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Justice Chittatosh Mookerjee

SKOCH Lifetime Achievement Award

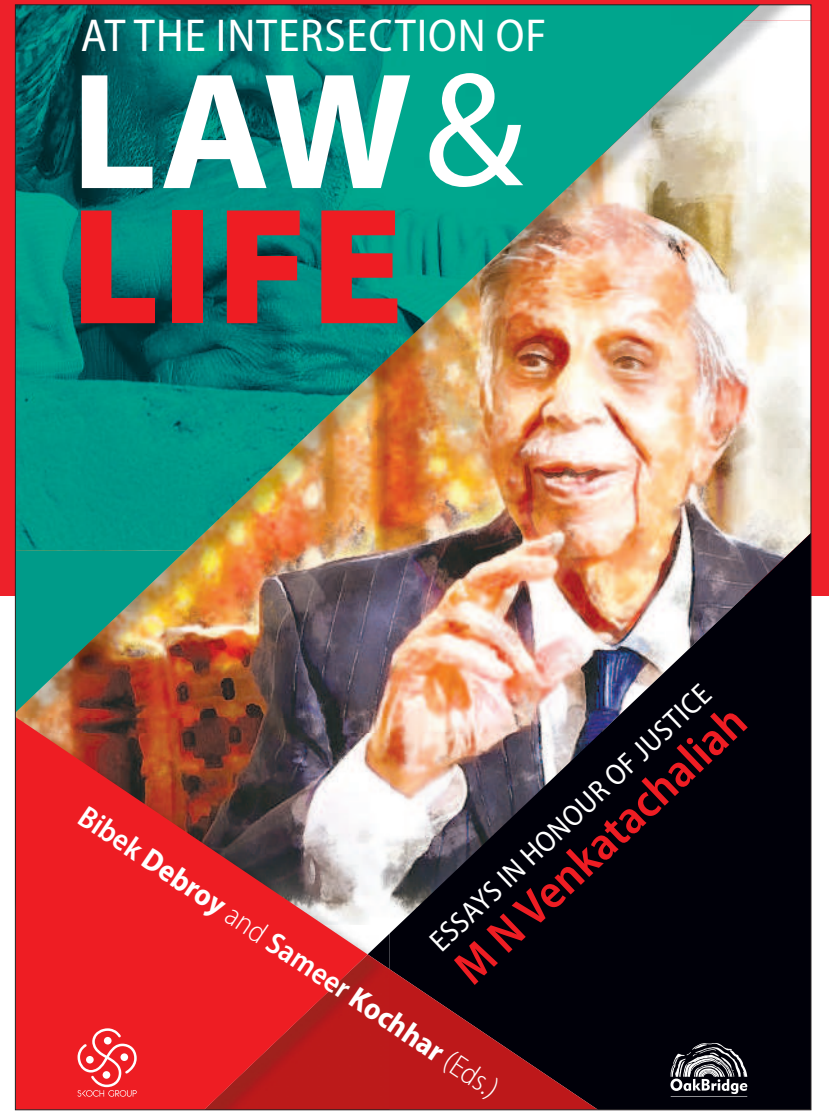
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AT THE INTERSECTION OF

LAW &
LIFE

Bibek Debroy and Sameer Kochhar (Eds.)
ESSAYS IN HONOUR OF JUSTICE
M N Venkatchaliah

INDIA LAW FORUM TO DISCUSS EMERGENT AS WELL AS URGENT ISSUES

India's brightest legal luminaries, practitioners and experts from the field of Justice, Law and Policy are coming together to adorn the 2nd edition of SKOCH India Law Forum on 26th August 2023 at New Delhi. SKOCH India Law Forum is the only platform that deliberates and returns actionable

recommendations on the burning issues of its times.

The Forum features India Law Awards independently instituted by SKOCH Group. This year SKOCH India Law Forum Lifetime Achievement Award is conferred on Justice Chittatosh Mookerjee, Former

Chief Justice, Calcutta High Court. Additionally, eminent Judges and Lawyers are conferred SKOCH Award for Service to Justice and Service to Law respectively.

Justice M N Venkatchaliah, Former Chief Justice of India received the SKOCH Lifetime Achievement Award,

2022. A festschrift in his honour edited by Bibek Debroy and Sameer Kochhar entitled *At the Intersection of Law & Life: Essays in Honour of Justice M N Venkatchaliah* will be unveiled during SKOCH India Law Forum.

