of skill even though an element of chance is also involved. (2) In the event rummy is played by the members or the guests without stakes, the provisions of the Chennai City Police Act are not attracted.
>
> (3) In the event rummy is played by the members or the guests with stakes, the provisions of the Chennai City Police Act are attracted.
>
> (4) In the event the club/association either allows its members or guests to play rummy with stakes or make any profit or gain out of such gambling, the Police has the authority to invoke the provisions of the Chennai City Police Act.
>
> (5) In order to ascertain as to whether the premises is used as a gaming house for gambling, the Police is entitled to invoke Section 23 of the Act." (Emphasis Supplied)
>
> 308. The High Court of Karnataka, in AIGF (supra) had held that games of skill do not metamorphize into games of chance merely because they are played online, and therefore, the udgment of this Court in MJ Sivani (supra) cannot be the best guide to distinguish online games and physical games.
>
> 309. This Court had considered playing of any game, whether of skill or chance, for money or money's worth to be gambling/gaming in MJ Sivani (supra). The High

Court of Karnataka has failed to apply this ratio and has cursorily distinguished the facts of the dispute in AIGF (supra) from what was considered to be "gaming" as per common parlance in MJ Sivani (supra).

310. In MJ Sivani (supra) this Court referred to two definitions of Gaming as given in the Strouds Judicial Dictionary and Black's Law Dictionary reported in 6th edn. at 679, as given below:

"(i) The Strouds Judicial Dictionary: To play any game, whether of skill or chance for money or money's worth; and the act is not less gaming because the game played is not in itself unlawful and whether it involved or did not involve skill.

(ii) The Black's Law Dictionary Bryan A. Garner & Henry C. Black, Black's Law Dictionary, (6th ed.) 679, The practice or act of gambling. An agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of the winner, and to which all contribute. The elements of gaming are the presence of price or consideration, chance and prize or reward."

311. The Court also noted that Section 2(7) of Mysore Police Act, 1963, defines "gaming" to mean that "it does not include a lottery but all forms of wagering or betting in connection with any game of chance, except wagering or betting on a horse-

race, when such wagering or betting takes place". Accordingly, the Court defined 'Gaming' in the following words:

"Gaming is to play any game whether of skill or chance for money or money's worth and the act is not less gaming because the game is not in itself unlawful and whether it involved or did not involve skill." (Emphasis Supplied)

312. In MJ Sivani (supra) this Court, while determining the issue of the legality of prohibition on video games, under Section 2(7) of the Mysore Police Act, 1963, observed that, even if video games were considered to be games of skill, the outcome could be manipulated by tampering with the machines. Therefore, the court refused to grant protection to these games.

313. The medium of play, whether online or not, is not relevant to the issue. The only thing that is required to be checked is whether, irrespective of the nature of the game and irrespective of the medium of play, whether stakes are involved. The moment stakes are involved the medium of playing or the nature of the game as one of skill or chance is irrelevant because it will constitute betting and gambling.

314. As far as the contention of the online gaming companies that the legislation violates their fundamental rights under Article 19(1)(g) is concerned, it has to be

rejected at the outset for the simple reason that once the trade being carried out by the companies is classified as a "betting and gambling" enterprise, it becomes res extra commercium and the question of applicability of Article 19 does not arise.

VII. The impugned legislations are not disproportionate

315. The occasion for testing the impugned legislations on proportionality does not arise as activities encompassed under "betting and gambling" are in the nature of res extra commercium, and as a reading of the decision in the two RMDC cases also suggests, no one can claim a fundamental right in operating an activity which is extra commercium.

316. Undoubtedly, games of skill would be protected by the constitutional guarantee laid down under Article 19, but betting or wagering on any game, be it a game of skill, would not be entitled to receive any such protection.

317. The Madras High Court, vide para 102 of the impugned judgment, has held that the 2021 TN Amendment Act has provided a sweeping definition to the word gaming under Section 3-A and has therefore eliminated any chance for display of skill even for little stakes. The High Court could be said to have failed to appreciate that the moment the stakes are involved, irrespective of the quantum and scale of such stakes, the activity would fall under the ambit of betting and gambling. When such is the case, the States are empowered to legislate, regulate or prohibit under Entry 34 List II.

318. Vide Para 110 of the judgment in Junglee Games (supra), the Madras High Court had agreed that gambling and betting has a negative impact on individuals and can also be ruinous to their well-being. After having observed the same, the Court is incorrect in holding that the element of skill is being neglected by the impugned legislation because ultimately, staking on games of skill would also constitute betting and gambling and can cause the same ruin and financial and psychological hardship to individuals indulged in it.

319. Therefore, there is no question of proportionality since gambling ventures are ultimately res extra commercium as held in RMDC-I (supra).

320. The High Court has held that a blanket ban on games of skill played with little stake fails the proportionality test. This is incorrect because there is no underlying constitutional right to the online gaming companies. We say so because the moment they are categorized as betting and gambling, the underlying activity would become res extra commercium and therefore, the states would have absolute power to impose a blanket ban the moment stakes are involved. There can be no question of proportionality when the underlying activity itself is res extra commercium and lacks constitutional protection under Article 14 or 19 of the Constitution of India. A reference can be had to the judgment of this court in P.N. Krishna Lal and Ors v. Govt of Kerala and others reported in 1995 Supp (2) SCC 187, wherein it was held, as under:

> "31. Under the Act, the State has absolute right to regulate production, transport, storage, possession and sale of liquor or intoxicant drug. No person has any absolute right to sell liquor or intoxicated drug except in accordance with law which aimed at preservation of public health as well as to raise revenue. Dealing in liquor or intoxicant drug is, therefore, not an absolute right to business or trade but is a regulated right in accordance with law. The Act prohibits mixing of noxious substance with liquor or possession thereof. The State, therefore, possesses the right of complete control on all kinds of intoxicants, namely, manufacture, collection, sale and consumption thereof. Regulation of sale of potable liquor prevents reckless propensity for adulterating liquor to make easy gain at the cost of health and precious life of consumer, equally none has freedom or fundamental right to do business in adulterated articles of food. Cognizant to the contemporaneous large scale deaths or grievous hurt to the consumers of adulterated liquor mixed with noxious substance, the Amendment Act aims to prevent their recurrence and accordingly it came to be made.
>
> 32. No civilised society, therefore, would countenance that a citizen has a fundamental right to trade or business in activities which are criminal in its propensity, immoral, obnoxious and injurious to health, safety and welfare of the general public. It is, therefore, a question, of public expedience and public morality that the State is fully competent to regulate the business in liquor or intoxicated drug to mitigate its evil or to suppress it in its entirety. There is no inherent right in a citizen to conduct business or trade in adulterated intoxicated liquor by retail or wholesale. It is, therefore, obvious that dealing in liquor inherently pernicious or dangerous goods which endangers the community or subversive of morale, is within the, legislative competence under the Act. The State has thereby the power to prohibit trade or business which is injurious to the health and welfare of the public and the elimination and exclusion from the business is inherent in the nature of liquor business. The power of the legislature to evolve the policy and its competence to raise presumptive evidence should be considered from this scenario."

321. The competence of the state to regulate certain activity also enables it to prohibit the same activity. The 2021 TN Amendment Act has not provided a sweeping definition or a "Midas touch". It has merely brought every form of betting and gambling under its sweep, and for that the States are empowered under Entry 34 List II.

322. Moreover, vide para 105, the Madras High Court in its impugned judgment has expressed concern over the fact that a simple game of volleyball or football played for a cash prize will now come under the scope of the 1930 Gaming Act. This speculation deserves to be rejected at the outset as contests are different from tournaments, and the cash prize won as a result of the exercise of skill in such tournaments would not have a direct and immediate nexus to the stake amount that is placed. An entry fee for a tournament based on a game of skill is different from a stake amount. Moreover, the preamble of the impugned Acts conveys that the online medium with rampant scope for betting and gambling is the species that is sought to be prohibited. In this regard, the

submissions of the Revenue in Part III of the Written Submissions [Paragraph 26(m)-26(n), Para 27], where a contest is distinguished from a tournament, may be read in conjecture.

323. There is one another angle to look at this issue. The directive principles of state policy as contained in the Constitution, provide that the welfare of the people shall be the guiding light for the State. In particular, it provides for securing the health and strength of workers and also ensures that children are protected from exploitation. It also enshrines in Articles 38 and 47 that the states shall strive to promote the welfare of the people and raise the standard of living. Online betting and gambling have demonstrably been a serious addiction hazard, and have also caused financial hardships owing to their inherently risk-prone nature. This was taken note of by the State Legislature of Tamil Nadu at the time of enacting the impugned legislation, as the various considerations and empirical factors considered by the Legislature are taken note of in the preamble to the TN Online Gambling Act 2022/23, which is reproduced hereinbelow:

> "[...] AND WHEREAS the Hon'ble High Court of Madras by Common Order dated 03.08.2021 in W.P.No.18022 of 2020, etc, struck down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, which banned wagering or betting in cyber space, as ultra vires the Constitution, with liberty to bring in an appropriate legislation conforming to the constitutional sense of propriety in the field of betting and gambling by the State;
>
> AND WHEREAS the Government constituted a Five Member Committee under the Chairmanship of retired Hon'ble Justice Thiru K. Chandru to advise on enacting a fresh legislation on online games;
>
> AND WHEREAS the Committee in its report, taking into account the parameters of physical space of operation, time of playing, players' relationship with other players, addiction level, amount of money involved, level of economic activity, scale of organisers' profit and role of credit, has observed that online version of any game cannot be compared with the offline version of the game, except in cases of word games or board games not involving any random outcome generator;
>
> AND WHEREAS the said report further states that in the case of online version of games including online rummy, the algorithm for the random generators are known to the developers and hence are pseudo random generators; such games can be played with bots (an autonomous program or character designed to interact with systems or users); no mechanism is available for auditing the centralised server architecture of the gaming systems; and artificial intelligence can be used to manipulate the games and lure the players into continued indulgence;
>
> AND WHEREAS the said report classifies the online games, into two types, namely, one which have minimal or negligible randomness factor and another having random event or count generators which are pseudo random and are addictively designed and accordingly recommends to regulate the former and to ban the latter;

AND WHEREAS in a recent survey conducted by the Government among more than two lakh teachers of the School Education department, to study the effects of online games on school students, more than seventy four per cent. of the teachers responded that concentration of students is impacted, sixty seven per cent. of the respondents said that they noticed eye defects, more than seventy four per cent. of them said they noticed decrease in intelligent quotient, writing skills and creativity of students, more than seventy six per cent. said they have noticed significant decrease in self esteem of students, more than seventy seven per cent. said they have noticed increase of anger in students and more than seventy two per cent. said they have noticed indiscipline among students;

AND WHEREAS the Government, on seeking the view of the general public on the proposed legislation, more than ninety nine per cent. that is, 10,708 out of the total 10,735 mails received, have requested for imposing a total ban on online games;

AND WHEREAS seventeen stakeholders comprising of representatives from the online gaming industry, think tanks, political parties, players association and social activists, who were provided an opportunity to express their views in person, have put forth various suggestions and requests to the Government, such as, to allow self regulation by the industry themselves, regulation by the Government, to differentiate real money games and other forms of games, to provide age and money restrictions, to ban advertisements, to prevent money laundering, to provide grievance redressal mechanism and to provide a total ban on online games;

AND WHEREAS it is considered that the issues of online gaming and gambling cannot be dealt with by the old binary of game of chance versus game of skill and a new conceptual framework is needed which incorporates understanding of how information technology operates at basic level, the critical difference between physical and online in general and also between physical and online versions of games;

AND WHEREAS it is an established scientific fact that true random outcome is not feasible in a software and any randomness will depend upon the specific algorithm written by the developer and that audit of the algorithm makes it difficult to detect any hidden algorithm designed to favour the game provider and that overlay of artificial intelligence in the online gaming can make the gaming scenario completely unfair to the game player/customer, with the game service provider / facilitator literally being able to hold all the cards; and that no scientifically validated algorithm for testing of even pseudo randomness is available at present;

AND WHEREAS due to the inherent addictiveness by design of the online games and the money being put in by the game players, the complete gaming scenario amounts to an exploitative, addictive service, causing not only health hazards but also social and economic harm of epidemic proportions;

> AND WHEREAS many research studies on the effects of online gambling and online gaming addiction on youth, have highlighted negative effects such as development of aggressive behaviour, poor eye-sight, reduced concentration, diminished analytical thinking, decreased productivity and hence should be viewed as a potent vice that would affect the long term prospects of the State and its population;
>
> AND WHEREAS the ruining of families and suicide deaths due to online gaming addiction affects public health, disturbs social order and prejudices the maintenance of public order;
>
> AND WHEREAS the Government, after careful consideration of the report of the said Committee, the findings of the survey among school teachers, research studies on the subject, and the views of the stakeholders and the general public, have decided to enact a law to prohibit online gambling and to regulate online games in the State; [...]" (Emphasis Supplied)

324. Thus, as a reading of the preamble would show, the Legislature was mindful of the harms associated with betting and gambling on online games, irrespective of their nature as a game of skill or chance, and also the virtual impossibility of devising a mechanism of regulation to ensure fairness in algorithm and artificial intelligence-driven online gaming platforms. The Legislature has also adverted to specific findings of surveys on the effects of online gaming on children and the severe consequences of the online gaming-induced financial difficulties. It was only after taking into consideration these factors and realities that the impugned legislation was enacted. We need not say any more on whether despite taking into consideration the aforesaid factors, the legislation could still be said to be arbitrary. The answer would be a clear no.

VIII. On Nomen Juris and Legal Fiction

325. It was contended on behalf of the respondents that the word "gaming" has acquired the status of a "nomen juris" to mean to include only games of chance and thus, even by legislative intervention or changes, games of skill cannot be read into the definition of gaming. The said contention seems to have found favour with the High Courts.

326. However, we are of the view that the aforesaid contention cannot be accepted. The Constitution has deployed the expression "betting and gambling" in Entry 34 of List II. The word "gaming" does not define the subject matter of Legislation in List II. The constitution makers had the foresight not to constrain the future generations from adopting an evolved meaning of the words employed by them at the time of drafting of the Constitution. Thus, the words used were deliberately kept broad enough to be able to take shape and get moulded suitably by the tides of time, so as to bring within their folds circumstances which could not have been foreseen in 1950. The foresight and wisdom of the Constitution makers lay not in predicting the future, but in knowing the inevitability of change and evolution, and codifying that inevitability in the language used in the Constitution.

