

# The Digital Dice Roll: Navigating the Legal Labyrinth of Fantasy Sports in India

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**ABSTRACT** Since ancient times, sports and gaming have been an essential aspect of civilization, igniting people's competitive impulses everywhere from the Roman Colosseum to internet battlegrounds. However, because traditional sports need certain physical skills, access to them was still restricted. Fantasy sports, on the other hand, emerged as an appealing alternative, providing a platform for everyone to actively participate in competitive endeavors without being bound by traditional physical limits. Fantasy sports incorporate the formation of imagined teams with actual players, which requires talent and analysis, as opposed to gambling, which is based on luck. The internet and technological improvements have increased the popularity of fantasy sports, particularly cricket, resulting in a booming sector in India. However, the emergence of fantasy sports in India has sparked debates on its classification vis-a-vis online gambling. Are fantasy sports legal? Are fantasy sports a game of skill or a game of chance? These are some controversial questions that have been around for a few years. This paper examines India's gambling regulations while clarifying the meaning, traits, and background of fantasy sports. It also highlights the distinctions and interpretations of the "Game of Skill and Game of Chance" made by the Hon'ble Courts in a number of rulings that are expected to be important for the development of fantasy sports in the future. The legal position of fantasy sports in several Indian states is also discussed in the article, along with an international perspective. In addition, this paper examines the problems and disputes that Dream11 and other fantasy sport platforms have encountered as a result of the numerous court actions that have been taken in this regard. Lastly, it discusses how the laws that currently govern gambling have contributed to these issues and whether any changes are necessary.

**INDEX TERMS** Fantasy Sports, Game of Skill, Online Gambling, Legal Framework, Dream11, Public Gambling Act

## **I. INTRODUCTION**

India is a land that caters to a diverse population and for many, sports is considered as a religion. In the last few decades, the field of Sports has gained immense recognition at the state, national and international level. The sports industry in India is growing and evolving with the passing years. Sports is not simply restricted to the sports persons involved in playing the game but has now gained considerable attention, thus transforming itself into a multi-billion-dollar industry. Similarly games, whether casual or sociable, appeal to people of all ages. Gaming has evolved into a massive entertainment powerhouse. This sort of entertainment has developed to the point that it may now be used to make money through betting or gambling. Gambling has a long history in Indian culture, extending back to India's most famous mythological epic, the Mahabharata.

Amidst this fantasy sports emerged as a prominent phenomenon in contemporary entertainment, captivating millions worldwide. These online games present a unique intersection of sports fandom and strategic gameplay, where participants construct virtual teams comprised of real-life professional athletes. The performance of these athletes in actual sporting events directly translates into points for the participant's virtual team, creating a dynamic and engaging experience. These platforms also provide various features and functions to enhance users experience and their engagement which includes live scoring updates, player news, injury reports, etc. where users are given expert analysis and advice also, they can interact with other users for achieving a best possible outcome. Participants assume the role of general managers, meticulously drafting players, strategically executing trades, and meticulously optimizing their team's lineup. This intricate process demands a nuanced understanding of player statistics, astute game analysis, and astute strategic decision -

making. The competitive nature of fantasy sports, often involving substantial prizes or prestigious league standings, further intensifies the engagement and fosters a highly competitive environment among participants.

Fantasy sports have a long history that predates the internet. In the late 1950s, Wilfred Wilkenbach created fantasy golf, in which participants were chosen from a group of professional golfers, and the winner was the one with the fewest strokes. In 1962, Wilkenbach was also given credit for inventing fantasy football. Offerings on American online platforms were introduced with the introduction of the Internet in the 1990s. In 1998, the Fantasy Sports and Gaming Association was established as the first trade association by CDM Fantasy Sports, SportsLine, and Prime Sports. The following global boom was caused by the shift from fantasy season leagues to daily fantasy sports. Though they existed in Europe in the 2000s, fantasy sports really took off after 2016. When ESPN and Star Sports introduced Super Selector in 2001, India joined the fantasy sports craze. Dream11, the first platform for fantasy sports, was introduced in 2008

## **II. RESEARCH OBJECTIVES**

- 1) To elucidate what Fantasy sports are exactly and whether they come under Gambling operations.
- 2) To identify the laws surrounding fantasy sports in India as well as case laws surrounding it.

