

# ● LEGAL FRAMEWORK OF ONLINE GAMING IN INDIA: EXAMINING THE CORE LEGAL ISSUES AND RECENT LEGISLATIVE DEVELOPMENTS



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## Abstract

Since the last decade, India has witnessed exponential growth in Digital Media and Entertainment sector. 'Online Gaming' is one of the major segments of this Industry growing at a rate of 38% Compound Annual Growth Rate<sup>1</sup> (CAGR). Reach of high speed internet to the corners of rural India, low cost data plans, availability of affordable mobile handsets, emergence of around 275 plus online gaming companies, 15,000 plus game developers and Increase in number of 'Online Gamers' expected to reach 442 millions by 2023<sup>2</sup> are the key factors responsible for growth of 'Online Gaming' environment in India. The ancient texts suggest that gambling though considered immoral was prevalent in form of 'Dyut'<sup>3</sup> since time immemorial in India. Under the present legal framework Games of Skill are permissible but Games of Chance are prohibited. Despite certain positive aspects like economic growth and employment avenues for youth, there are also several ill-effects of online gaming such as addiction, monetary losses, mental health issues, money laundering and increase in Cyber Crimes and Cyber Fraud cases. Still, the future of this industry seems promising, so it is necessary to explore the possibilities of regulation rather than banning or prohibiting it.

## Key words -

Online Gaming, Games of Skill, Game of Chance, Online Gaming Industry, Cyber Crimes.

## I. Introduction

The Law Commission of India in its 276th Report entitled "Legal Framework: Gambling and Sports Betting Including In Cricket" came to some remarkable and important conclusions with regard to online gambling and betting which could be cited at the outset of this discussion. One of these reads as under:

*"With the advent of online gambling and the anonymity that it ensures, the gambling and betting activities have acquired a global presence. It has, therefore, become more*

<sup>1</sup>Sansad TV Perspective: Regulating Online Gaming Industry(<https://testbook.com/ias-preparation/regulating-online-gaming-industry-sansad-tv-perspective#:~:text=These%20laws%20have%20been%20challenged,laws%20to%20ban%20onlin%20gaming.>) (last visited Jul. 5, 2023).

<sup>2</sup>GullyChat Today: Ground Rules for Gaming Expansion in India (<https://www.adgully.com/gullychat-today-ground-rules-for-gaming-expansion-in-india-136331.html#:~:text=As%20per%20Invest%20India%2C%20revenue,user%20base%20of%20180%20million.>), (last visited Jul. 5, 2023).

<sup>3</sup>Dyut or Dyut Krida was a famous dice game played for stakes during the Mahabharata period.

*challenging for countries to monitor or curb these activities. Many countries that prohibit gambling have not been successful, particularly with regard to online gambling. The transnational character of online gambling platforms calls for much needed change in approach. With the changing times, there could always be an option to have a relook at the earlier approach of a complete ban. The relook if any, may take into account the possible loss of revenue and employment generation that a regulation could bring about<sup>4</sup>.*

"In line with the above context, one another conclusion drawn in the same report seems worth citing, which reads as under:

*"However, incapacity to enforce complete ban has resulted in rampant increase in illegal gambling, resulting in a boom in black-money generation and circulation. Since, it is not possible to prevent these activities completely, effectively regulating them remains the only viable option. Thus, if Parliament or the State Legislatures wish to proceed in this direction, The Commission feels that regulated gambling would ensure detection of fraud and money laundering etc. Such regulation of gambling would require a three-pronged strategy, reforming the existing gambling (lottery, horse racing) market, regulating illegal gambling and introducing stringent and over-arching regulations.<sup>5</sup>"*

These two conclusions drawn by Law Commission clearly highlight the two most important concerns with regard to online gaming in India:

1. That with the recent technological advancements, online gaming is taking shape of a huge industry having a promising future, with immense potential for creating job opportunities for youth and wealth creation for nation in form of taxes, surcharges and increase in foreign exchange reserves through investments; and
2. That regulation can be a better alternative instead of complete ban, as complete ban can increase malpractices such as online frauds, money laundering, racketeering, tax evasion etc. which may cause huge revenue losses to the nation.