327. While the term “gaming” may be defined in a manner so as to bring it within the meaning of the expression “betting and gambling”, the constitutional expression “betting and gambling” cannot be forced to conform to some archaic definition of “gaming”. The words “gaming” and “gambling” cannot always be equated. Gaming has not been judicially defined to include only games of chance, contrary to what has been held in the judgment in Junglee Games (supra). The phrase “gaming” cannot be said to be nomen juris. The phrase “gaming” is a statutory definition that can be altered according to the will of the Legislature. In no way can it be dependent on the element of chance alone. The definition of “gaming” is fluid and fluctuating across states and different legislations. Therefore, by no stretch of imagination can the term acquire the status of nomen juris. Each gaming statute, with its unique and evolving definition of gaming, cannot acquire nomen juris. The term gaming and what it includes and excludes takes colour from the Legislature in question.

This has also been laid down by the High Court of Madras in Re Musa (supra) where the Court interpreted the common parlance meaning of the term “gaming” when the statute in question did not have a carve-out clause that protected betting and gambling on games of skill.

328. Further, the finding of the High Court of Madras that betting and gambling on games of skill is deemed to be gaming by way of legal fiction is incorrect. The judgments relied upon in the previous paragraphs illuminate that the moment stakes are involved, it would constitute betting and gambling irrespective of the nature of the game. Therefore, there is no question of Midas Touch or Legal fiction since, for eons, staking money on any game has been considered to be betting and gambling and hence pernicious.

329. As to why such protection offered to betting and gambling on games of skill had to be removed, the preamble to the TN Online Gambling Act 2022/23, read in tandem with our following discussion, would make the legislative intent unambiguous.

330. In the aforesaid context and to conclude, the obiter dicta of the judgment in D. Siluvai Venance v. State, rep. by the Inspector of Police reported in 2020 SCC Online Mad 1546 needs to be looked into. What was opined by the Judge would express the plight of the States and all the well- wishers of the Nation. The extracts are reproduced hereunder:

> “22. The gaming industry in India is undergoing a dramatic transition, not only in terms of its audience, but also in terms of the modes of participation and engagement. Gambling Laws in India prohibit betting or wagering and any act which is intended to aid or facilitate the same. For the purpose of regulating gaming in India, most of the Indian legislations differentiate between "games of skill" and "games of chance". Gaming/Gambling, being a State Subject, India has laws which differ from State to State. Therefore, what is permitted in one State, may be an offence in another.
>
> 23. The Public Gaming Act, 1867, is the Central Act in this subject, which has been adopted by several State Governments and the remainders have enacted their own legislation to regulate gaming/gambling, within its territory. It is to be noted at this

> juncture that such State legislations have been enacted prior to the advent of virtual/online gambling in India, except the State of Sikkim, Nagaland and Telangana, which have introduced regulations pertaining to online gaming also.
>
> xxx xxx xxx
>
> 37. It is to be noted at this juncture that except the decisions in Varun Gumber's case [High Court of Punjab and Haryana]; Gurdeep Singh Sachar's case [Bombay High Court]; and Chandresh Sankhla's case [High Court of Rajasthan] which dealt with the fantasy sport-

Dream11, none of the precedents referred supra deal with online gaming. The decisions discussed supra are in respect of recreational clubs and not specifically refer about any virtual area, like, Internet. Neither the Public Gaming Act, 1867, nor the Tamil Nadu Gaming Act, 1930, specifically speaks about such virtual area, as the advent of such online games are very recent. In fact, the Hon'ble Supreme Court, while dealing with an appeal, has held that the issue pertaining to online rummy has not arisen at all, till date.

38. India has a rich heritage with a diverse range of sports/games. Sports is not only an important source of entertainment, but also imparts value of hard work, discipline and co-operation. To regulate the physical sports/games, we are having a legislative set up, but having such a set up to deal with the emerging online games/virtual games is the need of the hour. A comprehensive regulatory framework by a regulatory body is necessary to regulate the online sports and to curb any illegal activities as well. In fact, such regulation of online sports would encourage investment in the sector, which could lead to technological advancements as well as generation of revenue and employment.

39. We should not loose [sic] sight of the fact that nowadays, almost in all the social media, youngsters are being attracted, to play such online games, by alluring with prize money. Gaming sites are also partaking a slice on the winning hand, as of a virtual gambling house. In fact, these online games lure the unemployed youth that they can earn money by playing these games.

40. Saint Thiruvalluvar in 934th and 939th couplet of Thirukkural described the evils of gambling as follows:.....

which means--

> "There is nothing else that brings poverty like gambling which causes many a misery and destroys one's reputation." ....
>
> which means-
>
> "Gambling would preclude the five Rathnas, viz., Reputation, Education, Wealth, Food and Cloth, from reaching the person."

41. At this juncture, this Court is inclined to share the modus operandi of such online games.

42. If X and Y want to play a game, both of them have to bet a sum of Rs. 10/- (Say). The winner will get the amount that he put in place, i.e., Rs. 10/- and in addition to that, he will get an additional sum, Say 75% that was put in place by the opponent, being the prize amount. The balance, i.e., 25%, will be credited to the account of the particular online gaming site. The loser will loose [sic] everything.

43. If a group of persons (Say 10) want to play a game, each one of them have to bet a sum of Rs. 10/- (Say). At the end of the game, the Winner will get his amount as well as 100% of his bet amount, being the prize money. The Runner will get his amount as well as 70% of his bet amount, being the prize money. The losers will not only loose [sic] the game, but also loose [sic] Rs. 10/- that was put in by them. A rough calculation for the aforesaid scenario will give a whooping sum of Rs. 63/- to the online gaming site, while awarding Rs. 20/- to the Winner and Rs. 17/- to the Runner. Naturally, a player, if he looses [sic] his amount, will try to meet out his loss by playing again and again.

44. To be noted, if these set of unemployed youth, who are also under frustration, if get trapped into these elements, may go to any level to meet their loss. The most dangerous thing for any Society is educated criminals. If a knowledgeable person turns out to be a criminal, it would be a havoc on the society. Nowadays, we are also witnessing Graduates involving in chain snatches and other dacoity cases.

45. Keeping these aspects in mind and to regulate and monitor such virtual games, some of the States have amended their prevailing Gaming Acts.

46. The Sikkim Online Gaming (Regulation) Act, 2008, mandates that license has to be obtained for conducting such online games, within the State's boundaries.

47. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016, has excluded the staking of money on games of skill from the ambit of gambling. The Act also defines what are the games of skill and also listed them. Of course, license has to be obtained for conducting such games, within it's boundaries.

48. The Telangana Gaming (Amendment) Act, 2017, prohibits all forms of gaming for money, be it games of skill or games of chance. In fact, the Government of Telangana has further moved a Bill to amend the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug-Offenders, Goondas, Immoral Traffic Offenders and Land-Grabbers Act, 1986, by including "Gaming Offender", who commits or abets the commission of offences punishable under the Telangana Gaming Act, 1974.

49. When the menace of lottery was at its peak, sucking the blood and life of several families, the Government of Tamil Nadu, in the year 2003, has taken a rigid stand, with an iron hand and banned the sale of all lotteries, including online, within the territory of the State, by passing the Government

Order in G.O. Ms. No. 20 Home (Courts II) Department dated 08.01.2003. This Government Order, though challenged before the Courts of law, still holds the field. By virtue of this order, the Government has thus prevented the suicidal deaths, who have not only lost their hard earned money but also their family peace and reputation, in the State.

50. Similarly, when the menace of charging exorbitant interest, by way of 'daily vatti', 'hourly vatti', 'kandhu vatti', 'meter vatti', 'vattiku vatti', was in its prime, the Government of Tamil Nadu, in the year 2003, has enacted Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003, thereby, wiped the tears of the affected people at large.

51. Therefore, this Court hopes and trusts that this Government shall take note of the present alarming situation and pass suitable legislation, thereby, regulating and controlling such online gaming through license, of course, keeping in mind the law of the land as well as the judicial precedents in this regard. This Court is not against the virtual games, but, the anguish of this Court is that there should be a regulatory body to monitor and regulate the legal gaming activities, be it in the real world or the virtual world. Needless to say that if the Government intends to pass a legislation in this regard, all the stakeholders should be put in notice and their views should be ascertained.

52. Since this Court is exercising power under Section 482 Cr.P.C., with the above suggestions, this Court refrains from observing any further, leaving it to the Government." (Emphasis Supplied)

331. The states are always at liberty to define a particular word or expression for the purpose of achieving the object of the enactment. The scope of judicial review of a challenge to a definition or classification is limited. As we have already held that when the Parliament or the Legislature has, in its wisdom, either defined or classified a particular expression, it is not for the courts to give a different interpretation to deviate from the object the enactment seeks to achieve by altering the natural meaning attached to the expressions in the enactment. A reference may be had to the judgment of this Court in Polestar Electronic (Pvt.) Ltd. v. Additional Commissioner, Sales Tax reported in (1978) 1 SCC 636, this Court has held as under:

> "7. Now, if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases. Crawford in his book on "Construction of Statutes" (1940 Edn.) at p. 269 explains the rule in the following terms:
>
> "Where the statute's meaning is clear and explicit, words cannot be interpolated. In the first place, in such a case they are not needed. If they should be interpolated, the statute would more than likely fail to express the legislative intent, as the thought

intended to be conveyed might be altered by the addition of new words. They should not be interpolated even though the remedy of the statute would thereby be advanced, or a more desirable or just result would occur. Even where the meaning of the statute is clear and sensible, either with or without the omitted word, interpolation is improper, since the primary source of the legislative intent is in the language of the statute." Lord Parker applied the rule in R. v. Oakes [(1959) 2 All ER 350] to construe "and", as "or" in Section 7 of the Official Secrets Act, 1920 and stated :

"It seems to this Court that where the literal reading of a statute, and a penal statute, produces an intelligible result, clearly there is no ground for reading in words or changing words according to what may be the supposed intention of Parliament. But here we venture to think that the result is unintelligible." Lord Reid also with great clarity and precision which always characterise his judgment enunciated the rule as follows in Federal Steam Navigation Co. Ltd. v. Department of Trade and Industry [(1974) 2 All ER 97] :

"Cases where it has properly been held that a word can be struck out of a deed or statute and another substituted can as far as I am aware be grouped under three heads: where without such substitution the provision is unintelligible or absurd or totally unreasonable; where it is unworkable; and where it is totally irreconcilable with the plain intention shown by the rest of the deed or statute." This rule in regard to reading words into a statute was also affirmed by this Court in several decisions of which we may refer only to one, namely, Narayanaswami v. Pannerselvam [(1972) 3 SCC 717 : AIR 1972 SC 2284 : (1973) 1 SCR 172] where the Court pointed out that:

"'..... addition to, or modification of words used in statutory provision is generally not permissible ...', but 'courts may depart from this rule to avoid a patent absurdity'." Here, the word used in Section 5(2)(a)(ii) and the second proviso is "re-sale" simpliciter without any geographical limitation and according to its plain natural meaning it would mean re-sale anywhere and not necessarily inside Delhi. Even where the purchasing dealer resells the goods outside Delhi, he would satisfy the requirement of the statutory provision according to its plain grammatical meaning. There are no words such as "inside the Union Territory of Delhi" qualifying "re-sale" so as to limit it to re-sale within the territory of Delhi. The argument urged on behalf of the Revenue requires us to read such limitative words in Section 5(2)(a)(ii) and the second proviso. The question is whether there is any necessity or justification for doing so? If "re-sale" is construed as not confined to the territory of Delhi, but it may take place anywhere, does Section 5(2)(a)(ii) or the second proviso lead to a result manifestly unintelligible, absurd, unreasonable, unworkable or irreconcilable with the rest of the Act? Is there any compulsive necessity to depart from the rule of plain and natural construction and read words of limitation in Section 5(2)(a)(ii) and the second proviso when such words have been omitted by the law-giver? We do not think so.

> 8. It may be pointed out in the first place that the Legislature could have easily used some such words as "inside the Union Territory of Delhi" to qualify the word "re-sale", if its intention was to confine re-sale within the territory of Delhi, but it omitted to do what was obvious and used the word "re-sale" without any limitation or qualification, knowing full well that unless restriction were imposed as to situs, "re-sale" would mean re-sale anywhere and not merely inside the territory of Delhi. The Legislature was enacting a piece of legislation intended to levy tax on dealers who are laymen and we have no doubt that if the legislative intent was that "re-sale" should be within the territory of Delhi and not outside, the Legislature would have said so in plain unambiguous language which no layman could possibly misunderstand. It is a well-

settled rule of interpretation that where there are two expressions which might have been used to convey a certain intention, but one of those expressions will convey that intention more clearly than the other, it is proper to conclude that, if the legislature used that one of the two expressions which would convey the intention less clearly, it does not intend to convey that intention at all. We may repeat what Pollack C.B. said in Attorney General v. Sillem [(1864) 2 H & C 431, 526] that:

> "If this had been the object of our legislature, it might have been accomplished by the simplest possible piece of legislation; it might have been expressed in language so clear that no human being could entertain a doubt about it."... IX. The State Legislature also derives competence from the Entry 1 List II, that is, "public order"

332. One another vital issue that falls for our consideration is whether the State of Tamil Nadu and State of Karnataka had the legislative competence under Article 246(3) r/w Entry 1 of List II in the 7th Schedule to the Constitution of India, for the purpose of enacting Part II of the 2021 TN Amendment Act and the 2021 Karnataka Amendment Act, respectively. This, we feel, is in addition to the duties of the State enshrined in the directive principles, about which we have discussed above.

333. Entry 1 in the State List reads as follows:

> Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power) a. Contours of the Expression "Public Order"

334. This Court has interpreted the expression "public order" in Entry 1 of the State List at multiple instances and has consistently held that it is an expression that has a very wide connotation. Notions of what constitutes this wider concept of public order have been expounded in various judgments. The categories below distil the judicially-developed ingredients.

b. Detriment to tranquility, health, and comfort

335. One of the earliest cases to interpret the expression 'public order' and give the phrase a wide connotation is the decision of this Court in Romesh Thappar v. State of Madras reported in AIR 1950 SC 124: 1950 SC 436. It laid down the meaning of "public order" to mean an expression that signifies the state of tranquility which prevails among the members of a political society, as a result of the internal regulations enforced by the government. It thereby conceived public order not merely as the absence of disorder but as the existence of a peaceful social condition enabling normal civic life.

