

## **MOOT PROBLEM**

**1<sup>ST</sup> SYMBIOSIS LAW SCHOOL, NAGPUR, NATIONAL MOOT COURT COMPETITION, 2020**

**State of Totomoto**

**v.**

**Union of Indiland and Anr.**

1. The Union of Indiland, the world's largest democracy possesses the longest and most detailed Constitution. Indiland follows a quasi-federal system with a strong central government. Indiland is a diverse and dynamically populated country in South-East Asia populated with people from several religious and economic backgrounds. Despite its vast diversity the country is united by one sport, the Cricket. Cricket in Indiland had been scrupulously followed by more than 90% of its population and several people considered it as a religion in Indiland. Cricket over time also became one of the prime contributors to the economy of the nation and contributed to almost 23% of its economy.
2. By the year, 2015 the entire global market was facing recession and Indiland was one of the most severely affected nations. Several economic surveys (by both national and international agencies) had categorically concluded that the Government of Indiland had to immediately take drastic steps to ensure new multi-national investments in order to ensure sustainable economic growth. On the basis of such report and in order to promote the economy and in an effort to create jobs and increase employment, the government of Indiland came up with a policy named "Play in Indiland" in an attempt to capitalise on the Cricket craze and fever prevalent amongst the citizens of Indiland. As a part of the said policy, Government of Indiland entered into Bi-lateral Investment Treaties with Governments of Germaria, Sporarica and Frazilia to invest in Indiland by promoting business with respect to or ancillary to Cricket. Accordingly, tax incentives and less stringent land and labour laws were promised, which along with the huge popularity of Cricket amongst the Citizens, proved effective in attracting several foreign investors and companies.

3. MiracoTech Pvt. Ltd. is a company registered in Sporarica, a highly developed western country. MiracoTech Pvt. Ltd. is one of the leading App Developers in its company and have recently ventured into the niche of online gaming apps. Immediately upon the execution of the Bi-lateral investment treaties and with an intent to reap benefits of the treaty, MiracoTech Pvt. Ltd. set up a subsidiary in Indiland under the name and style of “MiracoCric Indiland Pvt. Ltd.” (MIPL). This subsidiary was set up in collaboration with Mr. Puyol, one of the most celebrated cricketer in Indiland, who was the promoter of MIPL with 10% shareholding.’ MIPL introduced its first product in Indiland, which was a mobile based gaming app titled “Criksaga”.
4. The USP of the App was that a user could build and act as managers of his own Fantasy Cricket Team (Constituting real players) using his/her cricket knowledge and analytical skills. The user can further put money up on the team’s performance. The catch however, is that the fantasy team would score points on the basis of the real-life performance of the selected players in a given match in real time. This then translates into a higher score on the app which further translates into money if the user is playing a Cash Contest. The website states as follows:

*“Here are the basic rules you need to follow while playing a fantasy cricket match on Criksaga:*

- *Selecting the Match - Once you head to the cricket page, you'll see a list of upcoming cricket matches that you can participate in. Pick the match that suits you and which you want to play.*
- *Creating a Team - After you've selected a match, it's time to put your sports knowledge and analytical skills to good use by picking the right team. This is critical as creating the best team will help you win bigger rewards in Cash Contests.*
- *Cash Contests - Once you've created your team, you will be redirected to the contests page. Select a Cash Contest that fits your budget. You can also test your skills in Practice Contests. That's it! You're all set for the fantasy cricket game.*
- *Follow the Match - It's time to check your fantasy cricket team’s progress. You can use the fantasy scorecard and contest leaderboard to check your rank. The scorecard is updated every 2 minutes.*

- *Once the match is over and winners are officially declared, your fantasy team's final ranking and winning amount will be visible on the leaderboard. You could withdraw winnings over Rs.200 from your Criksaga account with a one-time verification."*