### III. HYPOTHESIS

H<sub>0</sub>: Current Fantasy Sport laws require no changes

H<sub>1</sub>: Current Fantasy Sports Laws require changes

### IV. LITERATURE REVIEW

1). Suryawanshi, A., 2021. The paper delves into the legal complexities surrounding fantasy sports, particularly the debate over whether they constitute a "game of skill" or a "game of chance." The Supreme Court ruling in *K.R. Lakshman v. State of Tamil Nadu* upheld fantasy sports as games of skill, exempting them from the Public Gambling Act of 1867. However, the lack of central legislation and bans by certain states reflect a fragmented regulatory landscape, posing challenges to the industry's uniform growth. Taxation is a critical focus of the paper. The industry's capacity to spur economic expansion, draw in foreign direct investment, and create jobs is also highlighted in the research. However, the stigma associated with gambling and regulatory uncertainty continue to be obstacles to its wider acceptance. A single regulatory framework is called for in the study's conclusion in order to solve these issues and guarantee the sector's ongoing growth. However, there are empirical analytical gaps in the report, especially with regard to the socioeconomic effects of existing taxation policy, which presents chances for more study.

2). Bose, N., 2021. This research paper deals with the complex and dynamic problem of online gambling in India, focusing on the absence of a single regulatory framework to control this growing sector. It speaks about the conventional legal differentiation between gaming and gambling, which is based on whether an activity depends on chance or skill. There is still a question as to what constitutes a "substantial amount of skill," especially in the case of online platforms, even though cases like *State of Bombay vs. R.M.D. Chamarbaugwala* and *K.R. Lakshmanan vs. State of Tamil Nadu* have already ruled that games based on skill are not covered under the gamut of the gambling act. Online gaming falls outside the archaic Public gaming Act of 1867, creating a legislative lacuna. Although partial regulations exist in states such as Sikkim and Nagaland, and Tamil Nadu implements outright bans on the sector, the entire practice of legal inconsistency between different regions is pretty evident. The paper analyses against the more considerable socioeconomic and ethical concerns linked with online gambling on issues like its addiction risk and financial losses together with accessibility among minors and potential in creating revenues and jobs along with reducing illegalities. Bose concludes by urging a balanced regulatory framework that addresses risks, cross-border challenges, and the industry's benefits. He cautions that blanket bans might push the activity underground and fail to effectively address its complexities.

3). Balaji, A., 2021. This paper on Indian gambling laws raises the issues caused by archaic legislation in modern gaming platforms such as online fantasy sports. It is the primary framework, although it is a colonial-era law: the Public Gambling Act of 1867, which is only about physical gambling and does not include digital innovations. The paper discusses the classification between games of skill and games of chance, because this is where the line for legality is drawn under Indian

law. Games of skill, as opposed to those of chance, are exempted from gambling bans because their results depend on skills and judgment. Judicial precedents, such as *State of Andhra Pradesh v. K. Satyanarayana* (1968), had clarified this classification, but some ambiguities have persisted, particularly with the growth of online gambling. Dream11, a leading fantasy sports platform, has been a focal point of legal debate. However, the literature underscores that India's gambling laws remain inadequate for regulating online platforms. The distinction between skill and chance often requires judicial intervention, revealing gaps in legislative clarity. Moreover, the absence of uniform regulations complicates enforcement and raises concerns about fairness and consistency. Academics recommend updated legislation that would respond to the digital gaming complexities and harmonize laws across states. Such reforms would be important for clarity, consumer protection, and adaptation to changing nature of the game in this digital age.

4). Kapadi, H., 2021. The research paper looks into how the Mischief Rule of Interpretation has been applied by Indian courts to determine the legality of fantasy sports, especially Dream 11. Fantasy sports, which rely on users' skill, judgment, and knowledge to create virtual teams, are differentiated from gambling under Indian laws such as the Public Gambling Act, 1867. The Mischief Rule, originating from *Heydon's Case* (1584), helps courts interpret statutes to address their intended purpose and prevent misuse. Judicial decisions of Punjab and Haryana, Bombay, and Rajasthan High Courts have ruled that fantasy sports involve substantial skill and are not games of chance, and hence, they fall outside the gambling laws. Such judgments of the Supreme Court have been upheld in several cases; however, a few appeals are still pending. Fantasy sports are also covered under Article 19(1)(g) of the Indian Constitution, which allows them to function as a legal, taxable enterprise. Conclusion The Mischief Rule has played a crucial role in establishing the legal framework for fantasy sports in India, differentiating them from gambling and encouraging their growth as a legal and regulated industry.