Therefore, the object of this article is to inquire into the historical and social perspectives of gambling and to examine the effects of unregulated gambling and betting. Further, the purpose of this article is also to critically appreciate the present legal framework and efficacy of the evolving regulatory framework with regard to online gaming in the Indian Context.

### **Gaming v. Gambling:**

Though Gaming and Gambling are two different activities and in the 'generic sense' the difference between these two terms can be understood in a very simple manner. While Gaming is a wider connotation, wherein the result of the activity is dependent upon skill of the player and money is not involved in it, whereas, result of gambling is totally dependent upon chance or luck and money is directly involved in it as stake. The greed of winning large sum of money in return of small contributions as stakes is the main reason for popularity of gambling. In *RMD Chamarbaugawala v. Union of India*<sup>6</sup> the Hon'ble Supreme Court relied on the skill test to decide the fact that any particular act is gambling or not. The Court observed that "if any competition substantially involves skills

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<sup>4</sup>Para No. 9.1 of Chapter IX of 276th Report of Law Commission of India.

<sup>5</sup>Supra note 2.

<sup>6</sup>AIR 1957 SC 628.



are not gambling activities but are commercial activities protected under Article 19 (1)(g)" (of the Indian Constitution). As per the definition of "Gaming" provided under the Goa, Daman and Diu Public Gambling Act, 1976, is "Gaming includes wagering and betting, or wagering or betting on digits of numerical figures arrived through manipulation in any manner whatsoever; or on order of digits, or on digits themselves or on their pictorial representation. Any transaction whereby any person employs or engages any other person to wager or bet with any other person. The collection or soliciting of bets, receipts or distribution of winnings or prizes in money or otherwise in respect of wagering and betting; or any act which is intended to aid, facilitate, wagering or betting or such collection, soliciting, receipt or distribution shall amount to Gaming with an exception of lottery which shall not be included in the definition". With the dominance of internet and online gaming websites and platforms the line of distinction between these two activities has blurred<sup>7</sup> and reached a point of convergence<sup>8</sup>. We are now living in the era of 'gambification' of non gambling activities<sup>9</sup> which are primarily 'shown' or 'pretended to be' games of skill or social gaming.

## A. Historical background of Gambling and Betting in India

The history of gambling and betting dates back to the history of human civilization. It existed in different forms such as *Dyut* (game of dices), horse-racing, wrestling, cock-fights, boat-racing and bull-fight etc. Though the social sentiments towards betting and gambling have been different across different times and different cultures, but gambling have been prevalent across the globe in almost every civilization. Though gambling and betting have always been considered immoral in the Indian culture, yet there is sufficient proof in the ancient Indian texts to show that gambling and betting were prevalent in India since time immemorial and the same was not considered illegal. The biggest example of ill effects of gambling available for reference in the ancient Indian texts is that of Mahabharata, wherein *Dharmraj Yudhishthir*, not only lost his kingdom but also his wife and brothers. As per the ancient Indian texts the habit of gambling not only destroys wealth of the gamblers but also yields misfortune and disrepute to him. *Narada Smriti*, *Yagnavalakya* and *Kautilya* were in support of regulating gambling activities by the state. There have been hymns in the *Atharva Veda*<sup>10</sup> for success in gambling activities. *Yagnavalakya Smriti* states that son should not repay the debt of father borrowed for the purpose of fulfilling lust and gambling. The *Katyayana Smriti*<sup>11</sup> states that if gambling cannot be prevented at all in the state, it should be regulated. It further mentions that gambling can be legalized by the state after payment of taxes to the king or the ruler. As per *Manusmriti*<sup>12</sup> gambling and betting activities destroys kingdoms and these activities are similar to open theft which the king must make all efforts to suppress. It further states that the king should inflict punishment on persons indulged in gambling activities. Virtues like truth honesty and wealth are lost due to addiction of gambling

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<sup>7</sup>Aroon Deep, The blurred lines between gaming and gambling, <https://www.thehindu.com/> (last visited Jul.6,2023).