"6. The impugned Act was passed by the Provincial Legislature in exercise of the power conferred upon it by Section 100 of the Government of India Act, 1935, read with Schedule VII List II Entry 1 to that Act, which comprises among other matters, "public order". Now "public order" is an expression of wide connotation and signifies that state of tranquillity which prevails among the members of a political society as a result of the internal regulations enforced by the Government which they have established. Although Section 9(1-A) refers to "securing the public safety" and "the maintenance of public order" as distinct purposes, it must be taken that "public safety" is used as a part of the wider concept of public order, for, if public safety were intended to signify any matter distinct from and outside the content of the expression "public order", it would not have been competent for the Madras Legislature to enact the provision so far as it relates to public safety. This indeed was not disputed on behalf of the respondents. But it was urged that the expression "public safety" in the impugned Act, which is a statute relating to law and order, means the security of the province, and, therefore, "the security of the State" within the meaning of Article 19(2) as "the State" has been defined in Article 12 as including, among other things, the Government and the legislature of each of the erstwhile provinces. Much reliance was placed in support of this view on R. v. Governor of Wormwood Scrubs Prison, ex p Foy [R. v. Governor of Wormwood Scrubs Prison, ex p Foy, (1920) 2 KB 305] where it was held that the phrase "for securing the public safety and the defence of the realm" in Section 1 of the Defence of the Realm (Consolidation) Act, 1914, was not limited to securing the country against a foreign foe but included also protection against internal disorder such as a rebellion. The decision is not of much assistance to the respondents as the context in which the words "public safety" occurred in that Act showed unmistakably that the security of the State was the aim in view. Our attention has not been drawn to any definition of the expression "public safety", nor does it appear that the words have acquired any technical signification as words of art." (Emphasis Supplied)

336. An application of this understanding can be found in State of Rajasthan v. Shri. G Chawla & Dr. Pohumal, reported in AIR 1959 SC 544 wherein the State of Ajmer (later State of Rajasthan) enacted the Ajmer (Sound Amplifiers Control) Act, 1952. The Act imposed restrictions on the tuning and placement of amplifiers. For example, it mandated that an amplifier cannot be so tuned to be audible beyond 30 yards and cannot be placed at a height of more than six feet from the ground. The legislative competence of the State was challenged on the ground that amplifiers are instruments of broadcasting and communication, and their control would fall within the exclusive domain of the Parliament under Entry 31 of List I.

337. Rejecting this contention, this Court held that the manufacture or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus,

is one matter, but the control of the use of such apparatus, though legitimately owned and possessed, to the detriment of the tranquillity, health and comfort of others, is quite another. Sustaining the legislation under Entry 1 of the State List, this Court vide Paras 12-14 held as follows:

> "12. There can be little doubt that the growing nuisance of blaring loudspeakers powered by amplifiers of great output needed control, and the short question is whether this salutary measure can be said to fall within one or more of the entries in the State List. It must be admitted that amplifiers are instruments of broadcasting and even of communication, and in that view of the matter, they fall within Entry 31 of the Union list. The manufacture, or the licensing of amplifiers or the control of their ownership or possession, including the regulating of the trade in such apparatus is one matter, but the control of the 'use' of such apparatus though legitimately owned and possessed, to the detriment of tranquility, health and comfort of others is quite another. It cannot be said that public health does not demand control of the use of such apparatus by day or by night, or in the vicinity of hospitals or schools, or offices or habited localities. The power to legislate in relation to public health includes the power to regulate the use of amplifiers as producers of loud noises when the right of such user, by the disregard of the comfort of and obligation to others, emerges as a manifest nuisance to them. Nor is it any valid argument to say that the pith and substance of the Act falls within Entry 31 of the Union list, because other loud noises, the result of some other instruments etc., are not equally controlled and prohibited.
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> 13. The pith and substance of the impugned Act is the control of the use of amplifiers in the interests of health and also tranquility, and thus falls substantially (if not wholly) within the powers conferred to preserve, regulate and promote them and does not so fall within the entry in the Union list, even though the amplifier, the use of which is regulated and controlled is an apparatus for broadcasting or communication. As Latham, C.J. pointed out in Bank of New South Wales v. The Commonwealth [(1948) 76 CLR I, 186] :
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> "A power to make laws 'with respect to' a subject- matter is a power to make laws which in reality and substance are laws upon the subject-matter. It is not enough that a law should refer to the subject-matter or apply to the subject-matter : for example, income tax laws apply to clergymen and to hotel-keepers as members of the public; but no one would describe an income tax law as being, for that reason, a law with respect to clergymen or hotel-keepers. Building regulations apply to buildings erected for or by banks; but such regulations could not properly be described as laws with respect to banks or banking."
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> 14. On a view of the Act as a whole, we think that the substance of the legislation is within the powers conferred by entry No. 6 and conceivably entry No. 1 of the State List, and it does not purport to encroach upon the field of entry No. 31, though it incidentally touches upon a matter provided there. The end and purpose of the

> legislation furnishes the key to connect it with the State List. Our attention was not drawn to any enactment under entry No. 31 of the Union list by which the ownership and possession of amplifiers was burdened with any such regulation or control, and there being thus no question of repugnancy or of an occupied field, we have no hesitation in holding that the Act is fully covered by the first cited entry and conceivably the other in the State List.

(Emphasis Supplied)

338. Subsequently, in Rev. Stainislaus (supra), this Court considered the constitutional validity of the M. P. Dharma Swatantraya Adhiniyam, 1968, and the Orissa Freedom of Religion Act, 1967 respectively enacted by the State of Madhya Pradesh and the State of Orissa respectively. The legislative competence of the State Legislatures was challenged on the ground that matters of religion fall within the residuary power of the Union under Entry 97 of List I. However, the State Governments defended the enactments as 'public order' legislations.

339. This Court held that the impugned Acts fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbance to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. It especially noted that anything that disturbs the current of the life of the community, and does not merely affect an individual, would amount to disturbance of public order. Situations such as forcible conversions or attempts to provoke communal passions have a clear potential to disturb communal harmony, therefore falling within the State's power to legislate on public order. The relevant paragraphs of the judgment are reproduced here below:

> "24. The expression "public order" is of wide connotation. It must have the connotation which it is meant to provide as the very first Entry in List II. It has been Held by this Court in Ramesh Thappar v. State of Madras [1950 SCC 436 : AIR 1950 SC 124 : 1950 SCR 594 : 51 Cri LJ 1514] that "public order" is an expression of wide connotation and signifies state of tranquillity which prevails among the members of a political society as a result of internal regulations enforced by the Government which they have established.
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> 25. Reference may also be made to the decision in Ramjilal Modi v. State of U.P. [AIR 1957 SC 620 :
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> 1957 SCR 860, 866 : 1957 Cri LJ 1006] where this Court has Held that the right of freedom of religion guaranteed by Articles 25 and 26 of the Constitution is expressly made subject to public order, morality and health, and that it cannot be predicated that freedom of religion can have no bearing whatever on the maintenance of public order or that a law creating an offence relating to religion cannot under any circumstances be said to have been enacted in the interests of public order." It has been Held that these two articles in terms contemplate that restrictions may be imposed on the rights guaranteed by them in the interests of public order. Reference

> may as well be made to the decision in Arun Ghoshe v. State of West Bengal [(1970) 1 SCC 98 : 1970 SCC (Cri) 67] where it has been Held that if a thing disturbs the current of the life of the community, and does not merely affect an individual, it would amount to disturbance of the public order. Thus if an attempt is made to raise communal passions, e.g. on the ground that some one has been "forcibly" converted to another religion, it would, in all probability, give rise to an apprehension of a breach of the public order, affecting the community at large. The impugned Acts therefore fall within the purview of Entry 1 of List II of the Seventh Schedule as they are meant to avoid disturbances to the public order by prohibiting conversion from one religion to another in a manner reprehensible to the conscience of the community. The two Acts do not provide for the regulation of religion and we do not find any justification for the argument that they fall under Entry 97 of List I of the Seventh Schedule.

(Emphasis Supplied) c. Public Safety or Interest

340. This Court has recognized that 'public order' overlaps substantially with notions of public safety, public tranquillity, and in certain contexts public interest as well and that 'public order' in Entry 1 of List II can be read comprehensively to include such aspects. While in Romesh Thappar (supra), the statute in question used 'public safety' and maintenance of "public order" as distinct expressions, this Court treated public safety as part of the wider concept of public order. It thereby approached public safety as subsumed within public order.

341. This overlap has also been elucidated in Nek Mohammad v.

Province of Bihar, reported in 1948 SCC OnLine Pat 54 where the Patna High Court held that "public order" as mentioned in the provincial legislative entry is comprehensive enough to include public safety in its relation to maintenance of public order, and that "public safety" in that statutory setting is either synonymous with public order or comprehended within it vide page 782 of the judgment:

> "Section 3 says that an order made under section 2 shall be in force for a period not exceeding six months from the date on which it is made unless earlier revoked by the authority making the order. Section 4 relates to grounds of detention. I shall have to consider the terms of section 4 in detail in connection with another argument, and for the purpose of the arguments which we are now considering it is not necessary to quote the terms of section 4. Learned Counsel for the petitioners has emphasised that the expression 'public safety' occurs both in the preamble and in section 2(1). He has further emphasised that the word 'and' between the two expressions 'public safety' and 'maintenance of public order' shows that the two expressions relate to different subjects. In my opinion, learned Counsel for the petitioners has approached the subjects mentioned in the three Legislative Lists from an entirely wrong, narrow and technical point of view. It has been more than once held that in interpreting a, Constitution Act a wide meaning should be given to the words which confer upon any

Legislature the power to legislate on certain topics and, within the ambit of the words, the most sovereign powers must be understood to be given to the Legislature. It has been further held that the entries in the Constitution Act should be given a large and liberal interpretation, the reason being that the allocation of the subjects in the three Lists is not by way of scientific definition but by way of a mere simplex enumeratio of broad categories, [see the observations made by their Lordships of the Federal Court In the matter of the Central Provinces and Berar Sales of Motor Spirit and Lubricants Taxation Act [(1939) A.I.R. (F.C.) 1.] . Dealing with the question of the interpretation of the subjects in the three Legislative Lists, it was observed by his Lordship Gwyer, C.J., in A.L.S.P.P.L., Subrahmanyan Chettiar v. Muttuswami Goundan [(1941) A.I.R. (F.C.)

47.] , as follows:—"It must inevitably happen from time to time that legislation, though purporting to deal with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance', or its 'true nature and character', for the purpose of determining whether it is legislation with respect to matters in this list or in that." In Prafulla Kumar Mukherjee v. Bank of Commerce, Ltd., Khulna [(1947) A.I.R. (P.C.) 60.] , it was pointed out by their Lordships of the Privy Council that it was not possible to make so clean a cut between the powers of the various legislatures that they would never overlap. Their Lordships then say—"Subjects must still overlap and where they do the question must be asked what in pith and substance is the effect of the enactment of which complaint is made and in what list is its true nature and character to be found. If these questions would not be asked, much beneficent legislation would be stifled at birth, and many of the subjects entrusted to Provincial Legislation could never effectively be dealt with". If these observations are kept in view, then there can be no doubt that the true nature and character of the Act under our consideration brings it within item 1 of the Provincial Legislative List. That item mentions first "public order" in its general and widest sense, subject only to one limitation that it does not include the use of His Majesty's naval, military or air forces in aid of the civil power; then, there is a further particular— "preventive detention for reasons connected with the maintenance of public order". This particular merely indicates one aspect of public order.

The expression "public order" in List I of the Provincial Legislative List must, in its context, be taken in a comprehensive sense so as to include public safety in its relation to the maintenance of public order. The expression "public safety" may have one meaning in one context and another in a different context; for example, traffic regulations for motor vehicles may have an aspect of public safety, so also adulteration of foodstuffs and other goods. The subject of adulteration of foodstuffs is item 30 of the Provincial Legislative List. I do not think it can be contended for one moment that the

Provincial Legislature has no power to make laws with respect to adulteration of foodstuffs and other goods, merely because the subject may, in some of its aspects, be connected with, public safety. In the same way the maintenance of public order undoubtedly involves considerations of public safety, but surely that would not be a ground for holding that the Provincial Legislature is not competent to make laws for the maintenance of public order. It is worthy of note that, apart from the general subject, of 'Public Order' mentioned in item 1 of the Provincial Legislative List, one particular aspect of public order namely, preventive detention for reasons connected with the maintenance of public order, is specifically mentioned. I emphasise the words "for reasons connected with the maintenance of public order" One of the reasons connected with the maintenance of public order may well, be public safety. If we consider the scope and purpose of the Act as a whole, then the conclusion at which one is bound to reach is that in its true nature and character it deals with the maintenance of public order involving, no doubt, considerations of public safety as well. In the context in which the expression "public safety" occurs in the preamble and in section 2(1) of the Act, it is either synonymous with public order or is comprehended by the more general term "Public Order" and the use of the word 'and' is not disjunctive. I do not think that there is any encroachment on item 1 of the Federal Legislative List which deals with, inter alia, preventive detention in British India for reasons of State connected with defence, external affairs, etc. That item may also have an aspect of public safety, but of a different character altogether, being connected with defence, external affairs, or the discharge of the functions of the Crown in the relation to the Indian States. Learned Counsel for the petitioners has relied on certain observations made by his Lordship Zafrulla Khan, J., in the case of King-Emperor v. Sibnath Banerjeei [(1943) 24 Pat. L.T. 332, P.C.]. The observations will be found at page 345. His Lordship said as follows:— "The argument before us was limited to the ground that 'public safety or interest' was not one of the heads specified in entry no. 1 of List I or entry no. 1 of List II of the Seventh Schedule to the Constitution Act as subjects in respect of which Indian legislation might provide for 'preventive detention'. The judgment of this Court in Talpade's case [(1943) 24 Pat. L.T. 158, F.C.] , clearly proceeded on the footing that such legislation was covered by the two entries. We think that the expressions 'reasons of State connected with defence' and 'reasons connected with the maintenance of public order' are wide enough to include 'public safety or interest'." It is contended that those observations show that 'public safety' was considered to be covered by the two items in the two lists taken together, and in view of the proclamation of emergency under section 102 of the Government of India Act, the Federal Legislature had power then to make laws for a province with respect to any of the matters enumerated in the Provincial Legislative List, but now the Provincial Legislature cannot make laws with respect to any of the matters enumerated in List I. I do not read those observations in the sense in which learned Counsel for the petitioners takes them. The question before their Lordships was whether section 2 of the Defence of India Act was ultra vires the Indian Legislature, and it was not necessary for their Lordships to consider whether the legislation in question came within List I or List II. It would have been enough to decide that it came within the subjects mentioned in either of the two lists or the two lists taken together. It cannot, therefore, be said that the Federal Court had decided that public safety as a subject of legislation would not come within item 1 of List II; on the contrary, the observation was to the effect that the expression 'reasons connected with the maintenance of public order' was wide enough to include 'public safety or interest'. As I have already stated, many of the subjects mentioned in the three lists have a 'public safety' aspect and the maintenance of public order undoubtedly includes, public safety. There are certain other

observations in another decision of the Federal Court [Kashav Talpade v. King-Emperor [(1943) 24 Pat. L.T. 158, F.C.]] on which learned Counsel for the petitioners places some reliance. These observations which will be found at pages 173 and 174 of the report are:— "If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them." These observations were made with reference to certain observations made by Chagla, J. (as he then was) when the case was before the Bombay High Court.