5). Manvee, 2023. The paper discusses the rapid growth of fantasy sports in India, distinguishing them from gambling by emphasizing their reliance on skill and analysis rather than chance. Landmark legal rulings, such as *Varun Gumber v. Union Territory of Chandigarh* and *Gurdeep Singh Sachar v. Union of India*, have upheld fantasy sports as games of skill, granting them legal status in most states. However, challenges remain in states like Odisha, Telangana, and Assam, where such games are still considered gambling. The paper further points out that the industry's economic growth has been fueled by advancements in internet access, affordable smartphones, and the popularity of cricket, which has made India a significant global market for fantasy sports. It also covers the intellectual property issues that surround the use of player names and logos, urging clear contractual agreements. Celebrity endorsements by the likes of M.S. Dhoni and Virat Kohli have further increased the popularity of the industry. Yet, despite all this success, the paper advocates for a holistic legislation that regulates the sector in a responsible manner, bringing much-needed clarity regarding the distinction between games of skill and chance.

## V. FINDINGS

Games are broadly classified into two categories –

### Game of Chance and Game of Skill.

**Game of Chance** refers to games where no prior knowledge is required but merely just taking part in a game or an event and leaving it up to chance or one's luck for a positive outcome. These games are usually those where a person cannot have much influence via his knowledge, skills or technical know-how on the game directly to increase his odds of winning. Dice games are an example of how it all comes down to one's luck and probabilities of an outcome for a person to win.

**Game of Skill** meanwhile refers to games where a person requires a certain number of skills and knowledge to play. Here the person can influence his chance of winning and the outcome is based upon how well, one applies his or her knowledge and skills and is able to accurately analyze the situation to turn it around in their favours.

**Betting or gambling** generally means putting on stake something of value, particularly money, with consciousness of risk and hope of gain on the outcome of a game or a contest, whose result may be determined by chance or accident, or on the likelihood of anything occurring or not occurring

### A. DO GAMBLING LAWS APPLY TO GAMES OF SKILL

According to **Section 12 of the Gambling act** which is as follows:

“12. Act not to apply to certain games.—Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played.”

The growing popularity of games like Dream11, Team 11 and Paytm first games brings the question to light that on what basis are they considered gaming and not gambling considering the presence of financial transactions. The framework of what constitutes gambling becomes especially important when understanding the legality of online gambling. The primary difference which converts gambling to gaming is how much the sport depends on personal skills rather than luck. Game of skill is more dependent on the adeptness and training of player and shouldn't be based on mere coincidences. Some case laws which talk about the distinction between game of chance and game of skill are:

**1. The State of Bombay vs R.M.D. Chamarbaugwala** observed that the category of gambling can't include games where success of player depends on a substantial amount of skill and held that even if it's a skill based game with dependency on chance it would be considered as a game of skill.

**2. K. R. Lakshmanan v. State of Tamil Nadu**, SC had exempted horse racing and betting on horse races outside the perspective of gambling. Following this judgement, as legislations don't use the word online gambling and there is a lacuna in terms of any static SC decision in terms of online gambling the legality of online games especially those involving real money whether games of skill or chance is absolutely unknown.

**3. In State of Andhra Pradesh vs. K. Satyanaryana and Ors.**, Supreme Court of India declared that playing fantasy sports games with a preponderance of skill is not considered gambling and is therefore legal. However, the court did not specify what constitutes a preponderance of skill, leaving this determination to be made by individual states

**4. Moreover, the 276th report of the Law Commission of India** recommended the exemption of skill-based games from the scope of gambling. The Law Commission recommended enactment of legislations concerning online gambling under List 1 of the seventh schedule of the Constitution. The report suggested that obtaining a license from the appropriate authority must be made mandatory for offering online gambling services. Furthermore, the Government of India has also cited the 276th report while holding that fantasy sports are games of skills and hence are legal under the ambit of the Indian legal system.

