

Beyond the Bet: Legal and Policy Dilemmas in India's Online Gaming Sector

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Abstract

The online gaming Industry in India has witnessed exponential growth over the past decade, driven by digital penetration, smartphone accessibility, and the gamification of entertainment. Yet, this rapid expansion has been accompanied by legal ambiguities, regulatory inconsistencies, and growing societal concerns about addiction, financial exploitation, and youth exposure. The central dilemma facing the Indian legal system today is whether the industry requires structured regulation or categorical prohibition. In India, gambling & betting laws has been a subject of the State list³ & therefore different states have exclusive powers to draft & enforce legislations for their respective states. The Public Gambling Act, 1867⁴ is the only central legislation dealing with gaming laws in India. While games of skill are legalized in India; there is no such legislation for the games of chance. With the passage of time Indian judiciary has interpreted laws to define what is meant by the term games of skill. Judicial precedents have declared games such as rummy, poker, fantasy sports as games of skill because there is preponderance of skills involved in it.

This paper critically examines the evolution and current legal position of online gaming in India, with particular focus on the intersection of gaming, gambling, and constitutional freedoms. It surveys the legal dichotomy between 'games of skill' and 'games of chance', analyses key judicial decisions, and investigates recent legislative developments, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.⁵ Through comparative insights from global regulatory frameworks, this study advocates for centralized, transparent, and technology-sensitive regulatory model that upholds consumer protection without stifling innovation or digital entrepreneurship.

Keywords: Online Gaming, Information Technology, Gambling, Games of Skill or Chance, Digital Consumer Protection.

1. INTRODUCTION

The concept of gaming has deep cultural and historical roots in India. However, with the rapid advancements of technology, the Indian gaming landscape has transformed significantly. No longer confined to traditional outdoor play or brick-and-mortar gaming houses, gaming in India has evolved into a dynamic digital industry. This shift has been facilitated by several factors, including widespread internet access, the proliferation of smartphones, and the increasing convenience of digital payment systems.

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³ The Constitution of India, 1950, Sch VII, List II, Entry 34.

⁴ The Public Gambling Act, 1867.

⁵ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, vide G.S.R. 139(E), dt. 25.2.2021, published in the Gazette of India, Extra, Pt.II, Sec.3(i), dt. 25.2.2021.

Under Indian law, gaming is broadly categorized into two types: games of skill, which are permitted, and games of chance, which are typically prohibited. Numerous anti-gambling statutes- many of which date back to colonial legislation- criminalize the operation of games of chance, especially those conducted in common gaming houses. Yet, a persistent legal challenge arises from the absence of precise statutory definitions, particularly regarding what qualifies as a ‘game of skill’. This has led to interpretive inconsistencies across jurisdictions. While the Indian Judiciary has played an active role in elaborating the ‘preponderance of skill’ doctrine, many state legislations continue to conflict with such judicially developed standards.

The Cambridge Dictionary defines gambling as⁶-

“The risking of money in games of chance, especially at a casino”.

Legally, Indian gaming jurisprudence hinges on critical distinction between games of skill and games of chance. While judicial pronouncements such as *K.R. Lakshmanan v. State of Tamil Nadu*⁷ have upheld this distinction, ambiguity continues to surround legislative interpretation at the State level. Several states have enacted restrictive measures, resulting in a fragmented legal landscape. The central government’s 2023 attempt to operationalize a co-regulatory framework through amendment to the IT rules was shelved, and proposals to appoint designated self-regulatory bodies (SRBs) due to concerns of industry dominance.

The online gaming sector, in particular, has evolved beyond mere recreation to become a complex, high-revenue digital industry. Economically, India’s online gaming sector has emerged as a significant contributor to the digital economy. As of 2026, the online gaming share in M& E sector is expected to be 12.6 percent which was significantly 3.4 percent in 2019.⁸ The user base expanded by 23 million during the year, bringing the total number of gamers to 590 million.⁹ Notably, 44% of these gamers are men, indicating a diversification in the demographic profile.¹⁰ The sector is majorly fueled by real money gaming and has also attracted a revenue of 86 percent of the total revenue¹¹ accounting for a value of \$ 3.7 billion in 2024, which is expected to rise by \$60 billion by 2034.¹²

From a policy and tax perspective, the industry has witnessed pivotal changes. The Finance Act, 2023 introduced Section 115BBJ¹³ to impose a 30% tax on net winnings from online games, regardless of whether

⁶ Cambridge Dictionary, available at <https://dictionary.cambridge.org/dictionary/english/gaming> (last accessed 24 October 2024).