5. MiracoTech Pvt. Ltd. Company launched the App in Indiland establishing offices in States of Senosa, Totomoto, Raranaka and Daultpur (all of them constituent States of Indiland). Additionally, servers were set up only in the States of Senosa and West Komoyaka. The App was a booming success in Indiland with people across the country playing it across all age groups. More than 60% of the Indiland Population were involved/enrolled on the App. The success of the App was even more evident in State of Totomoto (home state of Mr. Puyol) where almost 75% of the State's population were enrolled on the App.
6. Following the unprecedented success of Criksaga App, several companies (including a few companies from Germaria, Sporarica and Frazilia) developed and released in markets their own apps which were very similar to the functioning of the Criksaga App and set up servers in State of Totomoto to cater to its members across Union of Indiland. The virtual fantasy games became an instant hit and its impact was visible on the economic growth of Indiland.
7. Analostatis Organisation, a statistical research organisation set up in the State of Totomoto published a report on the use of the Apps and its effects stating that it was being used by a considerable amount of minors and such usage could hamper their social growth, especially when you take into account the monetary aspect of the game. Additionally, it was observed that, a large number of people were being affected due to the amount of money that was being lost by them in the course of the game, this was causing major distress in the society. The effect was more visible amongst the lower middle-class strata of the society where even the basic household incomes were being squandered on the said Apps, mainly because the said Apps were being viewed as being means of making easy money. There were several reports of suicides and personal insolvencies being attributed to the Apps which were published in the local and mainstream media.
8. Taking these occurrences and reports into consideration, the Government of Totomoto passes the Totomoto Online Gaming Act, 2019 ('the Act') (Refer to Annexure- A for detailed provisions). The provisions of the Act seek to ban any app that concerns fantasy sports leagues and additionally categorise the use of the Apps as a punishable offence.

9. Following the ban, a large number of users protested claiming violation of their right to life and personal liberty, in addition to other freedoms. MIPL along with Mr. Puyol filed a Writ Petition before the High Court for the State of Totomoto challenging the vires and constitutional validity of the Act. The State of Totomoto and Union of Indiland were arrayed as Respondents in the said Writ Petition.
10. It was contended that Sections 3, 4, 5, 6 of the Act were in violation of Articles 14, 19, 20 & 21 of the Constitution and in violation of basic principles of criminal jurisprudence prevalent in Indiland. It was also contended that the said provisions being ultra-vires, the rest of the act could not survive independently and therefore the entire act ought to be struck down as unconstitutional.
11. Interestingly, the Union of Indiland made submissions in support of the Petitioners claiming that State of Totomoto had no legislative competence to enact the Act. It was specifically pleaded that State of Totomoto lacked both subjective and territorial jurisdiction to enact the Act.
12. State Government through its Advocate General contended that the Court should take into consideration the social aspect of the legislation. It was further stated that the Apps in question encourages the act of gambling and the absence of age restrictions result in the corruption of young minds and that no citizen could claim any right under Article 19 as regards the action of gaming/gambling furthered by such Apps. Further, even in case of adults, the App had sparked several cases of violence/deaths (including suicides) due to the loss of money across the State. The Apps were termed as "Social Evil". The State categorically also contended that the State was well within its legislative competence to enact the Act both subjectively and territorially.
13. Considering the submissions of the Counsels on all the sides and the material on record, the High Court of State of Totomoto vide its judgment dated 9<sup>th</sup> November, 2019 declared the Act unconstitutional as violative of fundamental right and having been passed without any legislative competence. The High Court also specifically records that the Apps were developed in furtherance of BITs and that were instrumental in improving the economy of the nation and that the Act was impeding the economic growth. Upon request being made by the Advocate General, the High Court issued a Certificate of Appeal under the Indiland

Constitution, thereby enabling the State to prefer an appeal before the Supreme Court of Indiland.

14. The State of Totomoto accordingly filed an appeal before the Supreme Court of Indiland, arraying MIPL, Mr. Puyol and Union of Indiland as Respondents. Apart from assailing the judgment of the High Court on the grounds that the State of Totomoto infact was legislatively competent to enact the Act and that the Act was in compliance of the Part III of the Indiland Constitution. Additionally, the State of Totomoto also challenged the Constitutional validity of the Bilateral investment Treaties entered into by the Republic of Indiland on the ground that the said BITs acted as promoters of social evils such as gambling and betting (as incidental to cricket related business) in the country and therefore the said BITs being contrary to Public Policy.