(Emphasis Supplied)

342. The overlap between public order and public safety has also been recognised by a seven-Judge Bench of this Court in Madhu Limaye v. Sub-Divisional Magistrate, reported in (1970) 3 SCC 746 while explaining the scope of Section 144 of the CrPC. The Court emphasised that disturbances of public tranquility, including riots and affrays, can lead to the subversion of public order unless prevented in time. It described Section 144 as being directed against the menace of serious disturbances of a grave character, justifying action on public order grounds.

"24. The gist of action under Section 144 is the urgency of the situation, its efficacy in the likelihood of being able to prevent some harmful occurrences. As it is possible to act absolutely and even ex parte it is obvious that the emergency must be sudden and the consequences sufficiently grave. Without it the exercise of power would have no justification. It is not an ordinary power flowing from administration but a power used in a judicial manner and which can stand further judicial scrutiny in the need for the exercise of the power, in its efficacy and in the extent of its application. There is no general proposition that an order under Section 144, Criminal Procedure Code cannot be passed without taking evidence: see Mst Jagrupa Kumari v. Chobey Narain Singh [37 Cr LJ 95] which in our opinion is correct in laying down this proposition. These fundamental facts emerge from the way the occasions for the exercise of the power are mentioned. Disturbances of public tranquillity, riots and affray lead to subversion of public order unless they are prevented in time. Nuisances dangerous to human life, health or safety have no doubt to be abated and prevented. We are, however, not concerned with this part of the section and the validity of this part need not be decided here. In so far as the other parts of the section are concerned the key-note of the power is to free society from menace of serious disturbances of a grave character. The section is directed against those who attempt to prevent the exercise of legal rights by others or imperil the public safety and health. If that be so the matter must fall within the restrictions which the Constitution itself visualizes as permissible in the interest of public order, or in the interest of the general public. We may say, however, that annoyance must assume sufficiently grave proportions to bring the matter within interests of public order." (Emphasis Supplied)

343. Further, in S. Bagavathy v. State of Tamil Nadu, reported in 2007 SC OnLine Mad 218 a Full Bench of the Madras High Court held that public order has comprehensive meaning to include public safety in relation to maintenance of public order and explicitly stated that public order, public safety, public tranquility, and public interest are overlapping terms. It also clarified that public order need not always be traced only to violence like riot or insurrection. It concerns an orderly state of

society in which citizens peacefully pursue normal activities. Relevant paragraphs are reproduced here below:

> "120. In our considered opinion, on the question, whether the impugned enactment can be sustained under Entry 1, viz. Public Order, it should be remembered that public order is an expression of wide connotation intended to take care of the public safety for the members of the political society. Therefore, the public order need not in every case be traced either to the security of the State or to the law and order.
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> 121. Public Order has a comprehensive meaning so as to include public safety in its relation to the maintenance of the public order and the maintenance of the public order involves consideration of the public safety. The Public order, public safety, public tranquility and the public interest are all overlapping terms with each other. The expression public order therefore requires the very wide connotation. The public order is the basic need in any organised society. It implies orderly state of society and community in which citizens can peacefully pursue their normal activities of life. Therefore, it may not be proper to read the public order only with reference to insurrection, riot, turbulence or the crimes of violence. Hence, the public order in Entry 1 of List II, must be interpreted to include the public safety in its relation to the maintenance of the public order." (Emphasis Supplied) d. Even Tempo of the Life of the Community, Potentiality Test

344. The test of "even tempo" formulation has become one of the most widely cited tests for separating public order from ordinary issues of law and order. This test was authoritatively laid down by this Court in Arun Ghosh v. State of West Bengal, reported in (1970) 1 SCC 98 where it held that public order is the "even tempo of life of the community" in a specified locality and that disturbance of public order must be distinguished from acts directed against individuals which do not disturb society to the extent of causing a general disturbance of public tranquility.

345. While noting the thin line between disruption of 'law and order', and disruption of 'public order', this Court in Arun Ghosh (supra) observed that every infraction of law does necessarily affect public order, but an action affecting law and order may not necessarily affect public order. On the same line then, an act affecting public order need not necessarily affect the security of the State. It is sufficient if it affects a section of the society at large. On this premise, the Court went on to hold that the true test does not lie in the kind of disorder but rather the potentiality of the act, in question. In the Court's view, one act may affect only individuals, while the other though of a similar kind may have such an impact that it would disturb the even tempo of the life of the community.

"3. The submission of the counsel is that these are stray acts directed against individuals and are not subversive of public order and therefore the detention on the ostensible ground of preventing him from acting in a manner prejudicial to public order was not justified. In support of this submission reference is made to three cases of this Court: Dr Ram Manohar Lohia v. State of Bihar [(1966) 1 SCR 709] ; Pushkar Mukherjee v. State of W.B. [WP No. 179 of 1968, decided on November 7, 1968 : (1969) 1 SCC 10] and Shyamal Chakraborty v. Commissioner of Police, Calcutta [WP No. 102 of

1969, decided on August 4, 1969 : (1969) 2 SCC 426] . In Dr Ram Manohar Lohia case [(1966) 1 SCR 709] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its affect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its affect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order.

He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Writ Petition No. 179 of 1968 drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Dr Ram Manohar Lohia case examples were given by Sarkar and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its affect upon the community. The question to ask is:

> Does it lead to disturbance of the current of life of the community so as to amount a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another." (Emphasis Supplied)

346. This Court reiterated this "current of life" standard in Kanu Biswas v. State of West Bengal, reported in (1972) 3 SCC 831 and distinguished 'law and order' from 'public order' on the basis of whether something leads to disturbance of the current life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed. The dictum laid down vide para 7 of the judgments, as reproduced below, bottles down to a question of 'degree' and 'extent of the reach' of the act upon the society. "7. The question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order, according to the dictum laid down in the above case, is a question of degree and the extent of the reach of the act upon the society. Public order is what the French call "order publique" and is something more than ordinary maintenance of law and order. The test to be adopted in determining whether an act affects law and order or public order, as laid down in the above case, is: Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed?

(Emphasis Supplied)

347. What follows from the decision in Arun Ghosh (supra) is essentially that an act by itself is not determinant of its own gravity because the same conduct may have radically different public-order implications depending on the circumstances. Consequently, the Court had stressed that the question is always one of degree of harm and the act's effect upon the community in a locality. The same approach was applied by this Court in Nagendra Nath Mondal v.

State of W.B., reported in (1972) 1 SCC 498, where the Court held that an attack on an educational institution, in the course of which its registers and other papers were destroyed by acts of arson, falls within the area of public order although it was aimed at an individual entity because of its potentiality to cause reverberations affecting the even tempo of community life.

"8. The detention order, no doubt, mentioned that it was issued with a view to prevent the detenu acting prejudicially to the maintenance of public order. The contention raised by counsel, however, involves the question whether the acts alleged against the detenu constituted breach of public order or were such as would be prejudicial to its maintenance. As to what is meant by the expression, "public order", Hidayatullah, J., (as he then was) in Lohia v. State [(1966) 1 SCR 709 : AIR 1966 SC 740] said that any contravention of law always affected order, but before it could be said to affect "public order", it must affect the community or the public at large. He considered three concepts viz. "law and order", "public order" and "the security of the state" generally used in preventive detention measures and suggested that to appreciate the scope and extent of each of them, one should imagine three concentric circles, the largest of them representing "law and order", the next representing

"public order" and the smallest representing "the security of the state". An act might affect "law and order", but not "public order", just as an act might affect public order but not "the security of the state". Therefore, if the detention order were to use the expression "maintenance of law and order", that would be widening the scope of the detaining authority, if the statute concerned confined that power in relation to acts prejudicial to "the maintenance of public order". A similar distinction was also drawn in Pushkar Mukherjee v. West Bengal [(1969) 1 SCC 10 : (1969) 2 SCR 635] where Ramaswami J. observed that the expression "public order" in Section 3(1) of the Preventive Detention Act, 1950, did not take in every kind of infraction of law. An assault by one on another in a house or even in a public street might create disorder but not public disorder, for the latter was one which affected the community or the public at large. Therefore, a line of demarcation must be drawn between serious and aggravated forms of disorder which affect the community or injure the public interest and the relatively minor breaches of peace of a purely local significance which primarily injure specific individuals and only in consider sense public interest. A mere disturbance of law and order leading to disorder was, thus, not necessarily sufficient for action under the Preventive Detention Act, but a disturbance which would affect public order fell within the scope of the Act.

9. But in Arun Ghosh v. West Bengal [(1970) 1 SCC 98 : (1970) 3 SCR 288] it was pointed out that the true distinction between the areas of "law and order" and "public order" was one of degree and extent of the reach of the act in question upon society. Acts similar in nature, be committed in different contexts and circumstances might cases different reactions; in one case it might affect the problem of the breach of law and order, and in another the breach of public order. The analogy resorted to by Ramaswami, J., of crimes against individuals and crimes against the public, though useful to a limited extent, would not always be apt. An assault by one individual upon another would affect law and order only and cause its breach. A similar assault by a member of one community upon a leading individual of another community, though similar in quality, would differ in potentiality in the sense that it might cause reverberations which might affect the even tempo of the life of the community. As the Court pointed out, "the act by itself is not determinant of its own gravity. In its quality it may not differ but in its potentiality it may be very different." At the same time, the power of detention having been permitted to the State under the Constitution as an exceptional power, its exercise had to be scrutinised with extreme care and could not be used as a convenient substitute for the normal processes of the criminal law of the country. (Cf. S.K. Saha v. Commissioner of Police, Calcutta). [(1970) 1 SCC 149 : (1970) 3 SCR 360].

10. These are all cases under the Preventive Detention Act, 4 of 1950, which by Section 3 of it confers power of detention on specified grounds which include acts prejudicial to the maintenance of public order. The present Act likewise confers such power with a view to prevent a person from acting in any manner prejudicial to the security of the State or the maintenance of public order under its Section 3(1). Though the Act does not define the expression "public order", it does define the expression "acting in any manner prejudicial to the security of the State or the maintenance of public order". That expression under the definition inter alia means "committing mischief within the meaning of Section 425 of the Penal Code, 1860, by fire or any explosive substance on any property of Government or any local authority or any corporation owned or controlled by Government or any University or other educational institution, or on any public building where the commission of such mischief disturbs or is likely to disturb public order...." The definition itself thus draws a distinction

between mischief by fire or explosive substance upon property of one of the specified categories and such mischief upon any such properties which disturbs or is likely to disturb public order. The former, however reprehensible, would be taken care of by the Penal Code, and it is only in respect of the latter that the drastic power of detention without trial conferred by the first sub-section can be validly exercised. But to the extent that the expression “public order' is not defined here also, decisions under Act 4 of 1950 delineating the sphere of “public order” from those of “maintenance of law and order” and “the security of the State” would still be of utility.

11. The acts alleged against the petitioner in the grounds for detention are acts which fall under Section 3(2)(b), in that, they constitute mischief by fire and by explosive substance on property of an educational institution. But the question is whether these acts disturbed or were likely to disturb public order; in the words of Hidayatullah, C.J., in Arun Ghosh v. West Bengal case, disturb the even tempo of the life of the community of that specified locality. The distinction drawn by clause (b) of Section 3(2) then is between causing fire, for instance, to a building of an educational institution simpliciter, and committing mischief of the same nature but such that it disturbs or is likely to disturb the even tempo of the community in that particular locality.

12. The grounds set out two acts alleged against the petitioner. The first, of December 1, 1970, was that the petitioner and some others trespassed after midnight into the Headmaster's room in the Moynaguri Higher Secondary School and set fire to books, registers, furniture etc. and then placed a bomb in the school building thereby endangering the life of the teaching staff and the students attending the school. The second, of April 5, 1970, was that the petitioner along with some others again trespassed into the same school and set fire to parts of it and then threatened the members of its staff with death if they offered resistance or disclosed his name to any authority.

13. The target of arson, (assuming the allegations to be true which we have to assume) was an educational institution and particularly the registers and other papers maintained by it. The object obviously was vandalism, to disrupt its working by burning its records and to create a scare so that neither the teaching staff nor the pupils would dare attend it for prosecution of studies. The parents dare not hence-forth send their wards for fear that the school might be set on fire while they are in it. The bomb was manifestly placed in the premises for creating that scare. It could not have been intended for any other purpose after the records and furniture had been set on fire. In these circumstances, the alleged acts did not merely constitute mischief under Section 425 of the Penal Code, but constituted such mischief which disturbed or was likely to disturb public order. The acts in question, no doubt, would be acts similar to those committed by a person who resorts to arson, but in the circumstances were acts different in potentiality, and therefore, fell within the definition in Section 3(2)(b). The first argument urged on behalf of the petitioner must, consequently, fail.” (Emphasis Supplied)

348. Similarly, in Amiya Kumar Karmakar v. State of W.B., reported in (1972) 2 SCC 672, this Court reiterated this test and held that even though the alleged act of killing might appear as a crime against an individual, its political- ideology-driven purpose to terrorize non-adherents and thereby cause panic and abandonment of normal activities transforms its impact into one striking at public order. The relevant paragraphs are reproduced below:

"6. As to the proper connotation and the scope of the concept of public order, as distinguished from the concepts of law and order and security of State, the Act furnishes no dictionary. But these three concepts have by now been matters of discussion in several judgments of this Court wherein a clear differentiation of one from the other has been elucidated. Such differentiation was illustrated in some cases by means of three imaginary concentric circles, the narrowest of them being that relating to the security of the State, the next being that pertaining to public order, and the third, the largest, being that pertaining to law and order. (See Lohia v. State. [AIR 1966 SC 740 : (1966) 1 SCR 709: (1966) 2 SCJ 549]) In other cases, the differentiation was sought to be made on the basis of the degree of disorder affecting, in one case the community at large, and in other, specific individuals, and only in a secondary sense public order in other words, between crimes against specific individuals and crimes against the public. Such a distinction appears at first sight attractive by reason of the simplicity of its test, but on a closer examination of it fails to cover cases which are marginal and sometimes overlapping.