⁷ *K.R. Lakshmanan v. State of Tamil Nadu*, AIR 1996 SC 1153.

⁸ EGROW, ‘India’s Booming Online Gaming Industry- A Potential Powerhouse’, available at <https://egrowfoundation.org/research/indias-booming-online-gaming-industry-a-potential-powerhouse/> (last accessed 23 July 2024).

⁹ IBEF, ‘India’s Online Gaming Market Grew by 23% in FY24: Report’, available at <https://www.ibef.org/news/india-s-online-gaming-market-grew-by-23-in-fy24-report> (last accessed 12 November 2024).

¹⁰ Sreeradha Basu, ‘44% gamers in India are Women, but Male Employees Continue to Dominate the Industry’, available at https://economictimes.indiatimes.com/tech/technology/44-gamers-in-india-are-women-but-male-employees-continue-to-dominate-the-industry/articleshow/118563997.cms?UTM_Source=Google_Newsstand&UTM_Campaign=RSS_Feed&UTM_Medium=Referral&from=mdr (last accessed 10 April 2024).

¹¹ PTI, ‘Real Money Gaming Dominates as India’s Online Gaming Industry Targets \$9.1 Billion by 2029: Report’ available at <https://www.financialexpress.com/business/brandwagon-real-money-gaming-dominates-as-indias-online-gaming-industry-targets-9-1-billion-by-2029-report-3782135/> (last accessed 25 August 2024).

¹² Ibid.

¹³ The Finance Act, 2023, sec.115BBJ.

the game is one of skill or chance.¹⁴ Additionally, a 28% Goods and Services Tax (GST)¹⁵ was implemented on the total value deposited with online gaming platforms, effective 1 October 2023. These fiscal changes have significantly altered the compliance and profitability environment for gaming operators in India.¹⁶

1.1 Research Problem

The online gaming industry in India currently operates in a framework and frequently contentious legal landscape. Multiple state governments have attempted to ban online gaming platforms altogether, often without clear legislative categorization or technological understanding. At the same time, courts have repeatedly intervened to uphold the legality of certain forms of online gaming, especially where a ‘game of skill’ is established. The core research issue addressed in this paper is whether India needs to impose a regulatory framework or enforce a ban on the online gaming industry, and what implications such a decision would have for fundamental rights, state powers, and the digital economy.

1.2 Methodology

This research is primarily doctrinal and analytical in nature. It draws upon statutory texts, judicial pronouncements, policy papers, and secondary literature including academic articles, and government reports. A comparative approach is adopted where necessary, particularly in relation to regulatory models followed in jurisdictions such as United Kingdom, the United States, and Singapore.

2. HISTORICAL BACKGROUND

2.1. Ancient India

The practice of gambling in India is not a modern phenomenon; its origins trace back to epic narratives such as Mahabharata and Ramayana. Texts from ancient Indian jurisprudence- including the Yajnavalkya Smriti, Narad Smriti, and Arthashastra by Kautilya-acknowledge the existence of gambling while treating it as a social vice that required state intervention.¹⁷ The Manusmriti offers a particularly stern view, placing a duty on the ruler to suppress gambling and betting, equating them with open theft. It declares:

*“Gambling and betting let the king exclude from his realm; those two vices cause the destruction of the kingdoms of princes. Gambling and betting amount to open theft; the king shall always exert himself in suppressing both”.*¹⁸

Interestingly, even in ancient India, a nascent recognition existed that not all gambling was mindless or purely based on luck. Some games, like dicing, were seen as involving mental acuity and strategy, suggesting an early comprehension of what modern legal parlance refers to as the distinction between “game of skill” and a “game of chance”.