15. The Hon'ble Supreme Court of Indiland having admitted the Appeal, posted the matter for final hearing on 1<sup>st</sup> February, 2020.

**NOTE:**

- The laws of Indiland are *Paramateria* to the Laws of India, including the judgments delivered by Supreme Court of India and the various High Courts of India. However, all '*Common Law*' Precedents have equal persuasive value.
- The participants are expected to bring to the court's attention the relevant jurisprudence. It may include judgements and opinions delivered by Courts of Common Law Nations.
- The participants have to demonstrate with cogent reasons as to why a principle of law derived from precedent or otherwise is logical and the most applicable one.

**Disclaimer:** The facts stated in the present case are fictitious and have been drafted solely for the purposes of the competition. The facts, names, locations and dates bear no resemblance to any person, event or happening whether dead or alive. Any resemblance found, if any, is purely co-incidental.

## **ANNEXURE- A:**

### **RELEVANT EXCERPTS OF THE THE TOTOMOTO ONLINE GAMING ACT, 2019**

#### **Act No. XX of 2019**

#### **1. Short title, extent and commencement:**

- 1.1. This Act may be called the Totomoto Gaming Act, 1974.
- 1.2. It extends to the whole of the State of Totomoto.
- 1.3. It shall come into force on such date as the Government may, by notification in the Totomoto Gazette, appoint.

#### **2. Definitions:**

- 2.1. **Gaming Portal** includes any house, room, tent, enclosure, vehicle, vessel, cyber space or any place whatsoever in which any instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, room, tent, enclosure, vehicle, vessel, cyber space or any place or Apps, whether by way of charge for the use of such house, room, tent, enclosure, vehicle, vessel, cyber space or any place or instruments of gaming or otherwise howsoever.

**Explanation:** For the purpose of sub-clause (1), any premises or place or cyber space belonging to or occupied by a club, society, company or other association of persons, whether incorporated or not, which is used or kept for purposes of gaming shall be deemed to be a Gaming Portal notwithstanding that there is no profit or gain for the club, society, company or other association of persons on account thereof;

- 2.2. **Gaming** includes online gaming (including games pertaining to online Cricket Fantasy games) for money or any other stakes and lucky board and wagering or betting.

**Explanation:** For the purpose of this clause Wagering or betting shall include,- (a) collection or soliciting of bets; (b) the receipt or distribution of winnings or prizes in money or otherwise in respect of any wager or bet; (c) any act which is intended to aid, induce, solicit or facilitate wagering or betting or such collection, soliciting, receipt or distribution; (d) any act of risking money, or otherwise on the unknown result of an event including on a game of skill; (e) any action specified in sub-clause (a) to (d) carried out directly or indirectly by the players playing any game or by any third parties;

- 2.3. **Government** means and includes the Government of the State of Totomoto.

2.4. **Instruments of Gaming** includes any other article used or intended to be used as a subject or means of gaming, any document, electronic form or record, digital form or record used or intended to be used as a register or record or evidence of any gaming, the proceeds of any gaming which includes online electronic transfer of funds or transactions and any winnings or prizes in money or otherwise, distributed or intended to be distributed in respect of any gaming.

### 3. **Prohibition on Gaming**

3.1. There shall be complete prohibition on gaming in the State of Totomoto, including setting up of servers necessary for development and maintaining any form of Gaming Portals.

3.2. Any person who opens, keeps, operates, or uses or permits to be used any gaming portal for online gaming or conducts or assists in conducting the business of any gaming portals or advances or furnishes money for gaming therein, shall be punishable.