As pointed out in Arun Ghosh v. West Bengal [(1970) 1 SCC 98 : (1970) 3 SCR 288] the true distinction between the areas of law and order and public order lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society. Acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. In one case it might affect specific individuals only, and therefore touches the problem of law and order only, while in another it might affect public order. The Act by itself, therefore, is not determinant of its own gravity. In its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different. On the basis of such a distinction, an attack on an educational institution, in the course of which its registers and other papers were destroyed by acts of arson, was held to fall within the area of public order although it was aimed at an individual entity. (See Nagendra Nath Mondal v. West Bengal. [(1972) 1 SCC 498 : 1972 SCC (Cri) 227]) The criterion thus being the potentiality of the Act in question or the degree of its impact on members of the community in the locality in which the act in question is committed, examination of Ground 2 from that angle would appear to be more appropriate.

7. The act in Ground 2, no doubt, was an attack resulting in the death of the victim, and though it was said to have been committed by the petitioner along with his associates it would prima facie appear to be an act against a specific individual, involving infraction of law and order only. The act in question was similar in nature and quality to other such acts committed by one or more individuals against another resulting in the death of the latter. But it was not committed on account of any animus against the victim or for a motive such as personal vendetta. As the ground of detention asserts, it was committed with a view to promote a particular political ideology, that is to say against one who did not subscribe to the ideology and as a warning against those who did not agree with or subscribe to such ideology. Obviously, it was intended to and did in fact terrorise those who did not conform to

> that ideology, who out of panic abandoned their normal activities for fear that any one or more of them would be the target of such an attack. Viewed from this angle it is difficult to regard such an act as a mere infraction of law and order, for, such an act committed with such an intent and object and in such circumstances is one which strikes at the normal, orderly life of the community in that locality. Its impact and potentiality thus affect public order in the sense that it was aimed at bringing about disorder and chaos upsetting the even tempo of life in that locality. It is, therefore, not possible to agree with the proposition that it affected the problem of law and order only and was for that reason extraneous or irrelevant to the object specified in Section 3 of the Act, in relation to which only a valid order of detention thereunder could be made." (Emphasis Supplied) e. "Concentric Circles" Doctrine

349. A foundational doctrinal tool for interpreting public order is the three concentric circles rule. This was first laid down in Ram Manohar Lohia v. State of Bihar, reported in 1965 SCC OnLine SC 9 wherein this Court held that "law and order" is the widest circle, "public order" is a narrower circle within it, and "security of the State" is the narrowest circle. Thus, every infraction may affect law and order, but only those with broader societal impact implicate public order; and only the gravest threats implicate security of the State. It was observed that an act may disturb law and order without disturbing public order the remit of public order cannot be widened.

"53. These observations determine the meaning of the words "public order" in contradistinction to expressions such as "public safety", "security of the State". They were made in different contexts. The first three cases dealt with the meaning in the legislative lists as to which, it is settled, we must give as large a meaning as possible. In the last case the meaning of "public order" was given in relation to the necessity for amending the Constitution as a result of the pronouncements of this Court. The context in which the words were used was different, the occasion was different and the object in sigh was different.

54. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder. Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India

Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

55. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules." (Emphasis Supplied)

350. This Court has also reiterated that mere contraventions like cheating or criminal breach of trust ordinarily implicate 'law and order' violations and cannot automatically be elevated to 'public order' unless community-wide impact is shown. This was emphasised in Banka Sneha Sheela v. State of Telangana, reported in (2021) 9 SCC 415 which re-stated that "public order" disturbance requires "public disorder" and community-level impact vide paragraphs 3 and 14:

> "3. As is well-known, the expressions "law and order", "public order", and "security of State" are different from one another. In Ram Manohar Lohia v. State of Bihar [Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] the question before this Court arose under a preventive detention order made under Rule 30 of the Defence of India Rules, which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. This Court set out the distinction between a mere law and order disturbance and a public order disturbance as follows : (SCR pp. 738-39 & 745-46 : AIR pp. 755 & 758-59, paras 42 & 51-52) "42. The Defence of India Act and the Rules speak of the conditions under which preventive detention under the Act can be ordered. In its long title and the preamble the Defence of India Act speaks of the necessity to provide for special measures to ensure public safety and interest, the defence of India and civil defence. The expression "public safety" and interest between them indicate the range of action for maintaining security, peace and tranquillity of India whereas the expressions "defence of India" and "civil defence" connote defence of India and its people against aggression from outside and action of persons within the country. These generic terms were used because the Act seeks to provide for a congeries of action of which preventive detention is just a small part. In conferring power to make rules, Section 3 of the Defence of India Act enlarges upon the terms of the preamble by specification of details. It speaks of defence of India and civil defence and public safety without change but it expands the idea of public interest into maintenance of public order, the efficient conduct of military operations and maintaining of supplies and services essential to the life of the community. Then it mentions by way of illustration in clause (15) of the same section the power of

> apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain (the authority empowered to detain not being lower in rank than that of a District Magistrate), suspects, on grounds appearing to that authority to be reasonable—
>
> (a) of being of hostile origin; or
>
> (b) of having acted, acting or being about to act or being likely to act in a manner prejudicial to—
>
> (i) the defence of India and civil defence;
>
> (ii) the security of the State;
>
> (iii) the public safety or interest;
>
> (iv) the maintenance of public order;
>
> (v) India's relations with foreign States;
>
> (vi) the maintenance of peaceful conditions in any part or area of India; or
>
> (vii) the efficient conduct of military operations.

It will thus appear that security of the State, public safety or interest, maintenance of public order and the maintenance of peaceful conditions in any part or area of India may be viewed separately even though strictly one clause may have an effect or bearing on another. Then follows Rule 30, which repeats the above conditions and permits detention of any person with a view to preventing him from acting in any of the above ways. The argument of Dr Lohia that the conditions are to be cumulatively applied is clearly untenable. It is not necessary to analyse Rule 30 which we quoted earlier and which follows the scheme of Section 3(15). The question is whether by taking power to prevent Dr Lohia from acting to the prejudice of "law and order" as against "public order" the District Magistrate went outside his powers.

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51. We have here a case of detention under Rule 30 of the Defence of India Rules which permits apprehension and detention of a person likely to act in a manner prejudicial to the maintenance of public order. It follows that if such a person is not detained public disorder is the apprehended result. Disorder is no doubt prevented by the maintenance of law and order also but disorder is a broad spectrum which includes at one end small disturbances and at the other the most serious and cataclysmic happenings. Does the expression "public order" take in every kind of disorders or only some of them? The answer to this serves to distinguish "public order" from "law and order" because the latter undoubtedly takes in all of them. Public order if disturbed, must lead to public disorder.

Every breach of the peace does not lead to public disorder. When two drunkards quarrel and fight there is disorder but not public disorder. They can be dealt with under the powers to maintain law and order but cannot be detained on the ground that they were disturbing public order. Suppose that the two fighters were of rival communities and one of them tried to raise communal passions. The problem is still one of law and order but it raises the apprehension of public disorder. Other examples can be imagined. The contravention of law always affects order but before if can be said to affect public order, it must affect the community or the public at large. A mere disturbance of law and order leading to disorder is thus not necessarily sufficient for action under the Defence of India Act but disturbances which subvert the public order are. A District Magistrate is entitled to take action under Rule 30(1)(b) to prevent subversion of public order but not in aid of maintenance of law and order under ordinary circumstances.

52. It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State. By using the expression "maintenance of law and order" the District Magistrate was widening his own field of action and was adding a clause to the Defence of India Rules." xxx xxx xxx

14. There can be no doubt that for "public order" to be disturbed, there must in turn be public disorder. Mere contravention of law such as indulging in cheating or criminal breach of trust certainly affects "law and order" but before it can be said to affect "public order", it must affect the community or the public at large." (Emphasis Supplied) f. Social and Economic Disorder

351. A significant expansion to the expression 'public order' by this Court is that disturbances in public order are not confined to traditional violent law-and-order breakdowns alone but that it also extends to social and economic disorders. In S. Bagavathy v. The State of Tamil Nadu reported in (2007) 2 CTC 207, the full Bench of the Madras High Court dealt with the constitutional validity of the Tamil Nadu Protection of Interests of Depositors, 1997 ("TNPID Act"), which was enacted to protect vulnerable depositors from fraudulent financial establishments that defaulted on repayments, causing public resentment. The legislative competence of the Act was challenged on the ground that banking is a Union subject.

352. The High Court, therefore, dealt with the question of whether the TNPID Act providing for companies to deposit money would qualify as 'banking activity' and therefore be rendered unconstitutional for being ultra vires of the power of the state legislature. In answering this question, the Court held that the Act's true nature was not to regulate banking, but to maintain public order and address delinquency in unincorporated finance, which falls under the State List. The State acted within its competence as parens patriae (guardian) to protect depositors.

353. Applying the test of potentiality of the Act to disturb the even tempo of community life, the High Court went on to hold that public order is the basic need in organised society and that every breach of tranquility in social or economic spheres may involve breach of public order where it shakes societal order. "122. All and every breach of tranquility, whether in social or economic sphere of life of citizens, would involve breach of public order and therefore, the field of the legislation of the State Government to enact appropriate legislation in the matter affecting economic and social disorders which ultimately shake the public order, unless and otherwise it is traceable to the security of the State, the use of any Naval, Military and Air Force or any other armed force of the Union of India, cannot be curtailed by the Court on the ground of legislative competency.

123. While the law and order forms the largest concentric circle and the next represents the public order, the smallest represents the security of the State. Therefore, every infraction of law must necessarily affect the public order. But, an Act affecting the law and order may not necessarily affect the public order. Likewise, an Act which may affect the public order need not necessarily affect the security of the State. Therefore, the true test is not the kind of disorder but the potentiality of the Act in question. One Act may affect only individuals, while the other though of a similar kind may have such an impact that it would disturb the even tempo of the life of the community [vide Arun Gosh v. State of West Bengal ((1970) 1 SCC 98].

124. But, this does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act for instance affecting the public order may have an impact that it would affect both public order and the security of the State. In such a case the power can be exercised on both grounds viz. disturbance of the public order and danger to the security of the State [Vide Kishori Mohan Bera v. State of West Bengal, (1972) 3 SCC 845, Nathulal Govindji Jhagada v. State of Gujarat, (1981) 22 Guj LR 503]. Therefore, the public order postulates a synonymous with public safety and public interest. Hence, the problem of the depositors is the problem of the public and it cannot be decided numerically.

125. A serious contention was raised to the effect that public order is one as stated in the statement of objects and reasons in Act 14 of 1982 and therefore, public order is totally a different concept; that there should be actual physical force to danger to life and property or there should be threat to life and property; and that since the framers of Constitution originally included preventive detention, but the same was subsequently taken away and in that context, public order should be looked into. But, we are unable to appreciate such contention, because the Apex Court in State of U.P. v. Sanjai Pratap Gupta, (2004) 8 SCC 591, following its earlier decision in Arun Gosh v. State of West Bengal, referred supra, held that Public order, law and order and the security of the State fictionally draw three concentric circles, the largest representing law and order, the next representing public order and the smallest representing security of the State. Every infraction of law must necessarily affect order, but an act affecting law and order may not necessarily also affect public order. Likewise, an act may affect public order, but not necessarily the security of the State. The true test is not the kind, but the potentiality of the act in question. One act may affect only individuals while the other, though of a similar kind, may have such an impact that it would disturb the even tempo of the life of the community. This does not mean that there can be no overlapping, in the sense that an act cannot fall under two concepts at the same time. An act, for instance, affecting public order may have an

impact that it would affect both public order and the security of the State.

126. It can, therefore, be concluded that the Tamil Nadu Act is traceable to Entry 1 of the State List. For this view support can also be had from the decision of the Apex Court in Romesh Thappar v. State of Madras, AIR 1950 SC 124 = (1950) 63 L.W. 929, wherein it is held as under:...

129. If that be so, under the facts and circumstances and the societal realities for enacting the impugned Act, which is intended to safeguard the social and economic interest of the innocent depositors, won't the grievance of the depositors which rippled violently unset the public order in the society creating a social and economic disorder? Answering affirmatively, we do find force in the submissions made on behalf of the State Government that the legislative competency of the State is traceable to Entry 1 of List II which deals with “public order” apart from Entry 32 which regulates the activities of the financial establishments, to monitor them to rescue the depositors.

130. Piercing the veil of legalese, the core question is the degree of social control imposed by the State and resisted at every turn by the financial establishments. In pith and substance, we are also satisfied that the impugned Act is meant for public safety and public interest and to regulate the unincorporated trading and finance. This leads to the next question whether public order includes public interest and public safety.

131. The sad situation of the depositors is that the high priority promise of independence laws directed to agrarian reforms rolled out from State legislatures in quick succession. Urban elite found it disadvantageous to invest their savings in agricultural land. It is said that Rent Restriction Acts were a disincentive for investment in urban house property. Gold Control measures dried up gold as a venue of investment of savings. Bank interests were discouraging. Social security in old age being niggardly or non-existent, there was fascinating attraction for deposits in non-banking companies.

132. On the other hand, the attempt of the financiers exploiting the anguish of the depositors, is nothing but a notorious abuse of the innocent desire of the depositors for higher rate of interest for the small savings that they invested, for which they have been given a small passbook as a token of their acknowledgment, which they consider as a passport for their children higher education in some cases, or wedding of daughters in some other, and as a policy medical insurance in the case of most of the aged retired depositors, but in reality, in all cases, an unsecured promise executed on a waste paper. The senior citizens above 80 years, senior citizens between 60 and 80 years, widows, handicapped, driven out by wards, retired Government servants and pensioners, living below the poverty line, and similarly placed persons constitute the community of depositors. If their grievance is not taken as public interest, or public safety, the words, ‘public safety’ and ‘public interest’ would be only dead letters. Is it not the duty of the State to curb such mismanagement and malpractice indulged by the financial establishments adopting unscrupulous attempt?

133. Obviously there is a social anguish to curb exploitation of the depositors by these financial establishments, to prevent and protect the precarious loss of the depositors and to recover the same as much as possible. The unsecured depositors themselves cannot, without the aid of the State, find a solution for their grief, by taking a recourse under the legal proceedings ordinarily available to

them, but for the impugned enactment. Otherwise, it would only render them to abandon their sugar coated promises and make recourse to conventional legal proceedings, incurring expenses for Court fee, advocate fee, apart from the inconvenience involved therein, meeting all technical objections, giving way for docket explosive litigations, without tasting the fruits of the same.