On analysis of the facts, it can be noticed that courts use undefined words like 'substantial amount' of skill. Skill can have no specific meaning and in such a case with advent of new games on online platforms everyday can lead to unnecessary litigation in already overburdened courts. It becomes harder to determine the legality when the platform changes from a brick-and-mortar gaming house to an online platform. The basic criteria of Fantasy Sport being legal is that it has an element of skill which has been accepted by various courts in India. Purportedly, it cannot be denied that the fantasy sport has some element of chance but on a major perspective it depends on the skill and knowledge of the player. The only reason to be considered as a game of skill.

### B. THE ISSUE OF Dream11

Dream 11 is one of the foremost companies in India for online fantasy sports. Dream 11 offers many fantasy sports such as fantasy cricket, fantasy kabaddi, and fantasy football. With respect to Dream11, a special leave petition was filed in the supreme court. The Dream11 case stemmed from legal challenges questioning whether the fantasy sports platform constituted gambling under Indian law. The issue in concern here was that Dream11 and Online fantasy sports in general is illegal as it amounts to gambling, wagering and betting and that it did not amount of to a game of skill. The issue was raised in various state courts as Public Interest Litigation (PIL) and has been a topic that has come up on various occasions since 2017. This matter came up in the courts of Punjab & Haryana high court, Bombay high court and in Rajasthan High court.

**1. In the case in front of the Punjab and Haryana High court**, the court observed that the game is a game of skill and analysed the process of how the game works and how the quality of one's team is deduced. This helped them to arrive to the conclusion that the players require immense skill and knowledge regarding the sport that they're forming the team on and how the drafting of squads and the point system works on the Dream11 platform. Furthermore, the court also expanded that Dream11 being a business is protected by the constitution of India. Article 19(1)(g) of the constitution which is as follows:

a. “19. Protection of certain rights regarding freedom of speech etc

(g) to practise any profession, or to carry on any occupation, trade or business”

Gambling is not a trade and is not protected by this provision however Dream11 is a business which does its duty by following all rules and providing tax to the government. This means that Dream11 also has the protection guaranteed by the constitution and gives them the right to continue to conduct their business as usual

2. Similarly, later, in the Bombay High Court, another petition was filed stating that the activities of Dream11 are illegal in its nature as a result of it being involved in gambling and for the alleged evasion of taxes by not paying its due GST (Goods and Service Tax) which are levied for activities that amount to gambling, betting or lotteries. The court in its judgement referred to the judgement of the Punjab and Haryana High Court, and followed the same line of reasoning to establish that the activities of Dream11 in fact do not amount to betting or gambling as reasonable skills and knowledge are required to take part in it and that it is not entirely based on luck. Since, it was not gambling then the court held that by the virtue of its nature of not being a gambling activity, it paid its due amount of GST @18% and does not have to pay anything more than that which is required by activities that amount to gambling.

3. Furthermore, this matter was again discussed in the High court of Rajasthan, and the court there held the same beliefs as the previous courts and mentioned the same points as stated before. They stated that it is immaterial which teams win in real life as users choose players from both the teams. Thus, it falls down to the ability of the player to analyse the players and the game in selecting his squad. This led them to the conclusion that the matter of Online fantasy Sports amounting to gambling is no more an issue that has no precedence or in other words it was no more res integra i.e., unique.

4. The matter was then taken to the apex court of India, i.e., the supreme court of India, where the issue was dealt with. The supreme court stated that the matters have already been put to rest and have therefore restated and re-affirmed the various previous judgements on the same matter that have taken place before. These judgements have laid some form of precedence with respect to the discussion of fantasy sports and gambling in India.

## C. LAWS IN INDIA FOR GAMBLING AND FANTASY SPORTS

In India Gambling is a state subject as mentioned in entry 34 of the List II of 7th Schedule of the Constitution of India. In India, individual states have the authority to create and enforce their own regulations and laws regarding gambling activities. This means that each state has the power to determine whether or not to permit and regulate gambling within its jurisdiction.