<sup>8</sup>Joshua Brustein, Fantasy Sports and Gambling: Line is Blurred, <https://www.cnbc.com/> (last visited Jul.6,2023).

<sup>9</sup>Tom Brocks and Mark Johnson, The Gambification of Digital Games, Volume 21, Issue1, Sage Journals, 2023.

<sup>10</sup>Hymn No. XXXVIII.

<sup>11</sup>Verses Nos. 935 to 939.

<sup>12</sup>Hymns Nos. 9.221, 9.222 and 9.227.

which is a self-destructive act. Despite the prevalence of gambling in the ancient Indian texts the Indian culture has always condemned gambling and it has never been considered as socially accepted activity. A constitutional bench comprising of five judges in *Kishan Chander & Others v. State*<sup>13</sup> of Madhya Pradesh has rightly observed that: "*Considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult, the law to root out gambling cannot be in the public interest. Such a law must of necessity provide for special procedure but so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed.*"

## **B. Need of regulating Gambling and Betting**

There are several problems which are associated with, or may be the consequences of unregulated gambling and betting. Unregulated gambling and betting can result into growth of illegal trade and commerce. Corruption in sports such as match fixing, spot fixing or speculations (*Satta*) can increase in sports, specially in cricket which is the most popular game in India. Illegal and unregulated gambling activities may lead to increased crime rates as the poor persons losing their money in gambling and betting may resort to commission of theft, extortion, chain snatching and robberies to compensate the losses. Mental health issues among the youth and wastage of national wealth and resources may also occur due to lack of regulation. Moreover, huge sums of money earned from the highly profitable unregulated gambling and betting business may be used by the terrorist organizations and anti-national elements for conducting insurgent activities or waging war against the elected government similar to situation prevailing in some of the parts of the world, where terrorist organizations are indulged in illegal drug trade where they use the money earned in terrorists activities. Whereas, there are several advantages of regulated gambling and betting activities as regulated gambling and betting generate considerable amount of revenue in form of taxes, surcharges and duties<sup>15</sup>. These activities not only increase employment opportunities for youth but also boosts tourism. Regulated gambling and betting protects the vulnerable classes of the society from being looted and facilitate the agencies in law enforcement.

## **C. Existing Laws and Regulations on Gambling and Betting in India**

Betting and Gambling and imposition of taxes on these activities are state subjects listed under entries 34 and 64 of the State List (List II) of the Seventh Schedule of the Indian Constitution<sup>16</sup>. Despite the fact that betting and gambling are subjects falling within the exclusive legislative competence of state still there are central laws that incidentally affect the subject viz. The Indian Penal Code, 1860, The Indian Contract Act, 1872, Foreign Exchange Management Act, 1999, The Lotteries (Regulation) Act, 1998,

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<sup>13</sup>1964 SCR (1) 765.

<sup>14</sup>Bharat Vasani and Samiksha Pednekar, To Bet or Not to Bet, <https://corporate.cyrilamarchandblogs.com/> (last visited Jul.9,2023, 10:30 PM) <https://corporate.cyrilamarchandblogs.com/2019/08/to-bet-or-not-to-bet-betting-laws-india/>

<sup>15</sup>Gambling Laws and Regulations India, <https://iclg.com/practice-areas/gambling-laws-and-regulations/india> (last visited Jul. 12,2023).

<sup>16</sup>INDIA CONST.art. 246, Seventh Schedule.



Prize Competitions Act, 1955, The Young Person's (Harmful Publications), Act, 1956, The Prevention of Money Laundering Act, 2002, The Information Technology Act, 2000, Central Goods and Services Act, 2017, The Income Tax Act, 1961, Consumer Protection Act, 2019 and some other central rules such as Information Technology (Intermediaries Guidelines) Rules, 2011, Telecom Commercial Communications Customer Preference Regulations, 2010 also touch upon the issues related to Gambling and Betting in India.