134. Is it possible for those depositors who lost everything in the hands of the financial establishments on the tempting and robing in schemes, to fight against these financial establishments on their legs, without any aid of the State? No. In our considered opinion, the State, has rightly come with an enactment to wipe away the tears of the innocent depositors and to protect their interest and also to attach the property immediately and to take effective steps to recover the amounts diverted and to return as much as possible to the persons who lost their savings, of course providing adequate machinery and guidelines for the same, by protecting the innocent depositors and also genuine third parties, whose properties are also attached.

135. The State being the custodian of the welfare of the subjects cannot be a silent spectator without finding a solution for this gruesome plague. The State therefore had to awake and protect the vulnerable sector from the evil hands of the financiers, who have no social responsibility, but with a lustful desire of easy money making promising attractive returns for the poor investors. The noxious net cast by the financial establishments was large and the State was rightly moved to stop this menace. Many a little makes a mickle, and those small sums collected from a substantial number of subscribers accumulated into huge resources for the financiers, who ultimately diverted their collections and converted the deposited amounts as assets in the names of third parties, and finally one day attempted to close the financial establishments, disappointing the innocent depositors. The grim picture of the entire episode enacted by financiers is nothing but to gamble upon the appetite of the innocent depositors for higher rate of interest and to steal out the entire sterilized savings of the innocent depositors diplomatically under the banner of white collar financial establishments, out of their appetite for higher rate of interest and finally to siphon of them in entirety. In the name of attractive rate of interest, the financiers adopted unique, modus operandi mesmerizing the depositors to deposit their hard earned money under different schemes, which are nothing but have an anti- social impact on the community at large. Then, is it not the responsibility of the welfare State, who have owed to establish/maintain socio-economic justice in the society?

136. If no law could be made to curb such activities of the financial establishments effectively and to realise the dues payable to the depositors, an anomalous situation would have been created, viz., these financial establishments would continue their business and divert the funds clandestinely by mala fide transferring and would siphon of the funds of the depositors, and finally would be prepared to face the penal action under Section 45-S or 58-B(5-A) of the Reserve Bank of India Act, 1934, as the case may be, taking advantage of the loopholes in committing such white collar offences. But, the depositors would be left in lurch, with no remedy. To permit such anomalous situation, in our opinion, would be contrary to the public interest. Therefore, the element of public order comes into play sustaining the impugned legislation under Entry 1 of the List II of VII Schedule.

137. It is settled law that the Courts are concerned only with the constitutionality, but not with the wisdom of the legislature or lack of the same which are essentially for the legislature to determine. The judicial deference to legislature in the instances of economic regulation is a well established principle borne out of the acceptance of reality and Courts, lacking the capacity to inform themselves fully, about the peculiarities of a particular local situation, should hesitate to dub the legislative classification as irrational, because legislative judgment may respond closely to local needs and Courts' familiarity to those needs may be limited, (vide: State of Gujarat v. Shri Ambica Mills Ltd., AIR 1974 SC 1300).

138. Statutes made for the public good ought to be liberally construed and in doing so, another principle should not be lost sight, namely, safety of the people is the supreme law. Salus Populi est suprema lex (safety of the people is the supreme). The Constitution is the documentation of founding faiths of the nation and the fundamental direction for the fulfillment. Therefore, it is not possible to deduce a limitation from something supposed to be inherent in the constitution itself. The spirit of Constitution therefore cannot prevail as against its letter. (vide: A.K. Gopalan v. State of Madras, 1950 SCC 228 : AIR 1950 SC 27). The legislative competence should be tested by the spirit of the enactment which vivifies but not by mere letter. The Courts are not at liberty to declare an act void based on elusive and unsafe guide.

139. The State, invoking the field of legislation under Public Order, Entry 1, List II, as a parent of the country, applying the Doctrine of Parens Patriae, is obligated to shoulder with the responsibilities in exercise of its sovereign power and to discharge its duties to protect the public interest." (Emphasis Supplied)

354. The above-referred decision of the Madras High Court in S. Bagavathy (supra) was subsequently upheld by this Court in New Horizon Sugar Mills Ltd. v. Govt. of Pondicherry, reported in (2012) 10 SCC 575, wherein this Court affirmed the validity of depositor-protection legislation and acknowledged that transaction integrity and protection of depositors can be deeply relevant to securing public order. It treated such legislation as relatable to Entry 1 of List II due to the societal destabilization caused by large-scale depositor frauds.

g. Proximate Nexus Requirement

355. Finally, even though "public order" has been consistently interpreted to be wide in connotation, this Court has also emphasized the requirement that restrictions or measures justified on public order grounds must have a real, proximate connection to the public order sought to be protected, and not a remote, hypothetical or far-fetched relation. This requirement was elaborately explained in Supdt., Central Prison v. Ram Manohar Lohia, reported in 1960 SCC OnLine SC 43 while interpreting the meaning of "in the interest of public order" in Article 19(2) of the Constitution, in the following paragraphs:

> "9. We shall now proceed to consider the constitutional validity of this section. The material portions of the relevant provisions of the Constitution may now be read:

> "19. (1) All citizens shall have the right—
>
> (a) to freedom of speech and expression; *** (2) Nothing in sub-clause (a) of clause (1) shall affect the operation of any existing law, or prevent the State from making any law, insofar as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-

clause in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence." clause (2) of Article 19 was amended by the Constitution (First Amendment) Act, 1951. By this amendment several new grounds of restrictions upon the freedom of speech have been introduced, such as friendly relations with foreign States, public order and incitement to an offence. It is self-evident and common place that freedom of speech is one of the bulwarks of a democratic form of Government. It is equally obvious that freedom of speech can only thrive in an orderly society clause (2) of Article 19, therefore, does not affect the operation of any existing law or prevent the State from making any law insofar as such law imposes reasonable restrictions on the exercise of the right of freedom of speech in the interest of public order, among others. To sustain the existing law or a new law made by the State under clause (2) of Article 19, so far as it is relevant to the present enquiry, two conditions should be complied with viz. (i) the restrictions imposed must be reasonable; and (ii) they should be in the interests of public order. Before we consider the scope of the words of limitation, "reasonable restrictions" and "in the interests of", it is necessary to ascertain the true meaning of the expression "public order" in the said clause. The expression "public order" has a very wide connotation. Order is the basic need in any organised society. It implies the orderly state of society or community in which citizens can peacefully pursue their normal activities of life. In the words of an eminent Judge of the Supreme Court of America "the essential rights are subject to the elementary need for order without which the guarantee of those rights would be a mockery". The expression has not been defined in the Constitution, but it occurs in List II of its Seventh Schedule and is also inserted by the Constitution (First Amendment) Act, 1951 in clause (2) of Article 19. The sense in which it is used in Article 19 can only be appreciated by ascertaining how the Article was construed before it was inserted therein and what was the defect to remedy which the Parliament inserted the same by the said amendment. The impact of clause (2) of Article 19 on Article 19(1)(a) before the said amendment was subject to judicial scrutiny by this Court in Romesh Thappar v. State of Madras [(1950) SCR 594, 600, 601, 602] . There the Government of Madras, in exercise of their powers under Section 9(1- A) of the Madras Maintenance of Public Order Act, 1949, purported to issue an order whereby they imposed a ban upon the entry and circulation of the journal called the "Cross Roads" in that State. The petitioner therein contended that the said order contravened his fundamental right to freedom of speech and expression. At the time when that order was issued the expression "public order" was not in Article 19(2) of the Constitution; but the words "the security of the State" were there. In considering whether the impugned Act was made in the interests of security of the State, Patanjali Sastri, J., as he then was, after citing the observation of Stephen in his Criminal Law of England, states:

> "Though all these offences thus involve disturbances of public tranquillity and are in theory offences against public order, the difference between them being only a

difference of degree, yet for the purpose of grading the punishment to be inflicted in respect of them they may be classified into different minor categories as has been done by the Indian Penal Code. Similarly, the Constitution, in formulating the varying criteria for permissible legislation imposing restrictions on the fundamental rights enumerated in Article 19(1), has placed in a distinct category those offences against public order which aim at undermining the security of the State or overthrowing it, and made their prevention the sole justification for legislative abridgement of freedom of speech and expression, that is to say, nothing less than endangering the foundations of the State or threatening its overthrow could justify curtailment of the rights to freedom of speech and expression ...." The learned Judge continued to state:

"The Constitution thus requires a line to be drawn in the field of public order or tranquillity marking off, may be, roughly, the boundary between those serious and aggravated forms of public disorder which are calculated to endanger the security of the State and the relatively minor breaches of the peace of a purely local significance, treating for this purpose differences in degree as if they were differences in kind." The learned Judge proceeded further to state:

"We are therefore of opinion that unless a law restricting freedom of speech and expression is directed solely against the undermining of the security of the State or the overthrow of it, such law cannot fall within the reservation under clause (2) of Article 19, although the restrictions which it seeks to impose may have been conceived generally in the interests of public order." This decision establishes two propositions viz. (i) maintenance of public order is equated with maintenance of public tranquillity; and (ii) the offences against public order are divided into two categories viz.

(a) major offences affecting the security of the State, and (b) minor offences involving breach of purely local significance. This Court in Brij Bhushan v. State of Delhi [(1950) SCR 605] followed the earlier decision in the context of Section 7(1)(c) of the East Punjab Public Safety Act, 1949. Fazl Ali, J., in his dissenting judgment gave the expression "public order" a wider meaning than that given by the majority view. The learned Judge observed at p. 612 thus:

"When we approach the matter in this way, we find that while 'public disorder' is wide enough to cover a small riot or an affray and other cases where peace is disturbed by, or affects, a small group of persons, 'public unsafety' (or insecurity of the State), will usually be connected with serious internal disorders and such disturbances of public tranquillity as jeopardize the security of the State." This observation also indicates that "public order" is equated with public peace and safety. Presumably in an attempt to get over the effect of these two decisions, the expression "public order" was inserted in Article 19(2) of the Constitution by the Constitution (First Amendment) Act, 1951, with a view to bring in offences involving breach of

purely local significance within the scope of permissible restrictions under clause (2) of Article 19. After the said amendment, this Court explained the scope of Romesh Thapper's case [(1950) SCR 594, 600, 601, 602] in State of Bihar v. Shailabala Devi [(1952) 2 SCC 22 : (1952) SCR 654] . That case was concerned with the constitutional validity of Section 4(1)(a) of the Indian Press (Emergency Powers) Act, 1931. It deals with the words or signs or visible representations which incite to or encourage, or tend to incite to or encourage the commission of any offence of murder or any cognizable offence involving violence. Mahajan, J., as he then was, observed at p. 660:

"The deduction that a person would be free to incite to murder or other cognizable offence through the press with impunity drawn from our decision in Romesh Thapper case could easily have been avoided as it was avoided by Shearer, J., who in very emphatic terms said as follows:

'I have read and re-read the judgments of the Supreme Court, and I can find nothing in them myself which bear directly on the point at issue, and leads me to think that, in their opinion, a restriction of this kind is no longer permissible.'" The validity of that section came up for consideration after the Constitution (First Amendment) Act, 1951, which was expressly made retrospective, and therefore the said section clearly fell within the ambit of the words "in the interest of public order". That apart the observations of Mahajan, J., as he then was, indicate that even without the amendment that section would have been good inasmuch as it aimed to prevent incitement to murder.

10. The words "public order" were also understood in America and England as offences against public safety or public peace. The Supreme Court of America observed in Cantewell v. Connecticut [(1940) 310 US 296, 308] thus:

"The offence known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquillity. It includes not only violent acts and words likely to produce violence in others. No one would have the hardihood to suggest that the principle of freedom of speech sanctions incitement to riot ... When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious." The American decisions sanctioned a variety of restrictions on the freedom of speech in the interests of public order. They cover the entire gamut of restrictions that can be imposed under different heads in Article 19(2) of our Constitution. The following summary of some of the cases of the Supreme Court of America given in a well-known book on Constitutional law illustrates the range of categories of cases covering that expression. "In the interests of public order, the State may prohibit and punish the causing of 'loud and raucous noise' in streets and public places by means of sound amplifying instruments, regulate the hours and place of public discussion, and the use of the public streets for

> the purpose of exercising freedom of speech; provide for the expulsion of hecklers from meetings and assemblies, punish utterances tending to incite an immediate breach of the peace or riot as distinguished from utterances causing mere 'public inconvenience, annoyance or unrest'". In England also Acts like Public Order Act, 1936, Theatres Act, 1843 were passed : the former making it an offence to use threatening, abusive or insulting words or behaviour in any public place or at any public meeting with intent to provoke a breach of the peace or whereby a breach of the peace is likely to be caused, and the latter was enacted to authorise the Lord Chamberlain to prohibit any stage play whenever he thought its public performance would militate against good manners, decorum and the preservation of the public peace. The reason underlying all the decisions is that if the freedom of speech was not restricted in the manner the relevant Acts did, public safety and tranquillity in the State would be affected.
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> 11. But in India under Article 19(2) this wide concept of "public order" is split up under different heads. It enables the imposition of reasonable restrictions on the exercise of the right to freedom of speech and expression in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. All the grounds mentioned therein can be brought under the general head "public order" in its most comprehensive sense.

But the juxtaposition of the different grounds indicates that, though sometimes they tend to overlap, they must be ordinarily intended to exclude each other. "Public order" is therefore something which is demarcated from the others. In that limited sense, particularly in view of the history of the amendment, it can be postulated that "public order" is synonymous with public peace, safety and tranquillity.

12. The next question is what do the words "interest of public order" mean? The learned Advocate-General contends that the phrase "in the interest of public order" is of a wider connotation than the words "for the maintenance of public order" and, therefore, any breach of law which may have the tendency, however remote, to disturb the public order would be covered by the said phrase. Support is sought to be drawn for this wide proposition from the judgment of this Court in Ramji Lal Modi v. State of U.P. [(1957) SCR 860] It is not necessary to state the facts of that case, as reliance is placed only on the observations of Das, C.J., at p. 865, which read:

> "It will be noticed that the language employed in the amended clause is 'in the interests of' and not 'for the maintenance of'. As one of us pointed out in Debi Saron v. State of Bihar [AIR (1954) Pat 254] the expression 'in the interests of' makes the ambit of the protection very wide. A law may not have been designed to directly maintain public order and yet may have been enacted in the interests of public order." The learned Chief Justice again in Virendra v. State of Punjab [(1958) SCR 308] observed, at p. 317, much to the same effect:

> "As has been explained by this Court in Ramji Lal Modi v. State of U.P. [(1957) SCR 860] the words 'in the interests of' are words of great amplitude and are much wider than the words 'for the maintenance of'. The expression 'in the interests of' makes the ambit of the protection very wide, for a law may not have been designed to directly maintain the public order or to directly protect the general public against any particular evil and yet it may have been enacted "in the interests of" the public order or the general public as the case may be." We do not understand the observations of the Chief Justice to mean that any remote or fanciful connection between the impugned Act and the public order would be sufficient to sustain its validity. The learned Chief Justice was only making a distinction between an Act which expressly and directly purported to maintain public order and one which did not expressly state the said purpose but left it to be implied therefrom; and between an Act that directly maintained public order and that indirectly brought about the same result. The distinction does not ignore the necessity for intimate connection between the Act and the public order sought to be maintained by the Act.