A discussion on the book will follow the release.



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Gaming is Digital Gambling Thank You Finance Minister

POLICY

Public Finance & Gaming/Gambling

While the global online gaming industry reached over \$200 billion by the end of 2022, growing in a compounded growth rate of 10%, in India, it has grown at 40%, having reached a market value of \$3 billion during the same period.

SKOCH Group has organised several national consultations on online gaming in the last two years. The larger picture is that gambling has deep cultural and social roots in India and the gaming industry sees this as an opportunity. It is to be remembered gambling has had a dubious impact on shaping history. A game of chance played with loaded dice led to the Mahabharata. Numerous examples from the past should guide policymakers. Gambling in all its manifestations, including the online gaming industry, should be regulated.

There has been a proliferation of lobbyists who percolate in the system. They use all possible means to change the long-held approach to certain issues to try to explain issues in a new light. VCs employ them for enhanced access to the market and for initiating a dialogue within the decision making ecosystem. The situation is such that every person walking the corridors of power is perceived to be a lobbyist, trying to convince people in the government that changes in the way they represent, is good for the nation. Operationally, it seems some sections of the media have become an instrument of lobbying.

To understand online gaming in terms of its nature, impact, business, regulation and government perspective, let's break it down into a few fundamental issues:

- Are gaming/gambling truly divorced?
- Who decides a game is skill/chance?
- Can self-regulation be an appropriate policy choice for the government?
- Isn't self-regulation without an enabling legislation or regulatory framework compromising the interest of people and the country?

Given its inherent nature and possible impact on society, what should be an appropriate tax for the gaming/gambling industry?

From the lens of the regulator, it's fairly evident that online gaming is a burgeoning platform with many products and services that can easily be monetised, almost ready for money. However, online gaming companies are vehemently opposed to being subjected to regulation. They argue that any form of regulation will be counterproductive, as gaming is just a platform that allows consumers to play by pitting one against the other and make financial gains.

Despite several attempts by the industry associations, funded by the gaming industry and competing industry factions, lawyers and lobbyists tried hard to obfuscate the regulatory debate on online gaming. Resisting all the pulls and pressures, the GST Council, after a series of deliberations by the Group of Ministers in its 50th meeting, proposed a 28% GST Tax rate on the full face value of gaming transactions.

The argument of whether gaming is about skill development or a matter of chance, therefore akin to wagering, is hotly debated and embroiled in prolonged legal battles. Questions are being raised about the basis on which the GST slabs are made applicable; why should they be applied to the entire face value of the transaction and not to the fee charged by the gaming platforms?

A PWC India Report on *Taxation of Online Fantasy Sports Gaming Market in India* (May 2019) in collaboration with the Federation of Sports Gaming states: the fantasy sports industry has, directly and indirectly, created over about 3,400 jobs through 100-200 ancillary companies that provide research, tutoring and analytics services to fantasy sports users and coach them to draught their teams. Further, in the next 2-3 years, the fantasy sports industry can potentially create an additional

5000+ direct and 7000+ indirect jobs.

Amongst others, self-regulation suffers from the following limitations:

- There are few public-interest and consumer rights representatives hand-picked by industry and thus may be token consumerists.
- It needs more accountability to ensure compliance, legality and ethics.
- It may encourage competing companies/associations to adopt varying guidelines and standards, leading to a fragmented market and difficulty in ensuring a level playing field.
- It is linked to concerns of antitrust compliance as dominant players with significant market power are predisposed to exploit self-regulatory frameworks to ensure greater dominance by stifling competition/suppressing innovation.
- Companies may prioritise business interests, data monetisation and other business interests over user rights and concerns.
- Lack of enforcement and penalties.

What needs to be understood:

- Gaming/Gambling is a state subject.
- Taxation cannot be viewed in isolation from public finances. The state will look to tax anything remotely akin to sin or luxury.
- MoF is correct in taxing all additions at the highest rate. It provides resources for social goods.
- Tax rate and policy flip-flop is not recommended.
- No FDI will be lost as it is in the interest of foreign VCs to be part of a robust and burgeoning Indian market for their sustained growth.
- For any further change to happen, a wide-ranging consultation must follow, including the industry, state governments, credible think tanks and academia.
- Evidence should be gathered.
- All technology companies must understand that a forward-looking global approach is not at the cost of national interest.