### **Special State Acts & Laws related to Gambling and Betting**

The Bombay Prevention of Gambling Act, 1887, The Rajasthan Public Gambling Ordinance, 1949, The Meghalaya Prevention of Gambling Act, 1970, The Goa, Daman and Diu Public Gambling Act, 1976, The Tamil Nadu Gaming Act, 1930, The Sikkim Casinos (Control & Tax) Act, 2002, The Tamil Nadu Betting Tax Act, 1935, The Tamil Nadu Prize Schemes (Prohibition) Act, 1979, The Telangana Gaming Act, 1974 and The West Bengal Gambling and Prize Competitions Act, 1957 are some of the significant state enacted laws on the subject of Gambling and Betting.

#### **D. Public Gambling Act 1867**

The Public Gambling Act, 1867 was enacted on 25th January 1867<sup>17</sup>, with the dual object of punishing public gambling and keeping of common gaming houses. It *inter alia* provides for penalties for owning or keeping or having charge of a gaming house and penalty for being found in gaming house. Under the act staking on public streets on animals or birds fight has also been made punishable offences. The police has wide powers of arrest, search, seizure and destruction of gaming materials and it is not necessary to prove that any game whatsoever was being conducted in the gaming house was for stakes. Provisions for enhanced penalties have been prescribed for repeated offences. The Public Gambling Act, 1867 carved out an exception with regard to 'games of skills' and did not apply to such games irrespective of the place they were played. At the time of its enactment the act acquired the character of a national enactment, due to its wide territorial applicability, but under The Government of India Act, 1935<sup>18</sup> provincial legislatures were empowered to legislate exclusively on the subject of Betting and Gambling. Post independence and after enforcement of Constitution of India the position remained the same and these subjects fall in List II that is the state list under the 7th schedule. Therefore, The Public Gambling Act, 1867 lost its character of a central legislation and under the present regulatory framework it can only be applicable to any particular state subject to its adoption by the legislature of such state. At Present 14 states and union territories<sup>19</sup> have adopted this act by passing adopting enactments.

## **II. Regulatory Framework of Online Gaming and the Current Legal Regime**

As stated earlier, the line of distinction between gaming and gambling has blurred due to dominance of Online Gaming Platforms and Apps. The settled principle under Indian law is that games of skills are permitted and legal in India whereas games of chance are

<sup>17</sup>Act No. 3 of 1867.

<sup>18</sup>CH.2 Act 1935.

<sup>19</sup>States and Union Territories of Andaman and Nicobar Islands, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Haryana, Himachal, Lakshadweep, Punjab, Madhya Pradesh, Chattisgarh, Manipur, Mizoram, Tripura and Uttarakhand have adopted The Public Gambling Act, 1867.

prohibited. This clarity is diminishing day by day due to the rise of online culture in our country, as access to high speed internet, cheap data plans and mobile gadgets are revolutionizing the ways in which the common consumer used to behave a decade ago. Moreover, the rise of startup culture<sup>20</sup> has also impacted each and every sector, including Media and Entertainment Sector. The sudden boom of gaming platforms and Apps after COVID-19 Pandemic has also increased the competition among the players of this sector. The lack of a fully fledged regulatory regime for online gaming industry is one of the major reasons for increasing violations and there is a state of legal conundrum at present. The humble submission of the authors with regard to lack of regulatory framework is that, the scenario with regard to online gaming has changed drastically and beyond the imagination of law makers in last few years and the main problem with online gaming industry in the current time is that the platforms which claim that they are serving 'games of skill' or 'social games' through their platforms or Apps to the consumers, are actually serving 'games of chance' or games having predominant features of 'gambling' played for monetary stakes. Fantasy gaming<sup>21</sup> is the one of the most popular and growing segments in the online gaming industry which combine the elements of interest with elements of earning or winnings in form of money. The other major problem is that 'Gambling and Betting' are subjects falling within exclusive legislative competence of states and there are huge anomalies and inconsistencies in the nature and context of state laws. While some state laws provide for a blanket ban on gambling and betting (both offline and online) some states permit regulated approach in their laws on this subject. The most recent legislative step taken by the Government of India is the Amendment brought to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 on 6th April, 2023. (Popularly known as Gaming Amendments). Yet, it cannot be said that there was a complete absence of regulation on the specific subject of 'online gaming'. There have been some state acts, rules and ordinances already in place, before these amendments were introduced. Prior to the analysis on the efficacy of the above amending act (which is the current law) the legislative development on this topic can be understood by going through chronological development of law on this subject. The first ever state law permitting and regulating the online gaming was The Sikkim Online Gaming (Regulation) Act, 2008<sup>22</sup>, it was enforced on 29th July, 2008. As per the preamble of this act, the object of this act is to "*provide for control and regulation of online gaming through electronic or non-electronic formats, and to impose a tax on such games, in the state of Sikkim.*" This act defines "Online Games"<sup>23</sup> as "Online Games" means all or any games of chance or a combination of skill and chance, including but not limited to Poker, Roulette, blackjack or any game, played with cards, dice, or by means of any machine or instrument or money's worth, as may be prescribed from time to time." The term Online Gaming has been defined as "Online Gaming"<sup>24</sup> " means any gaming, where any player