2.2. Contemporary Framework

In post- Independence India, betting and gambling are classified as State Subjects under Entry 34 of List II of the Seventh Schedule to the Constitution.¹⁹ As a result, the power to legislate on such matters lies primarily with state governments. Before Independence, the central legislation in force was the Public Gambling Act, 1867, which prohibits operating or being found in a common gaming house. However, this

¹⁴ Neelanjit Das, ‘Income Tax Payable on Winning from Online, Offline Games of Chance’, available at <https://economictimes.indiatimes.com/wealth/tax/income-tax-payable-on-winnings-from-online-offline-games-of-chance/articleshow/105564804.cms?from=mdr> (last accessed 23 August 2024).

¹⁵ Supra Note 9.

¹⁶ Ibid.

¹⁷ Law Commission Cricket of India, 276th Report on Legal Framework: Gambling and Sports Betting Including Cricket in India, 2018, para 3.1.

¹⁸ Manusmriti, Chapter IX, verses 221-223, as interpreted in Law Commission Report (n1).

¹⁹ Supra Note 3.

Act neither defines online gaming nor distinguishes between skill and chance.

Following Independence, states were empowered to enact their own laws on gambling and gaming, leading to a patchwork of regulations, many of which are outdated and technologically obsolete. While some states such as Sikkim and Nagaland have attempted to modernize their regulatory approach- Sikkim by issuing online gaming licenses and Nagaland by explicitly defining “games of skill” under its 2016 Act- many others rely on judicial precedent to interpret their laws.²⁰

This divergence is evident in how courts and legislatures treat games such as poker and rummy. While Supreme Court has held that staking money on games involving “mere skill”, states like Telangana have taken a contrary position, classifying games with mixed elements of skill and chance as unlawful betting or wagering.²¹ The judiciary, therefore, has emerged as a key factor in interpreting this legal vacuum, particularly in demarcating games of skill from those of chance.²² However, the absence of a central framework continues to pose challenges in ensuring uniformity, compliance, and investor confidence in the sector.

3. GAME OF SKILL V. GAME OF CHANCE

The “skill versus chance” test lies at the heart of India’s legal distinction between permitted and prohibited games. A game of skill is understood to involve the exercise of judgment, decision- making, strategy, and experience- attributes that go beyond random luck.²³ In contrast, a game of chance is predominantly dependent on uncertain or arbitrary outcomes.

The distinction is critical because, under most Indian gambling statutes, games involving “mere skill” are exempt from prohibition, whereas those dominated by chance fall within the ambit of anti-gambling laws. A game of skill involves the exercise of judgment, strategy, and experience. In contrast, a game of chance is primarily governed by luck, randomness, or external variables. While no national law codifies this distinction, judicial precedents have provided guidance. The Hon’ble Supreme Court (SC) in *State of Bombay v. RMD Chamarbaugwala*²⁴ recognised that skill- dominated games fall outside the scope of gambling regulation.

Indian Jurisprudence does not have a uniform legislative definition of what constitutes a “game of skill”. Instead, courts have gradually evolved the doctrine of “preponderance of skill”- a concept borrowed from the “dominant factor test” used in U.S. legal systems.²⁵ This doctrine was reaffirmed in in *MJ. Sivani v. State of Karnataka*,²⁶ where the court held:

“There is nothing like a game of pure skill. Every game has an element of chance. The test is whether skill dominates the outcome to such degree that chance becomes incidental.”²⁷

Under this doctrine, games such as rummy, poker, fantasy sports and horse racing have recognised as skill-based by various courts.²⁸ However, the absence of a statutory standard means that what qualifies as a

²⁰ Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016.

²¹ Chanci, ‘Online Betting in Sports: A Comparative Analysis’ *Indian Journal of Integrated Research*, (2023) Vol.3 No.3, p.1-17.

²² Ibid.

²³ Abhimanyu Chopra and Aman Chaudhary, ‘A Game of Skill or Chance? Navigating the Indian Online Gaming Landscape’ available at <https://www.azbpartners.com/bank/a-game-of-skill-or-chance-navigating-the-indian-online-gaming-landscape/> (last accessed 19 Jan 2025).