13. Apart from the said phrase, another limitation in the clause, namely, that the restrictions shall be reasonable, brings about the same result. The word "reasonable" has been defined by this Court in more than one decision. It has been held that in order to be reasonable, "restrictions must have reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object". The restriction made "in the interests of public order" must also have reasonable relation to the object to be achieved i.e. the public order. If the restriction has no proximate relationship to the achievement of public order, it cannot be said that the restriction is a reasonable restriction within the meaning of the said clause. A Full Bench decision of the Federal Court in Rex v. Basudeva [AIR (1950) FC 67] contains some observations which give considerable assistance to construe the words. In that case, the appellant was detained in pursuance of the order made by the Government of U.P. under the U.P. Prevention of Black-Marketing (Temporary Powers) Act, 1947. The question was whether the preventive detention provided for in Section 3(1)(i) of the said Act was preventive detention for reasons connected with the maintenance of public order. The argument in that case ran on the same lines as in the present case. The learned Advocate-General there urged that habitual black-marketing in essential commodities was bound sooner or later to cause a dislocation of the machinery of controlled distribution which, in turn, might lead to breaches of the peace and that, therefore, detention with a view to prevent such black-marketing was covered by the entry. Answering that argument, Patanjali Sastri, J. as he then was, pointed out, at p. 69:

> "Activities such as these are so remote in the chain of relation to the maintenance of public order that preventive detention on account of them cannot, in our opinion, fall within the purview of Entry I of List II. ... The connection contemplated must, in our view, be real and proximate, not far- fetched or problematical." The decision, in our view, lays down the correct test. The limitation imposed in the interests of public order to be a reasonable restriction, should be one which has a proximate connection or nexus with public order, but not one far-fetched, hypothetical or problematical or too remote in the chain of its relation with the public order.

(Emphasis Supplied) h. Public Order in the Age of Internet, Computer, and Cyber Laws

356. This Court has also addressed the meaning and limits of public order in the context of internet-based communication and cyber regulation in Shreya Singhal v. Union of India, reported in (2015) 5 SCC 1, which examined the constitutionality of Section 66A of the Information Technology Act, 2000. While analyzing whether restrictions on online speech could be justified under Article 19(2), the Court reiterated that "public order" remains rooted in its traditional meaning, namely the state of tranquillity which prevails amongst members of a political society as a result of internal regulations enforced by the government. Referring back to Romesh Thappar (supra), Supt., Central Prison (supra), and Arun Ghosh (supra), the Court emphasized that this expression has a specific constitutional history and cannot be expanded to justify restrictions on speech lacking any proximate connection to disturbance of community life.

"Public order

33. In Article 19(2)(as it originally stood) this sub-head was conspicuously absent. Because of its absence, challenges made to an order made under Section 7 of the Punjab Maintenance of Public Order Act and to an order made under Section 9(1)(a) of the Madras Maintenance of Public Order Act were allowed in two early judgments by this Court. Thus, in Romesh Thappar v. State of Madras [Romesh Thappar v. State of Madras, 1950 SCR 594 : 1950 SCC 436 : AIR 1950 SC 124 : (1950) 51 Cri LJ 1514] , this Court held that an order made under Section 9(1)(a) of the Madras Maintenance of Public Order Act (23 of 1949) was unconstitutional and void in that it could not be justified as a measure connected with security of the State. While dealing with the expression "public order", this Court held that "public order" is an expression which signifies a state of tranquility which prevails amongst the members of a political society as a result of the internal regulations enforced by the Government which they have established.

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36. In Supt., Central Prison v. Ram Manohar Lohia [Supt., Central Prison v. Ram Manohar Lohia, (1960) 2 SCR 821 : AIR 1960 SC 633 : 1960 Cri LJ 1002] , this Court held that public order is synonymous with public safety and tranquility; it is the absence of disorder involving breaches of local significance in contradistinction to national upheavals, such as revolution, civil strife, war, affecting the security of the State. This definition was further refined in Ram Manohar Lohia v. State of Bihar [Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] , where this Court held : (SCR p. 746 D-E : AIR pp. 758-59, para 52) "It will thus appear that just as 'public order' in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting 'security of State', 'law and order' also comprehends disorders of less gravity than those affecting 'public order'. One has to imagine three concentric circles.

Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State."

37. In Arun Ghosh v. State of W.B. [(1970) 1 SCC 98 :

> 1970 SCC (Cri) 67 : (1970) 3 SCR 288] , Ram Manohar Lohia case [Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] was referred to with approval in the following terms :
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> (SCC pp. 99-100, para 3 : SCR pp. 290-91) "... In Ram Manohar Lohia case [Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] this Court pointed out the difference between maintenance of law and order and its disturbance and the maintenance of public order and its disturbance. Public order was said to embrace more of the community than law and order. Public order is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. Take for instance, a man stabs another. People may be shocked and even disturbed, but the life of the community keeps moving at an even tempo, however much one may dislike the act. Take another case of a town where there is communal tension. A man stabs a member of the other community. This is an act of a very different sort. Its implications are deeper and it affects the even tempo of life and public order is jeopardised because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Take the case of assault on girls. A guest at a hotel may kiss or make advances to half a dozen chamber maids. He may annoy them and also the management but he does not cause disturbance of public order. He may even have a fracas with the friends of one of the girls but even then it would be a case of breach of law and order only. Take another case of a man who molests women in lonely places. As a result of his activities girls going to colleges and schools are in constant danger and fear. Women going for their ordinary business are afraid of being waylaid and assaulted. The activity of this man in its essential quality is not different from the act of the other man but in its potentiality and in its effect upon the public tranquillity there is a vast difference. The act of the man who molests the girls in lonely places causes a disturbance in the even tempo of living which is the first requirement of public order. He disturbs the society and the community. His act makes all the women apprehensive of their honour and he can be said to be causing disturbance of public order and not merely committing individual actions which may be taken note of by

> the criminal prosecution agencies. It means therefore that the question whether a man has only committed a breach of law and order or has acted in a manner likely to cause a disturbance of the public order is a question of degree and the extent of the reach of the act upon the society. The French distinguish law and order and public order by designating the latter as order publique. The latter expression has been recognised as meaning something more than ordinary maintenance of law and order. Justice Ramaswami in Pushkar Mukherjee v. State of W.B. [(1969) 1 SCC 10] drew a line of demarcation between the serious and aggravated forms of breaches of public order which affect the community or endanger the public interest at large from minor breaches of peace which do not affect the public at large. He drew an analogy between public and private crimes. The analogy is useful but not to be pushed too far. A large number of acts directed against persons or individuals may total up into a breach of public order. In Ram Manohar Lohia case [Ram Manohar Lohia v. State of Bihar, (1966) 1 SCR 709 : AIR 1966 SC 740 : 1966 Cri LJ 608] examples were given by Sarkar, and Hidayatullah, JJ. They show how similar acts in different contexts affect differently law and order on the one hand and public order on the other. It is always a question of degree of the harm and its effect upon the community. The question to ask is : Does it lead to disturbance of the current of life of the community so as to amount to a disturbance of the public order or does it affect merely an individual leaving the tranquillity of the society undisturbed? This question has to be faced in every case on facts. There is no formula by which one case can be distinguished from another."

38. This decision lays down the test that has to be formulated in all these cases. We have to ask ourselves the question : does a particular act lead to disturbance of the current life of the community or does it merely affect an individual leaving the tranquility of society undisturbed? Going by this test, it is clear that Section 66-A is intended to punish any person who uses the internet to disseminate any information that falls within the sub-clauses of Section 66-A. It will be immediately noticed that the recipient of the written word that is sent by the person who is accused of the offence is not of any importance so far as this section is concerned. (Save and except where under sub-clause

(c) the addressee or recipient is deceived or misled about the origin of a particular message.) It is clear, therefore, that the information that is disseminated may be to one individual or several individuals. The section makes no distinction between mass dissemination and dissemination to one person. Further, the section does not require that such message should have a clear tendency to disrupt public order. Such message need not have any potential which could disturb the community at large. The nexus between the message and action that may be taken based on the message is conspicuously absent—there is no ingredient in this offence of inciting anybody to do anything which a reasonable man would then say would have the tendency of being an immediate threat to public safety or tranquillity. On all these counts, it is clear that the section has no proximate relationship to public order whatsoever. The example of a guest at a hotel "annoying" girls is telling—this Court has held that mere "annoyance" need not cause disturbance of public order. Under Section 66-A, the offence is complete by sending a message for the purpose of causing annoyance, either "persistently" or otherwise without in any manner impacting public order.

39. It will be remembered that Holmes, J.

in Schenck v. United States [63 L Ed 470 : 249 US 47 (1919)] , enunciated the clear and present danger test as follows : (L Ed pp. 473-74) "... The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. Gompers v. Buck's Stove & Range Co. [221 US 418 : 31 S Ct 492 : 55 L Ed 797 : 34 LRA (NS) 874 (1911)] , US p. 439.

The question in every case is whether the words used are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent. It is a question of proximity and degree."

40. This was further refined in Abrams v. United States [250 US 616 : 63 L Ed 1173 (1919)] , this time in a Holmesian dissent, to be clear and imminent danger. However, in most of the subsequent judgments of the US Supreme Court, the test has been understood to mean to be "clear and present danger". The test of "clear and present danger" has been used by the US Supreme Court in many varying situations and has been adjusted according to varying fact situations. It appears to have been repeatedly applied, see Terminiello v. Chicago [93 L Ed 1131 : 337 US 1 (1949)], L Ed at pp. 1134-35, Brandenburg v. Ohio [23 L Ed 2d 430 : 395 US 444 (1969)] , L Ed 2d at pp. 434- 35 & 436, Virginia v. Black [155 L Ed 2d 535 : 538 US 343 (2003)] , L Ed 2d at pp. 551, 552 and 553 [In its present form the clear and present danger test has been reformulated to say that: "The constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Interestingly, the US Courts have gone on to make a further refinement. The State may ban what is called a "true threat". "True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." "The speaker need not actually intend to carry out the threat. Rather, a prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. Intimidation in the constitutionally proscribable sense of the word is a type of true threat, where a speaker directs a threat to a person or group of persons with the intent of placing the victim in fear of bodily harm or death."[See Virginia v. Black, 155 L Ed 2d 535 : 538 US 343 (2003) and Watts v. United States, 22 L Ed 2d 664 at p. 667 : 394 US 705 (1969)]] .

41. We have echoes of it in our law as well—S. Rangarajan v. P. Jagjivan Ram [(1989) 2 SCC 574] , SCC at para 45 : (SCC pp. 595-96) "45. The problem of defining the area of freedom of expression when it appears to conflict with the various social interests enumerated under Article 19(2) may briefly be touched upon here. There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered.

The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression. The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a 'spark in a power keg'." xxx xxx xxx

43. In Ramji Lal Modi v. State of U.P. [1957 SCR 860 :

> AIR 1957 SC 620 : 1957 Cri LJ 1006] , SCR at p. 867, this Court upheld Section 295-A of the Penal Code only because it was read down to mean that aggravated forms of insults to religion must have a tendency to disrupt public order. Similarly, in Kedar Nath Singh v. State of Bihar [1962 Supp (2) SCR 769 : AIR 1962 SC 955 : (1962) 2 Cri LJ 103] , Section 124-A of the Penal Code, 1860 was upheld by construing it narrowly and stating that the offence would only be complete if the words complained of have a tendency of creating public disorder by violence. It was added that merely creating disaffection or creating feelings of enmity in certain people was not good enough or else it would violate the fundamental right of free speech under Article 19(1)(a). Again, in Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte [(1996) 1 SCC 130] , Section 123(3-A) of the Representation of the People Act was upheld only if the enmity or hatred that was spoken about in the section would tend to create immediate public disorder and not otherwise.

44. Viewed at, either by the standpoint of the clear and present danger test or the tendency to create public disorder, Section 66-A would not pass muster as it has no element of any tendency to create public disorder which ought to be an essential ingredient of the offence which it creates.

(Emphasis Supplied)

357. Shreya Singhal (supra) establishes that even in the digital age, online speech can be restricted on public-order grounds in circumstances where it poses a clear and present danger to public tranquillity, incites imminent violence or lawless action, or constitutes a true threat producing fear or disrupting public order.

i. Ingredients of Public Order Culled Out

358. In light of the above, public order may be said to comprise the following constituent elements:

> a) A state of tranquility prevailing amongst members of a political society as a result of internal regulations enforced by the Government;
>
> b) The absence of disorder
>
> c) A positive condition of peaceful, ordered social existence enabling normal civic life;

d) Public order denotes an orderly state of society and community in which citizens may peacefully pursue their normal activities of life;

e) Public order is reflected in the "even tempo" of life in a locality. Therefore, conduct that maintains or secures this even tempo falls within the realm of public order regulation;

f) Public safety or interest may, depending upon context, be legitimately invoked in its relation to the maintenance of public order to support legislative action preserving public order;

g) Public order occupies a constitutional position between the widest circle of "law and order" and the narrowest circle of "security of the State", signifying a broader societal impact rather than individual disturbances but less in magnitude when compared to threats to security of the State.

359. Correspondingly, disruption or disturbance of public order public order arises in the following situations:

a) An act disturbs public order when it affects the current or even tempo of the life of the community, rather than merely injuring an individual;

b) When repercussions of an act extend to large sections of the community, inciting further breaches of law and order or provoking communal passions, public order is subverted;

c) Activities that impair public health or constitute a manifest nuisance fall squarely within the State's competence under public order;

d) Activities that cause detriment of health, tranquility and comfort of others;

e) If something disturbs the current of the life of the community, and does not merely affect an individual;

f) Conduct which induces fear or panic in the community such that ordinary pursuits of life are abandoned becomes a matter of public order even if the immediate act is aimed at a particular individual;

g) Disturbances in the social or economic spheres that shake the orderly functioning of society, including large-

scale financial defaults undermining public confidence, may also constitute breach of public order.