<sup>20</sup>Startup Ecosystem in India- Growing or Matured, (last visited Jul.12,2023). <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2019/01/startup-landscape-ecosystem-growing-mature.pdf>

<sup>21</sup>The Evolving Landscape of Online Gaming in India (last visited Jul.13,2023). <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>

<sup>22</sup>Act No. 23, Acts of Sikkim State Legislature.

<sup>23</sup>Section 2(d), Sikkim Online Gaming (Regulation) Act, 2008.

<sup>24</sup>Section 2(k), Sikkim Online Gaming (Regulation) Act, 2008.



enters or may enter the game or takes or may take any step in the game or acquires or may acquire or may acquire a chance in a lottery, by means of a telecommunication device including the negotiating or receiving of any bet by means of telecommunication device." The Sikkim Act also defines some other important terms such as "License", "Online Gaming Servers", "Online Gaming Websites", "Penalty", "Sports Gaming" and "State". This act establishes a licensing regime for permitted online games throughout the state via intranet. This act is a living piece of legislation amended four times since its enactment in the years 2009, 2012, 2015 and 2017. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015<sup>25</sup> is another state legislation which has been enacted on this subject. The Preamble of this act states the purpose of this act, it says that the aim of this act is *"to prohibit gambling and regulate and promote online games of skill"*. The Act defines "Gambling"<sup>26</sup> as "Gambling means and includes wagering and betting on games of chance but does not include betting or wagering on games of skill". The act in clear terms draws distinction between 'Games of Skill' and 'Games of Chance'. It states that, where there is preponderance of skill over chance is a 'Game of Skill' and where there is preponderance of chance over skill is a 'Game of Chance'. It also sets a licensing regime and measures for promotion of online games of skill. The Act states that *"Once a license has been obtained under this Act, wagering or betting on online 'games of skill' or making profit by providing a medium for playing 'games of skill' shall not amount to gambling so long as they are being provided to players and are being accessed by players operating from territories where 'Games of Skill' are exempted from the ambit of Gambling."* Schedule A annexed to the Act enumerates a list of games of skill which include- Chess, Sudoku, Quizzes, Binary Options, Bridge, Poker, Rummy, Nap, Spades, Auction, Solitaire, Virtual Golf, Virtual racing games including virtual horse racing, virtual car racing etc., Virtual Sports including virtual soccer, virtual cricket, virtual archery, virtual snooker/ bridge, pool, Virtual Fighting, Virtual wrestling, Virtual boxing, virtual combat games, Virtual adventure games, Virtual stock/ monopoly games and Virtual sport fantasy league games. Besides these specific laws enacted on the subject under discussion, there have also been some legislative steps which could not see the light of the day and become law but had these bills became law, would have been very significant legal reforms and would have contributed in bringing more transparency in the online gaming sector and creating a strong legal regime. The Sports (Online Gaming and Prevention of Fraud) Bill, 2018<sup>27</sup> was introduced as private member bill in Lok Sabha by Dr. Shashi Tharoor, A Congress Member of Parliament. The Object enumerated in the preamble of the bill was *"to establish an effective regime to maintain the integrity of Sports in India by preventing and penalizing, Sports Fraud, regulation of Online Sports Gaming; and for the matters connected therewith or incidental thereto."* The last paragraph of the 'Statement of Objects and Reasons' of this bill is most relevant, so far as the need of regulation of online gaming is concerned, it stresses upon the need of an uniform central law to address the present concerns on the subject and states that *"Betting and Gambling are state subjects however, the Parliament of India has the legislative competence to enact a law*

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<sup>25</sup> Act No. 3, Acts of Nagaland State Legislature.