²⁴ *State of Bombay v. RMD Chamarbaugwala* AIR1957 SC 699.

²⁵ *Skill Lotto Solutions Pvt Ltd v. Union of India* 2020 SCC OnLine SC 990.

²⁶ *MJ. Sivani v. State of Karnataka*, AIR 1995 SC1770

²⁷ Ibid.

²⁸ *K.R. Lakshmanan v. State of Tamil Nadu* (1996) 2 SCC 226.

game of skill in one state may be banned in another. For instance, Telangana has categorized all games involving stakes- including those with skill elements- as gambling, contradicting SC jurisprudence.²⁹

4. LEGAL FRAMEWORK GOVERNING ONLINE GAMING IN INDIA

India's legal framework governing online gaming is characterized by fragmentation, ambiguity, and constitutional complexity. Unlike other sectors with central regulatory oversight, gaming is not governed by a single comprehensive statute. Instead, it is shaped by a combination of colonial-era laws, state-specific legislation, judicial interpretations, and recent attempts at digital governance. This disjointed architecture often results in overlapping jurisdictions, inconsistent judicial outcomes, and a regulatory vacuum- particularly for real-money and skill- based online gaming.

4.1 Constitutional Position: Legislative Competence

The regulation of gambling and betting falls within Entry 34 of List II (State List) under the Seventh Schedule of the Constitution of India, thereby granting states the power to legislate on "betting and gambling".³⁰ However, digital and online gaming platforms operate across state borders, invoking issues of interstate commerce, freedom of trade under Article 301,³¹ and the right to carry on any occupation under Article 19(1) (g).³² This leads to tensions between state-imposed prohibitions and constitutional protections afforded to businesses operating skill- based platforms.³³

While states like Tamil Nadu and Telangana have attempted blanket bans, courts have struck them down when they conflict with fundamental rights, especially where games demonstrate a preponderance of skill.³⁴ However, in the absence of a central gaming law, legal certainty continues to dodge the industry.

4.2 Key Central Laws Affecting Online Gaming

Although gambling is primarily a state subject, certain central legislations indirectly govern aspects of online gaming:

4.2.1 Public Gambling Act, 1867³⁵

This pre- constitutional, colonial legislation prohibits operating or visiting a common gaming house. It does not extend to games of skill and makes no reference to online or electronic modes.³⁶ Several states have adopted this law with modifications, while others like Sikkim, Nagaland, and Meghalaya have enacted independent statutes.

4.2.2 Information Technology (IT) Act, 2000

Though the IT Act, 2000, does not define online gaming, Section 67 prohibits obscene content in electronic form. With the 2023 amendments of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, online gaming platforms must now comply with certain due diligence standards, including KYC,

²⁹ Nishith Desai Associates, 'The Curious Case of the Indian Gaming Laws: Legal Issues Demystified' *available at* https://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf (last accessed 24 Jan 2025).

³⁰ Supra Note 3.

³¹ The Constitution of India, Art. 301.

³² Ibid, Art.19(1)(g).

³³ Aditya Malhotra and Meera Menon, 'Recent Developments in the laws relating to online Gaming and Online Betting in India', *available at* <https://www.ibanet.org/Recent-legal-developments-in-online-gaming-and-betting-in-India> (last accessed 24 Feb 2025).

³⁴ Gujarat National Law University, 'Evaluating Blanket Bans and Mandatory Limits in Gaming', *available at* <https://gnlu.ac.in/Document/content-docs/1b3b905c-7d50-48c1-b6c0-5dbada252935.pdf> (last accessed 25 August 2024).

³⁵ The Public Gambling Act, 1867.

³⁶ Supra Note 35, s.3.

age verification, and grievance redressal mechanisms.³⁷ However, the rejection of the self-regulatory body (SRB) model has left the enforcement framework in a state of fluctuation.