The PGA is the primary law pertaining to gambling in India. Nowadays, the majority of states have passed gambling-related laws of their own, primarily modeled after the Public Gambling Act of 1867. The Kerala Gambling Act, the Sikkim Regulation of Gambling Act, 2005, the Goa, Daman, and Diu Public Gambling Act, the West Bengal Gambling and Prize

Competition Act, and others are only a few examples. With the exception of Sikkim and Goa, most states have passed legislation outlawing gaming and betting. Certain table games are permitted on board offshore boats in Sikkim and Goa with previous state government approval and a license.

**1. PUBLIC GAMBLING ACT, 1867:** In India, there is no specific legislation pertaining to online gambling or fantasy sports. However, according to the present court stance, activities like online gambling and lotteries are inside the purview of PGA. According to the aforementioned Act, playing a game of chance is forbidden as it is seen as gambling. The "punishment for owning or keeping, or having charge of a gaming house" is outlined in Section 3 of the PGA. Aside from this, Section 12 of the Act creates an exemption and excludes specific actions from its purview. According to this clause, "mere games of skill" are exempt from the Act's restrictions. As stated above, fantasy sports are in fact a game of skill and not a game of chance. Therefore, fantasy sports will not be considered to be an activity of betting or gambling under the PGA.

**2. SIKKIM ONLINE GAMING REGULATION ACT, 2008:** The State of Sikkim allowed online sports betting in August 2009 following an amendment to the Sikkim Online Gaming (Regulation) Rules. In the State of Sikkim, online gaming is governed by this Act. Poker, blackjack, bingo, baccarat, and other games were already permitted, but following the amendment, online gambling was added as well. These regulations permit betting or gambling on internet games including lawn tennis, football, cricket, and other activities that call for both a wager and a prediction of the outcome.

**3. THE NAGALAND PROHIBITION OF GAMBLING AND PROMOTION AND REGULATION OF ONLINE GAMES OF SKILL ACT, 2015:** Under the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, the government of Nagaland grants licenses for skill-based games. Games of skill are not considered gambling activities under the aforementioned laws; only wagering on games of chance is. The Nagaland Act makes it very evident that skill-based games are not gambling and that winning at them actually requires a certain set of skills. Games that require skill include rummy, poker, virtual golf, virtual boxing, virtual team choosing, and sports fantasy league games, among others. However, in order to operate online gambling, a license is required and an application must be submitted under the Act.

**4. ASSAM, ODISHA AND TELANGANA:** There is no clear picture whether fantasy sports can be played or not for money in the States of Assam, Odisha and Telangana. Therefore, most of the fantasy sports websites in India do not let the residents of these three States participate in the paid category.

**5. THE FEDERATION OF INDIAN FANTASY SPORTS (FIFS) CHARTER:** The Federation of Indian Fantasy Sports (henceforth referred to as "FIFS") was established in 2017 as a corporation under the Companies Act of 2013 with the aim of promoting fair practices in online fantasy gaming supplied in India and regulating itself. The first and only fantasy sports self-regulatory organization in India, the Federation of Indian Fantasy Sports, establishes uniform best practices for the sector and safeguards consumer interests. By establishing standards of operation, rules for common practices, and a regulatory framework to safeguard the interests of fantasy sports consumers and operators, it seeks to establish a flourishing ecosystem for these parties. The FIFS has issued a charter which inter alia imposes the conditions in order to ensure fantasy does not fall within the ambit of gambling :

- a. Fair Play
- b. Age limit of players before the draft of the user's individual team
- c. Setting of a deadline before the draft of the user's individual team
- d. Limit on the Maximum and Minimum number of players from each teams in the user's draft.
- e. Responsible Gaming
- f. Online security measures
- g. Using verification standards
- h. Ethical advertising
- i. Measures for complaint

## **D. FANTASY SPORTS AND THEIR INTERNATIONAL SCENARIO**

Fantasy sports has existed within a grey area of regulation worldwide because there has been a strong contention that it is a game of pure skill rather than of chance, therefore falling outside the definition of gambling.