<sup>26</sup> Section 2(1), The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015.

<sup>27</sup> Bill No. 259 of 2018 as presented in Lok Sabha.

to govern online betting and gambling in light of its powers under Entry 31 of List 1 of Seventh Schedule to the Constitution, as explained in the 276th Report of the Law Commission<sup>28</sup> of India. The need of the hour is a comprehensive regulatory framework, overseen by a competent regulatory body, to check the flow of black money in online sports gaming, and to curb any illegal activities in connection with it. Apart from the check on criminal activities, the regulation of online sports gaming may encourage investment in the sector, which in turn can lead to technological advancements as well as revenue and employment generation." Another Private Member Bill introduced on the issue which could not become law is Online Gaming Regulation Bill 2022<sup>29</sup>. This bill was introduced in Lok Sabha Adv. Dean Kuriakose, Member of Parliament. The Preamble of this Act enumerated the object as "to establish an effective regime to regulate online gaming industry to prevent fraud and misuse and for matters connected therewith and incidental thereto." The aims and objects of the bill mainly focuses on the ill-effects of long hours of online gaming specially on the adolescents, which can impair normal socialization, and can cause physical and mental harm, wastage of natural resources and loss of precious time and addictive features of online gaming. The Objects and reasons part also states that there should be limitations of time and money an individual can invest while playing these games and it also stressed the need for establishment of an online gaming commission<sup>30</sup> which can regulate the online gaming industry in India and also set standards for industry in the country.

### Some Recent Legislative Developments

The State of Meghalaya on 26th March, 2021 notified The Meghalaya Regulation of Gaming Act, 2021<sup>31</sup> with an object to regulate gaming within the state, both games of skill as well as the games of chance. The definition of Gaming under the act includes both games, the games of skill and games of chance. The focus of the act is to create a licensing regime for all types of gaming either played online or offline. It also provides that Meghalaya Prevention of Gambling Act, 1970<sup>32</sup> shall have no application on any games of skill or chance licensed under this act. Schedule-A of the Act provides a list of Games of Chance permitted under this law. They are- Baccarat (Punto Banco), Big Six Wheel (Wheel of Fortune), Chemin-de-for, Craps, Flush, Brag, Three Card Game, Kino, Pontoon/21, Roulette, Slots, Super Pan9 and any other game of chance permitted by the State Government from time to time. Schedule-B of the Act enlists Games of Skill which are- Backgammon, Bingo, Blackjack, Napoleon, Poker, Poker Dice, Rummy, Solitaire, Spades, Prediction of results of gaming events and placing a bet on the outcome in part or in whole, of sports or sporting events such as football, cricket, lawn-tennis, chess, golf, horse-race and such other games, Virtual adventure games, Virtual Combat games, Virtual mystery and and detective games, Virtual racing games including virtual horse-racing, virtual car racing et al., Virtual Sports fantasy league games, Virtual sports

<sup>28</sup>Under the chairmanship of Justice B.S. Chauhan this report was submitted with regard the question of legalization of Gambling in india. The Report inter alia suggested that it is desirable to ban gambling but keeping the practical difficulties in mind the Commission suggested regulation of these activities.

<sup>29</sup>Bill No. 78 of 2022 as presented in Lok Sabha.

<sup>30</sup>Section 3 and 4 of Online Gaming Regulation Bill, 2022.

<sup>31</sup>Act No. 9 of Meghalaya State Legislature.