360. We shall now discuss in light of the principles condensed from the various judgments of this Court referred to above, whether the widespread prevalence and rampant online gaming involving betting and gambling poses a serious threat to public order.

361. First and foremost, it cannot be denied that there is an involvement of the public at large, throughout the length and breadth of the country, indulging in staking money in online gaming and fantasy gaming. Consequently, the whole online money gaming sector has boomed, and the activity of betting and gambling has been normalized to a large extent. Statistics would go on to show that the accessibility of these games is so penetrative that a large number of the players come from rural backgrounds and often from lower income groups. Therefore, it cannot be denied that the public, at large, is involved in online money gaming. With the growth of technology, the mischief that the Public Gambling Act sought to curb i.e. prevent the rise of common gambling houses, has gone completely in vain as every mobile phone is now a virtual common gambling house as well as the instrument of gaming.

362. Therefore, in terms of addiction, in terms of monetary losses and in terms of resultant widespread suicides, online money gaming has a definite impact on the public. When such is the case, it has to be recognized that online money gaming has been disturbing the tranquility of the public by making betting and gambling more normalized and accessible. Therefore, public tranquility is breached and consequently, the States would have competence to invoke public order and seek to curb the mischief and restore public tranquility.

363. The even tempo of the life of the community is facing hindrance as there is widespread monetary losses as well as addiction. Such losses and addiction are not limited to individuals and have turned out to be common. There are huge repercussions on large sections of the community who have access to a mobile phone and instant payment gateways. These Sections of the community often tend to deviate from the ordinary pursuits of life and are drawn into the world of false hope, based on the premise of instant gratification in terms of monetary gain, which normalizes their risk appetite. Therefore, the States are competent to curb this mischief as it poses a grave threat to public tranquility. The Gujarat High Court had expressed concerns over the Youth falling prey to Internet Gambling, in the judgment titled Amit M. Nair v. State of Gujarat reported in AIR OnLine 2020 Guj 2072 wherein the Court observed the following:

> “Internet gambling presents essentially many of the same concerns that the traditional gambling activities have raised throughout the years: uneasiness about the morality of the activity; the likelihood of addiction; the possibility of fraud; and the conflict between the state versus central regulations. The questions of morality primarily surface in connection with the Internet gambling's accessibility to children because children have potentially unlimited access to the computers and the Internet. It is possible that without proper monitoring they may access to the gambling Websites as readily as they could access the indecent materials. The supporters of a ban of Internet gambling maintain that outlawing the activity for all individuals is the only way to ensure that a segment of the population, children, will be adequately protected from corruption.” (Emphasis Supplied)

364. Moreover, the addiction and depression that stems from indulging in online money gaming and the frequent suicides that are reported would go on to indicate that this poses a widespread public health issue as well. As seen from the above decisions, any activity that is detrimental to public health and impairs public health or constitutes a manifest nuisance would fall squarely within the State's competence under public order.

365. Even though public health is a separate legislative head, yet the State can justify its legislative competence under public order itself since the mischief sought to be curbed poses a threat to public mental health at large, which will ultimately fall under the domain of 'public order'. Similarly, though it might look as if only an individual is affected, the cascading effect nevertheless affects ultimately the entire community, which poses a threat to very existence of order and the concept of welfare state.

366. This Court has recently recognized the right to mental health to be an integral part of right to life, in its judgment in Sukdeb Saha v. State of Andhra Pradesh, reported in 2025 INSC 893. When mental health has now been put at such a high pedestal, it would be the bounden duty of all the State to protect and enforce such rights and to ensure that activities that are detrimental to public mental health are curbed.

367. Recourse is made to RMDC-I (supra) again to establish how betting and gambling can never find a place in a welfare state and how such activity poses a threat to health, livelihood and the vision of the Constitution makers:

> "36. The avowed purpose of our Constitution is to create a welfare State. The directive principles of State policy set forth in Part IV of our Constitution enjoin upon the State the duty to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It is the duty of the State to secure to every citizen, men and women, the right to an adequate means of livelihood and to see that the health and strength of workers, men and women, and the tender age of children are not abused, to protect children and youths against exploitation and against moral and material abandonment. It is to be the endeavour of the State to secure a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, to protect the weaker sections of the people from social injustice and all forms of exploitation, to raise the standard of living of its people and the improvement of public health. The question canvassed before us is whether the Constitution makers who set up such an ideal of a welfare State could possibly have intended to elevate betting and gambling on the level of country's trade or business or commerce and to guarantee to its citizens the right to carry on the same. There can be only one answer to the question." (Emphasis Supplied)

368. Ms. Anjali Nagpal, a neuropsychiatrist who has studied the issue closely, said 'gambling disorder' is silently becoming an epidemic in India and is being normalized. "When favorite

celebrities openly promote them across social media, youngsters start to feel less like [it's] a risky activity and more like a trendy thing to do. It creates a false sense of security and on seeing their heroes endorsing it, their thought is: 'How bad can it be?" Nagpal said in an interview reported on DW, a popular international news broadcaster.

369. In her reckoning, the cycle starts small after a few wins that trigger a dopamine rush, making players feel accomplished.

"But as they chase bigger rewards, they get pulled in deeper, often without realizing it. Even after losing, the memory of those early victories keeps them hooked, fuelling an endless cycle," said Ms. Nagpal.

"The consequences include heavy financial losses, debt, family pressure, and constant disappointment which take a severe toll on mental health. It should be dealt strictly and promptly with stronger laws," added Ms. Nagpal.

370. We shall now demonstrate how the two States have sought to prevent this moral and material abandonment, mental degradation and prevent the exploitation of youth and their hard-earned money.

371. The State of Tamil Nadu categorically laid down that wagering or betting on any game using cyberspace and a computer system would constitute gaming under the act and whosoever engages in such gaming or facilitates such gaming would be liable for punishment in the form of imprisonment and fine under Section 3A of the 1930 Gaming Act.

372. Prior to the amendment, Section 11 of the 1930 Gaming Act had protected games of skill by an express carve out clause that exempted the application of the Act to games of mere skill.

373. In lieu of the Amendment, this protection clause was removed. The State of Tamil Nadu took this decision to curb the rampant rise of online betting and gambling, which the 1930 Act could not have foreseen. The State exercised their legislative power and applied their wisdom to counter this growing menace. By removing the protection clause and amending the definition of gaming to extend to cyberspace as well, the State has made it an offence to wager or bet on any game, which includes a game of skill.

374. The Karnataka Legislative Assembly wanted to curb the menace of online betting and gambling and therefore amended the provisions of the 1963 Police Act. The consequences of the amendments are as follows:

> a) The platforms of the online gaming companies, which are virtual software applications, were brought under the ambit of common gaming houses by amending the definition of the phrase "place".

b) Computers, mobile phones, internet and cyberspace have now been brought under the ambit of the definition "instruments of gaming".

c) The phrase "gaming" under Section 2(7), means all forms of wagering or betting using money, tokens valued in terms of money and every other form of virtual currency and electronic transfer of funds. The explanation to the provision makes it very clear that collection, soliciting, receipt or distribution, any act or risking money, or otherwise on the unknown result of an event including on a game of skill would constitute wagering or betting and would therefore squarely fall within the definition of gaming.

d) Section 2(12A) introduces the definition for online gaming. The provision makes it very clear that all forms of gaming, as defined under Section 2(7), when played with instruments of gaming like computers, applications and mobile phones or other virtual platforms, would constitute online gaming.

e) Section 78(1)(a) of the 1963 Police Act makes it an offence for the owner and occupier of online gaming platforms that involve betting or wagering, and which is opened for the purpose of gaming. When such a platform is used for the following two purposes (as given in sub-clause (vi) and (vii)), then the offender is liable to be imprisoned for a period of upto one year or fine or both.

f) Therefore, from the above provision, it is abundantly clear that when money is risked on an uncertain event, even while playing a game of skill, it would constitute an offence under the 1963 Police Act.

g) Section 176 of the 1963 Police Act saved the application of Sections 79 and 80 respectively to games of skill.

Previously, the provision extended protection to wagering or betting on games of skill as well. Now, only games of skill are protected under the 1963 Police Act and wagering or betting on games of skill is not covered by the protection.

h) Any offence committed under Section 78 would now be cognizable and non-bailable in lieu of Section 128A of the 1963 Police Act.

375. Therefore, an assessment of the two Acts along with their Statement of Objects and Reasons, would go on to establish that there is a proximate relation between the said Acts and the mischief they seek to curb and therefore, public order can be invoked to satisfy the competence of the States to enact the impugned legislations. The States have merely taken an effort to enforce the vision of the Constituent Assembly by seeking to protect the future and livelihood of the Population.

H. CONCLUSION

376. In lieu of the aforesaid discussion, we summarize our findings as follows:

a) The High Court of Madras and the High Court of Karnataka respectively committed an egregious error in giving a very narrow interpretation to Entry 34 of the List II. Both the High Courts failed to take into account the power intended to be bestowed upon the State Legislature under the said Entry by the framers of the Constitution. This has rendered both the States powerless to prohibit the activity of betting and gambling.

b) A natural corollary of the observations made by this Court in RMDC-II (supra) is that if games of substantial skill are conducted in a manner that they start to pose a severe threat and problems for the State or cause harm to the public, then the State will not be powerless to regulate such games of substantial skill as well. In the present case, since betting on games of skill is posing a serious threat to the State and the well-being of the masses, such betting would not enjoy immunity merely because it is taking place on a game of skill.

c) There was no occasion for this Court to consider the scope of the term "betting" as it appears in the expression "betting and gambling" in Entry 34 List II, and also the nature of the conjunction "and" joining the two words, while rendering the decisions in RMDC-I (supra) and RMDC-II (supra) respectively.

d) While it may be true that games of skill may not get covered by the expression "gambling", it is not correct to say that even "betting" on games of skill would be out of the competence of the State Legislature to legislate upon.

e) In K.R. Lakshmanan (supra), the scope of the expression "betting and gambling" as appearing in Entry 34 was not the subject matter of determination, rather, the issue pertained to whether horse racing would be entitled to the protection of the exception that the State Legislature had itself carved out for games of "mere skill" under Section 49 of the 1963 Police Act and Section 11 of the 1930 Gaming Act respectively.

f) The decision in K.R. Lakshmanan (supra) has no application to cases like the one at hand where the State Legislature, in its wisdom, has deemed it appropriate to regulate games where monetary stakes are involved, without affording any special protection to games of mere skill.

g) A reading of the decision in K.R. Lakshmanan (supra) also indicates that the Court therein considered the manner in which the Club operated and conducted the horse-races, as well as the process by which wagering/betting happened. The observations of the Court clearly indicate that the entire process of conducting races and betting on them was highly regulated and organized, which is very different from the uncertainty and veil of invisibility associated with online gaming activities, whether of skill or of chance.

h) The finding in the impugned judgments that the expression "betting and gambling" ought to be interpreted as "betting on gambling" is a clear Constitutional aberration, tinkering with the Constitution or actually rewriting the Constitutional text which Courts are not legally entitled to do.

i) The expression "betting and gambling" cannot be split to mean that the staking angle alone would amount to betting whereas the risk angle or the chance element would amount to gamble. Both betting and gambling involve the aspect of staking money on an uncertainty. Merely because the risk element is commonly perceived as "taking a chance", it cannot mean that an expression would cover only games of chances.

j) The protection afforded to games of skill under Entry 34 cannot be construed as protection to betting on games of skill, which essentially becomes a gambling enterprise.

k) When the element of betting and gambling enters the picture, the nature of the game ceases to be of relevance. The common aspect of addiction and the desire to gain more and more looms large wherever staking money on an uncertain event is involved. When such is the case, there is no question of manifest arbitrariness since the States have always been permitted to regulate or prohibit betting and gambling.

l) The occasion for testing the impugned legislations on proportionality does not arise as activities encompassed under "betting and gambling" are in the nature of res extra commercium, and the plain reading of the two RMDC (supra) decisions also suggests that no one can claim a fundamental right in operating an activity which is extra commercium.

m) Games of skill would be protected by the constitutional guarantee laid down under Article 19, but betting or wagering on any game, be it a game of skill, would not be entitled to receive any such protection, unless the Legislature creates an exception in favour of such betting on games of skill.

n) The competence of the State to regulate certain activity also enables it to prohibit the same activity, subject to Part III of the Constitution, if applicable. The 2021 Amendment has not provided a sweeping definition or a "Midas touch". It has merely brought every form of betting and gambling under its sweep, and for that the States are empowered under Entry 34 List II. In absence of availability of the protection of Article 19, total prohibition would not be hit by the test of proportionality.

o) The phrase "gaming" cannot be said to be nomen juris.

The phrase "gaming" is a statutory definition that can be altered according to the will of the Legislature. In no way can it be dependent on the element of chance alone. The definition of "gaming" is fluid and fluctuating across the states and different legislations.

p) In terms of addiction, in terms of monetary losses and in terms of resultant widespread suicides respectively, online money gaming has a definite impact on the public. When such is the case, it has to be recognized that online money gaming has been disturbing the tranquility of the public by

making betting and gambling more normalized and accessible. Therefore, public tranquility is breached and consequently, the States would have competence to invoke public order and seek to curb the mischief and restore public tranquility.

q) The addiction and depression that stem from indulging in online money gaming and the frequent suicides that are reported would go on to indicate that this poses a widespread public health issue as well.

r) The Tamil Nadu State Legislature relied on the report of the Justice Chandru committee wherein empirical findings related to the widespread harms of betting linked with online gaming have been discussed in detail. As such, the legislations are supported and backed by empirical data contrary to the assertion of the respondents.

377. In view of the aforesaid, the appeals preferred by the State of Tamil Nadu and the appeals preferred by the State of Karnataka stand allowed. The impugned judgments passed by the High Court of Madras and the High Court of Karnataka, respectively, are set aside. As a corollary, Part II of the 2021 TN Amendment Act, Sections 2(i), 2(l)(iv) and Schedule to the TN Online Gambling Act 2022/23, Sections 2, 3, 6, 8 & 9 of the 2021 Karnataka Amendment Act, respectively, are declared intra-vires the Constitution.

378. The connected appeal i.e., CA No. 6144 of 2023, also stands disposed of in the aforesaid terms.

379. No order as to costs.

..... J.

(J.B. PARDIWALA) ..... J.

(R. MAHADEVAN) NEW DELHI 27th MAY 2026.