CONSTITUTION

The Uniform Civil Code (UCC) is being heavily debated. Notwithstanding, no draft bill is available for the proposed introduction of the UCC.

The UCC is desirable in a progressive democracy where the rule of law is the same for all citizens. The Article 44 of the Constitution states categorically, "The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

Therefore it's imperative and not an antithesis of secularism.

Further, the Constitution is sacrosanct and is for 'unity in diversity' and allows for, as per Article 25 'freedom of conscience and free profession, practice and propagation of religion' and Article 26 gives 'freedom to manage religious affairs'.

The framers of the Constitution, thought it wise to include it in the Directive Principles of State Policy and the desired change should be initiated by the community themselves against customs and practices that are against the rights of women, archaic and those that are in contravention with the laws of the land and the spirit of the Constitution. That never happened!

The Modi Government took the onus and made the practice of Triple Talaq a criminal offence by passing the Muslim Women (Protection of Rights on

Marriage) Act, 2019. It declares the instant divorce granted by the pronouncement of Talaq three times as void and illegal and provides for imprisonment of up to 3 years and a fine to the husband who practised Triple Talaq.

Reforms Early Independence

In 1961, the Dowry Prohibition Act was passed. The reforms in Hindu personal law didn't wait for the introduction of UCC.

UCC is one of the most secular laws in its spirit but is being portrayed as a communal plot of a 'right-wing nationalist' government to polarise votes in its favour before the general elections next year. Prime Minister Narendra Modi has made a strong pitch for the UCC, saying the Constitution supports equal rights for all citizens.

Apex Court Supports

The Supreme Court is also known as the 'guardian' of the Constitution as it is mandated to uphold and uplift the rule of law and ensure and protect citizens' rights and liberties as provided in the Constitution. On various occasions, the Supreme Court has expressed displeasure that there isn't in place a single set of personal laws for citizens of India.

The Way Forward

- A draft should be made available so

that people can have an informed debate.

- Carry out a series of amendments in a piecemeal way to all personal laws that are not in accordance with the existing laws.
- UCC could be introduced as special personal law with people having the option of following it or their traditional way or both. Like the Special Marriage Act, which provides an opportunity but is not mandatory.
- The 21st Law Commission also emphasised the need to reform family laws across various religions to ensure gender equality instead of enactment of a UCC. It supported "equality within communities" instead of pursuing "equality between" communities in its Consultation Paper on Family Law Reforms.
- The tribal question and Article 371—though the government has hinted that tribal communities of the North East will be exempted from UCC, some fear that will set a wrong precedence, other communities and groups will seek exceptions on parity, though there may not be a constitutional validity for it.
- The scope of UCC is much broader, thus should not be looked at from the prism of religion.

RIGHTS

Equitable Treatment of LGBTQIA+

Diversity Commission Imperative

The dynamic play of technology and how it creates communities with a specific identity base and these communities come together, one fuels the other and cooperate to create a more significant mass movement by engaging technology that supports diversity in pursuit of life.

Diversity Commission in Affirmation of Self

In this increasingly diversified yet connected world, it is imperative that an institution provides the framework and also oversees that people work productively in a diverse yet inclusive environment.

Various identified traits are ability/disability, age, appearance, ethnicity, gender and gender identity, race/colour,

geographic location, political beliefs, pregnancy/parental status, religion/value system, sexual orientation, transgender, socio economic background/social background.

In this space, diversity is celebrated and is not the basis of discrimination. Therefore, the Diversity Commission will promote, support and advocate an open, supportive and responsive workplace environment.

Diversity Commission will:

- Address the larger picture, create a conducive framework for amicable coexistence in diversity.
- Represent diverse groups and encourage people to be informed, understand before they judge and react.

- Discuss points of diversity to be understood and contextualised in the changing times to work together.
- Enable better understanding of technology and how it connects the world and simultaneously encourages diversity.
- Encourage reforms to create a conducive atmosphere for debates.
- Encourage diversity and prevent discrimination.
- Encourage representation from different backgrounds in an organisation - why can't there be a reservation?
- Encourage collaboration and partnership to advocate diversity. Also, identify and seek implementation of the best practices in diversity awareness.

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