<sup>32</sup>Act No. 8 of Meghalaya State Legislature.





gaming including soccer, golf, cricket, archery, snooker, bridge, pool et al., Virtual stock/Monopoly Games, Virtual team selection games and any other game of skill permitted time to time by the State Government. At present all games either games of skill or chance played for stakes are banned in the state of Telangana. As per media reports<sup>33</sup> the state of Telangana is thinking to introduce a law for regulating games of skill, as the enforcement of a complete ban is difficult and may have adverse consequences. The newly introduced law may have an oversight board to determine that whether any game is a game of skill or chance. The state of Rajasthan has introduced the draft of Rajasthan Virtual Online Sports (Regulation) Bill, 2022<sup>34</sup> with the purpose of bringing a licensing regime for regulating fantasy sports, esports and other games of skill viz. Poker, quizzes, virtual stock games etc. In the month of March 2022 it came through media reports that state of Maharashtra is planning to amend Maharashtra Prevention of Gambling Act, 1887<sup>35</sup> to address the issues relating to online gaming. In the month of October, 2022 the State of Tamil Nadu has introduced Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill, 2022<sup>36</sup> which seeks to regulate online gaming and prohibit gambling on games of chance. The state of Kerala is planning to again put a ban on online Rummy played for stakes on the grounds of rise in number of suicide cases in the state. As the notification of the state Government banning online Rummy played for stakes was struck down by the Hon'ble Court in the month of September, 2021. The state of Karnataka in 2021 had amended The Karnataka Police Amendment Act<sup>37</sup>, which sought to prohibit all online games for stakes, including the games of skill, In the month of February 2022, the Hon'ble High Court of Karnataka had struck down certain provisions of this amending act. The State Government has filed an appeal against the Hon'ble High Court's Order and the Appeal is pending before the Apex Court.

### **Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rule, 2023**

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rule, 2023<sup>38</sup> may be considered to be the latest legislative step towards enacting a central law on the subject of 'online gambling' and creating a full proof legal framework to address all contemporaneous issues that need to be addressed due dominance of digital environment and boom in Digital Media and Entertainment Sector. In exercise of powers conferred by sub-section (1) and clauses (z) and clauses (za) of sub-section (2) of section 87 of The Information Technology Act, 2000, the Central Government introduced these amendments (Popularly known as "Gaming Amendments") to The Information Technology (Intermediary Guidelines and Digital

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<sup>33</sup>Gowree Gokahle, Tanisha Khanna and Raashi Vaishya, Gaming Law 2022, <https://www.nishithdesai.com/>

<sup>34</sup><https://finance.rajasthan.gov.in/PDFDOCS/REVENUE/10746.pdf> (visited on Jul.26, 2023).

<sup>35</sup>Supra Note. 33.

<sup>36</sup>[https://prsindia.org/files/bills\\_acts/acts\\_states/tamil-nadu/2023/Act9of2023TamilNadu.pdf](https://prsindia.org/files/bills_acts/acts_states/tamil-nadu/2023/Act9of2023TamilNadu.pdf) (visited on Aug.5,2023).

<sup>37</sup>[https://prsindia.org/files/bills\\_acts/bills\\_states/karnataka/2021/Bill%20No.%2037%20of%202021%20Karnataka.pdf](https://prsindia.org/files/bills_acts/bills_states/karnataka/2021/Bill%20No.%2037%20of%202021%20Karnataka.pdf) (visited on Aug.9,2023).

<sup>38</sup>G.S.R. 275(E) Dated 6th April 2023.