4.2.3 Finance Act, 2023:

The insertion of Section 115BBJ³⁸ imposes a 30% tax on net winnings from online games, while GSR at 28% on full deposits has dramatically changed the industry's financial environment.³⁹ These fiscal provisions apply regardless of whether game is of skill or chance, creating tension with judicially upheld protections for skill-based platforms.

4.3 State-Level Legislations: A Patchwork Approach

Several states have enacted independent gaming laws, often with divergent standards:

4.3.1 Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2023⁴⁰:

This Act prohibits real-money games like rummy and poker but was partly struck down by the Madras High Court for violating Articles 19(1)(g) and 14.⁷

4.3.2 Telangana Gaming (Amendment) Act, 2017⁴¹:

Banned all forms of gaming, including those involving skill, without meaningful classification or procedural safeguards.

4.3.3 Goa, Daman & Diu Public Gambling Act, 1976⁴²

The Goa, Daman, and Diu Public Gambling Act of 1976 penalizes those who maintain, manage, own or possess a gaming establishment or utilize any premises for such activities. Whereas, section 13 of the Act,⁴³ permits electronic amusement games, slot machines in Five Star Hotels, table games, and onboard gaming on offshore vessels, subject to government regulations.⁴⁴

4.3.4 Sikkim Casino (Control & Tax) Act, 2002⁴⁵

The legislation empowers the government of Sikkim to issue licenses to enterprises and individuals for the operation of casinos inside the State. In 2008, the Sikkim Online Gaming (Regulation) Act⁴⁶ was enacted to regulate and govern online gaming in both electronic and non-electronic formats, as well as to impose taxation on such activities inside the state of Sikkim.⁴⁷ It forbids them from engaging in online games in public.

This patchwork of regulation results in legal uncertainty for operators and users alike, particularly when platforms are accessible across state borders. Judicial intervention has become the primary mechanism for conflict resolution, but a uniform national policy remains absent. While recent efforts through taxation and IT rules suggest a move toward central oversight, a coherent legislative policy- balancing state

³⁷ Supra Note 3, Art.19(1)(g), Art. 14.

³⁸ Supra Note 13.

³⁹ Sneha Kulkarni & Preeti Motiani, 'Winnings from online games to be taxed at flat 30%, on par with cryptos, proposes Budget 2023' available at <https://economictimes.indiatimes.com/wealth/tax/winnings-from-online-games-to-be-taxed-at-flat-30-on-par-with-cryptos-proposes-budget-2023/articleshow/97527415.cms?from=mdr> (last accessed 24 March 2025).

⁴⁰ The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gambling and Regulation of Online Games Act, 2022.

⁴¹ The Telangana Gaming (Amendment) Act, 2017.

⁴² The Goa, Daman & Diu Public Gambling Act, 1976.

⁴³ Ibid, sec.13.

⁴⁴ ICLG, 'Gambling Laws and Regulations India 2025', available at <https://iclg.com/practice-areas/gambling-laws-and-regulations/india> (last accessed 25 April 2025).

⁴⁵ The Sikkim Casino (Control & Tax) Act, 2002.

⁴⁶ The Sikkim Online Gaming (Regulation) Act, 2008.

⁴⁷ Ibid.

autonomy, user protection, and digital freedom-is yet to be realised.

4.4 Role Of Digital Forensics in Online Gaming Regulation

With online gaming now operating within a cloud- based and digitally encrypted framework, enforcement of regulatory standards and detection of illegal conduct has become increasingly reliant on digital, audio, and video forensic techniques. These digital, audio, and video forensic techniques have emerged as essential enforcement tools. Investigations into cheating, bot usage, underage access, and payment manipulation often demand forensic retrieval of server-side logs, device fingerprints, in- app conversations and sometimes even recorded gameplay. Digital forensics enable the tracing of device- specific interactions, such as login origins, and anomalous behaviour patterns. Audio forensics becomes critical in platforms offering voice chat, especially in uncovering collusion, threats, or inducement during high- stake gaming events. Video forensics assists in verifying screen recordings or stream authenticity in cases of reported cheating or manipulation