### **1. United States:**

In the United States of America the Subject of Fantasy Sports Gaming fall under both state and Federal Laws. The Unlawful Internet Gambling Enforcement Act( UIGEA) which was enacted in 2006 exempted fantasy and sports simulations from the ambit of betting or wagering. In the year 2016, after Governor Andrew Cuomo of New York signed into law the interactive Fantasy Sports Bill, many states have been enacting new bills requiring a compulsory registration for all fantasy sports operating sites

### **2. United Kingdom:**

The United Kingdom is host to a plethora of world renowned sports such as Cricket, Football, Rugby and more. For a nation that loves sports, the Gambling Act 2005 (2005 Act) is the main law that governs both online and land-based gaming. Before establishing their online and mobile platforms, fantasy sports operators must get both a gambling software license and a pool betting operating license, as fantasy sports betting is regarded as pool betting. The Gambling Commission is the fantasy sports regulating body in the United Kingdom

### **3. Australia:**

One of the most free and well-regulated gambling and gaming markets in the world is found in Australia, the sixth-largest

country in the world by area. Compared to the top fantasy gaming nations worldwide, Australia's present legislative system offers a less controversial regulatory environment for fantasy sports. Nevertheless, the current gambling regulations in Australia do not quite accommodate fantasy sports. Every Australian state has its own unique gambling-related legislation. A bookmaker to operate in the country has to be licensed in the Northern Territory(Corporate Bookmakers). However, there are no land based fantasy sports betting in Australia.

## **VI. CONCLUSION**

In recent years, the Fantasy Sports Platform in India has witnessed remarkable growth in popularity. As a result, companies operating fantasy sports platforms in India must be mindful of the laws and regulations in each state where they operate. Some states have explicitly banned fantasy sports, while others have allowed it with certain restrictions and guidelines.

Nevertheless, the legal status of such platforms remains a complex issue, with certain states explicitly proscribing fantasy sports while others have authorized it subject to specific regulatory frameworks. The Indian judiciary, comprising the Supreme Court and various High Courts, have ruled that fantasy sports predominantly involve an element of skill and are distinct from gambling. However, there is no universal definition of the term "game of skill," resulting in the responsibility of interpretation being devolved upon individual states. Consequently, users must be cognizant of the applicable laws in their respective states and meticulously scrutinize the platform's terms and conditions before engaging in the same.

Some recommendations which I feel would enhance the regulatory framework for Fantasy Sports Industry are:

**1. Establishment of a Central Regulatory Body:** Imagine a team of dedicated experts coming together like superheroes to safeguard the world of gaming. This team, assembled from diverse backgrounds including gaming enthusiasts, law enforcers, consumer advocates, and mental health professionals, works tirelessly to ensure fair play and safety within the gaming universe. Their mission? To provide a level playing field for all gamers and uphold the highest standards of integrity and accountability.

**2. Implementation of an Ombudsman Scheme:** A Gaming Guardian is proposed, stepping in to resolve disputes and complaints with a caring touch. Like a wise elder, the Gaming Guardian listens attentively to the concerns of players, gaming platforms, and other stakeholders. With fairness and empathy, they guide parties towards amicable resolutions, sparing them the stress of lengthy legal battles and preserving the spirit of camaraderie in the gaming community.

**3. Establishment of an Appellate Authority:** Think of the Appellate Avengers, a consortium of seasoned experts solely established for resolving disputes in the DFS sector. When disputes arise and parties seek a second chance, the Appellate platform swoop in to review decisions made by the regulatory body. With their keen insights and unwavering commitment to truth and fairness, they ensure that every voice is heard and

every grievance is addressed, bringing transparency and accountability to the regulatory process.

**4. Emphasis on Time-Bound Disposal:** Like sportsmen trying to achieve maximum efficiency during competitive seasons, the gaming community depends largely on quick and efficient dispute resolution processes. Both the Ombudsman (Gaming Guardian) and the Appellate Authority (Appellate Avengers) are actively involved in this matter, ensuring that every case is handled promptly and that every decision is delivered on time.

The case of Dream11 is a clear indication about the failure of existing laws being adequate enough to monitor various activities that involve transactions like this. The Gambling act and the various state amendments fall short and don't provide clear cut solutions in matters such as these. The ambiguous distinctions of game of skill and game of chance is still not enough to aid in classifying games accordingly. In the end it falls upon the court to classify games regarding where it stands. This ambiguity in the existing laws and provisions is then filled up by the court which in turn makes it harder. Therefore, this calls for more changes in this field so that it gives more clarity as to what constitutes as gambling and what doesn't. Furthermore, the law should seek to unify these laws all across the country which would make it more accessible.

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