Media Ethics Code) Rules, 2021<sup>39</sup> on 6th of April, 2023. As discussed earlier, that betting and gambling are subjects falling within the exclusive legislative competence of states. Though some of the states have enacted state laws which permit certain games of skills, while there are also some state laws which completely ban both games of skill as well as games of chance played for stakes, either played online or offline. Looking into the immense growth of online gaming sector and various social and economic issues that have emerged in the recent times The Ministry of Electronics and Information Technology (MeitY) has introduced amendments to The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. The object of the amendment is to protect the children and other vulnerable sections from harms of illegal gambling and betting websites and Apps. The amendment aims to protect them from addiction related harms and financial losses caused due to addiction of online gaming in children and adults. It also aims to protect children and create measures for content related harms. Especially with regard to depiction of violent and inappropriate content accessed by them, or playing real money games. The other objects that the amendment aims to achieve are controlling advertisements of offshore betting and gambling websites and platforms targeting Indian players and to prevent money and money laundering related issues by creating strict KYC<sup>40</sup> compliance mechanism. This amendment has added several definitions and coined out a mechanism for verification of online games to be "permissible online game" by the Online Gaming Self Regulatory Bodies (SRBs) designated by the Central Government of India. Section (qa) of the amending act defines "Online Game" as "Online Game" means a game that is offered on the Internet and is accessible by the user through a Computer Resource or an Intermediary." Section (qb) defines "Online Gaming Intermediary" as "Online Gaming Intermediary means any Intermediary that enables the users of its computer resource to access one or more online games." Section (qc) defines "Online Gaming Self-Regulatory Body" as "Online Self-Regulatory Body means an entity designated as such under rule 4A." "Online Real Money Game" has been defined under section (qd) of the amendment as "Online Real Money Game" means an online game where a user makes or deposit in cash or kind with the expectation of earning winnings on the deposit". An explanation has been added to this definition to further elaborate and clarify the meaning of 'winnings' as per the explanation 'winnings' means any prize, in cash or kind, which is distributed to a user or intended to be distributed to a user of an online game based on the performance of the user and in accordance with rules of such online game.' Section (qe) defines "Permissible Online Game" as "Permissible Online Game means an online real money game or any other game or any other game that is not an online real money game." Permissible Online Real Money Game" has been defined in Section (qf) as "Permissible Online Real Money Game means an online game real money game verified by an online gaming self-regulatory body under rule 4 A."

The new rules provide for adequate control to safeguard Indian players from illegal gambling and betting websites and Apps in the following ways:

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<sup>39</sup>G.S.R. 139(E) dated 25th February, 2021.

<sup>40</sup>KYC Means "Know Your Customer" it is an initiative for verification of Customers mainly used in Banking Sector.



- (i) The intermediaries<sup>41</sup>, social media platforms, and App Stores are bound not to publish, share or host any online game that may have tendency to cause user harm and has not been verified as "permissible online game" by "Online Gaming Self-Regulatory Body" (SRBs)<sup>42</sup> by the Central Government.
- (ii) These rules also restrict any advertisement or surrogate advertisement or promotion of any online game not verified to be a "permissible online game".
- (iii) Even any other game non-real money game that may cause user harm or affect security of the nation will have to be compliant to the obligations as applicable to "Online Real Money Games" and the Central Government has the power to require such compliance.

The Online Gaming Self-Regulatory Bodies shall ensure that any online game is tested and verified against the framework published on its website before the "Online Real Money Game" is verified as "Permissible Online Game". The framework should mandatorily include:

1. The safeguard that measures that Online Real Money Games should not be against the Integrity of nation, Sovereignty and national interest. It should not be against public order and morality and security and friendly relations with other nations;
2. It must ensure safeguards from user harm psychological harm to vulnerable sections specially children and young adults;
3. Safeguards regarding Age rating and parental controls;
4. Measures ensuring safeguard from addiction, financial losses, frauds, defined 'limits of time' and 'money spent' and frequent warning messages during long gaming sessions.

Duty has been casted upon the SRBs to ensure the above safeguards which will protect the children and other vulnerable sections of the society from ill-effects of Online Gaming in India.

## Conclusion

From the above discussions it is clear that gambling and betting cannot be banned completely, instead of imposing a blanket ban on these activities, regulatory approach seems to be a better option as of today. It is also clear that Government is taking effective steps, so far as regulation of Online Gambling is concerned. Gambling and Betting are serious issues which both, the legislature as well as society has to handle very delicately. But, today we are living in digital environment, where the world is changing with fast speed and laws and regulations need to be pro-actively enacted to meet the expectations of the changing society. As the ill-effects of these activities are known to all of us, therefore a holistic legislative approach by the legislature and a self-regulatory behavior from the society is the need of the hour to sensibly deal with issue.

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<sup>41</sup>Section 2(l)(w) of the Information Technology Act,2000 defines the term Intermediary.

<sup>42</sup>Deeksha Bhradwaj, Three Gaming Self-Regulatory Bodies to seek Govt. Nod, <https://www.livemint.com/> (visited on August 18,2023).