Section 59 and 63 of the Bharatiya Sakshya Adhiniyam (BSA), 2023 legally empower courts to presume the integrity of such digital evidence, subject to rebuttal.⁴⁸ These criminal reforms have been furthered by virtue of Section 39 of BSA, 2023,⁴⁹ which provides recognition of expert opinion, allowing forensic analysts to testify on manipulated code, data trails, or fraudulent software integration. Moreover, Section 176(3) of the BNSS mandates videography in sensitive procedures- a precedent that could influence forensic handling of online gaming disputes.⁵⁰

The integration of cyber- forensics and evidentiary value is especially critical in cases involving real- money gaming, where user conduct can intersect with criminal law. From digital wallet transactions to communication intercepts during gameplay, forensic inputs now serve as indispensable tools for law enforcement, reinforcing both user accountability and judicial transparency. Therefore, amidst the tensions that unregulated expansion of real- money platforms has led to growing concerns around addiction, financial risk, underage access, and fraud- highlighting a genuine regulatory vacuum.

5. JUDICIAL APPROACH TO ONLINE GAMING IN INDIA

The Indian judiciary has played a central role in defining the legality and limits of online gaming, particularly in the absence of a uniform central law.

5.1 Foundational Jurisprudence: Precedent on Games of Skill

The landmark case of *State of Bombay v RMD Chamarbaugwala*⁵¹ laid the foundation of Indian gaming jurisprudence by holding that competitions involving substantial skill are protected under Article 19(1)(g).⁵² The Court drew a sharp distinction between games of skill and chance, ruling that the former enjoy constitutional safeguards, even when stakes are involved. This principle was reaffirmed in *K.R. Lakshmanan v State of Tamil Nadu*, where horse racing was deemed a game of skill despite the presence of chance elements.⁵³ The Supreme Court introduced the “preponderance of skill” test, which has since become the benchmark for evaluating the legality of games such as poker, rummy, and fantasy sports.

⁴⁸ The BSA, 2023, ss. 59 and 63.

⁴⁹ Ibid, sec.39.

⁵⁰ The BNSS, 2023, s.176.

⁵¹ *State of Bombay v RMD Chamarbaugwala*, AIR 1957 SC 699.

⁵² Supra Note 3, art.19(1) (g).

⁵³ *K.R. Lakshmanan v State of Tamil Nadu*, AIR 1996 SC 1153.

Further clarity was provided in *MJ Sivani v State of Karnataka*,⁵⁴ where the Court acknowledged that most games carry an element of chance, but legality hinges on whether skill is the dominant factor influencing the outcome.⁵⁵ This jurisprudential evolution enabled courts to assess emerging digital games within a reasoned legal framework.

5.2 Judicial Recognition of Online Games as Legal Skill- Based Platforms

While rummy and poker have both been recognised as games involving skill, their legal status varies across states. The judiciary has consistently recognised that technological delivery does not alter the legal character of a game. In *Varun Gumber v. Union Territory of Chandigarh*,⁵⁶ the Punjab and Haryana High Court (HC) upheld the legality of Dream 11, a fantasy sports platform, holding that participation requires substantial knowledge, judgment, and analysis.⁵⁷ This has been further acknowledged by the Hon'ble Madras HC in *Junglee Games India Pvt Ltd v State of Tamil Nadu*,⁵⁸ where it struck down the Tamil Nadu Prohibition of Online Gambling Act, 2021 for banning online rummy and poker as unconstitutional, holding that the blanket ban violated the right to carry on business.⁵⁹

Similar recognition has been extended in *Play Games 24x7 Pvt Ltd v. State of Telangana*,⁶⁰ although Telangana HC has generally taken a more conservative approach, influenced by the states's 2017 amendment banning all forms of real-money gaming.⁶¹ These judgments reflect the inconsistent legal terrain across jurisdictions but also a growing judicial inclination to favour regulation over outright prohibition.

5.3 Constitutional Conflicts and Judicial Moderation

Despite progressive interpretations in some states, other like Andhra Pradesh and Telangana have persisted with blanket bans, leading to a constitutional clash between state autonomy under Entry 34 (List II) and the fundamental rights of individuals and businesses.⁶² Courts have sought to strike a balance by favouring regulation, particularly where gaming platforms maintain such as KYC protocol, age verification, and fair play audits.