(i) for the first offence, with imprisonment for a term which may extend to one year and with fine which may extend to five thousand rupees; but in the absence of special reasons to be recorded in writing, the punishment awarded under this clause shall be imprisonment for not less than three months and fine of not less than three thousand rupees;

(ii) for every subsequent offence, with imprisonment for a term which may extend to two years and with fine which may extend to ten thousand rupees; but in the absence of special reasons to be recorded in writing the punishment awarded under this clause shall be-

(a) for a second offence, imprisonment for not less than six months and fine of not less than five thousand rupees;

(b) for a third or subsequent offence, imprisonment for not less than one year and fine of not less than ten thousand rupees.

Explanation.—For the purpose of this section, the expression “person” includes the owner, or as the case may be, the occupier of the place used as a Gaming Portal and where such place belongs to or is occupied by a club, society or other association of persons, the person having the care or management of such place.

3.3. It shall not be necessary, in order to convict any person for opening, keeping or using or permitting the use of Gaming Portal or of being concerned with the care or

management of a Gaming Portal, to prove that any person found therein was gaming for money, wager, bet or stake.

- 3.4. Further, each company involved in Gaming related activities including in development and management of Apps that facilitate Gaming would be liable to repay all the monies collected from its users within three (3) months of the enactment of the Act.

*Provided that* each of such Companies would also be entitled to recover monies given to the winners of each gaming round by way of a recovery suit.

Explanation - It is clarified that the “monies collected” would also include monies collected before the commencement of the act.

#### **4. Offences by Companies**

Where a person committing a contravention of this section or any other provisions of this Act is a company, every person who, at the time of the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, its managing directors and other directors, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge of that he exercised all due diligence to prevent such contravention.

#### **5. Penalty for being found using a Gaming Portal**

Whoever is found gaming, or present for the purpose of gaming in a Gaming Portal shall, on conviction, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to three thousand rupees, or with both.

Explanation - For the purpose of this section, any person found in or using any Gaming Portal during gaming therein shall be presumed to have been present there for the purpose of gaming.

#### **6. Instruments of gaming, etc., found in a Gaming Portal may be ordered to be destroyed or forfeited on conviction.**

On conviction of any person for opening, keeping or using or permitting the use of a Gaming Portal, or gaming therein or being present for the purpose of gaming, the convicting magistrate,-

6.1. may order all the instruments of gaming found therein or on or about the person found therein, to be forthwith destroyed or forfeited; and

6.2. may order-

(a) all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and the proceeds thereof with all moneys seized to be forfeited ;

or

(b) any part of such proceeds, and other moneys to be paid to any person appearing to be entitled thereto.

#### **7. Payments of portion of fines to informants:**

7.1. The convicting magistrate may direct any portion, not exceeding one half, of any fine which is imposed under section 3 or section 4 to be paid to such informants as may have assisted in the detection of the offenders.

7.2. A direction under sub-section (1) may also be made by any court of appeal, reference or revision.

7.3. Where a direction is made under sub-section (1) or sub-section (2) the magistrate or court concerned shall send the amount to be paid under sub-section (1) or sub-section (2), as the case may be in the area within the jurisdiction of the Commissioner of Police, and elsewhere to the Superintendent of Police, who shall distribute it among such of the informants aforesaid as may be chosen by him in such proportion as he thinks fit.

7.4. The amount to be paid as aforesaid shall not be sent to the Commissioner of Police or the Superintendent of Police until the expiration of three months from the date of the direction under sub-section (1) or if an appeal, reference or revision is made within the period, until the same is disposed of.

#### **8. Power to Remove Difficulties:**

8.1. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by order in the Totomoto Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to it to be necessary or expedient for removing such difficulty.

8.2. Every order made under this section shall be laid, as soon as may be after it is made, before each House of the State Legislature.

**9. Over Riding Effect:**

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

**10. Power to make rules:**

10.1. The Government may, by notification in the Totomoto Gazette make rules for carrying out all or any of the purposes of this Act

10.2. Every rule made under this section shall immediately after it is made, be laid before each House of the State Legislature if it is in session immediately following for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiration of the session in which it is so laid or the session immediately following both Houses agree in making any modification in the rule or in the annulment of the rule, the rule shall, from the date on which the modification or annulment is notified have effect only in such modified form or shall stand annulled, as the case may be ; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.