Judicial commentary increasingly acknowledges the interplay between technology and legality. The courts have noted that real-time data analysis, gameplay logs, and user behaviour patterns offer forensic means to distinguish genuine skill- based play from manipulative or fraudulent practices- adding depth to the traditional "skill v. chance" test.

5.4 The Road Ahead: Awaiting Apex Clarity

The absence of a definitive ruling from the SC on the broader question of online gaming keeps the jurisprudence in flux. Although several special leave petitions are pending, the apex court has yet to consolidate the diverse HC opinions into a unified legal doctrine. Until such time, the judiciary remains the de facto regulator interpreting obsolete laws through the lens of constitutional morality, consumer protection, and digital innovation.

⁵⁴ *MJ Sivani v State of Karnataka*, AIR 1995 SC 1770.

⁵⁵ Ibid.

⁵⁶ *Varun Gumber v. Union Territory of Chandigarh*, Special Leave Petition (Civil) No. 26642/2017.

⁵⁷ Ibid.

⁵⁸ *Junglee Games India Pvt Ltd v State of Tamil Nadu*, Civil Appeal No.s 6124-6131/2023.

⁵⁹ *Junglee Games India Pvt Ltd v. State of Tamil Nadu* WP No. 10703 of 2023 (Madras HC)

⁶⁰ *Play Games 24x7 Pvt Ltd v. State of Telangana*, CS (COMM) 596/2024.

⁶¹ Ibid.

⁶² The Constitution of India, 1950, Sch VII, List II, Entry 34; Art 19(1)(g)

6. POLICY AND REGULATORY CHALLENGES IN INDIA'S ONLINE GAMING SECTOR

6.1. Fragmented Federalism and Legislative Inconsistency

One of the most persistent challenges in regulating online gaming in India stems from the country's federal structure. Since betting and gambling fall under Entry 34 of the State List,⁶³ each state has the constitutional authority to frame its own laws, it has resulted in a patchwork of inconsistent and often conflicting regulations. This creates a regulatory grey area where a platform operating legally in one jurisdiction may face criminal liability in another, despite offering the same service. Such fragmentation poses significant problems for pan-India gaming platforms, especially those offering real-money services. The lack of a consistent legal standard discourages investment, complicates compliance, and undermines user trust, thus, creating a paradox that no thriving digital economy can afford to sustain.

6.2. Political Ambivalence and Moral Paternalism

The regulatory confusion surrounding online gaming in India is not just a matter of legal gaps—it is also shaped by shifting political narratives and moral anxieties. Public statements from political leaders, such as BJP MP Vijay Goel's call for an outright ban on real-money gaming, reflect a growing discomfort with the sector.⁶⁴ Often, such positions frame online gaming as synonymous with gambling, without acknowledging the legal distinction between games of skill and games of chance, or recognising the role of regulation in mitigating risks despite judicial pronouncements cautioning against such prohibitive measures.

6.3. Regulatory Vacuum and the Breakdown of Self-Regulation

The legal vacuum in India's online gaming sector has been further complicated by the failure of the self-regulatory model envisioned by the central government. In 2023, the Ministry of Electronics and Information Technology (MeitY) amended the IT Rules to propose a co-regulatory framework, wherein Self-Regulatory Bodies (SRBs) would be authorised to certify games and oversee compliance.⁶⁵ While this appeared to be a progressive step, the implementation faltered. Concerns were quickly raised about transparency, independence, and potential industry bias, especially as gaming companies themselves were to nominate SRBs. Eventually, MeitY withdrew recognition of all proposed SRBs, effectively leaving the sector without any formal regulatory oversight.⁶⁶ In the absence of either a statutory regulator or a functioning self-regulatory body, there is no institutional authority to monitor compliance, approve platforms, or protect consumer interests. The current vacuum not only undermines user protection but also exposes legitimate businesses to legal uncertainty.

7. COMPARATIVE LEGAL MODELS: GLOBAL APPROACHES TO ONLINE GAMING REGULATION

7.1 United Kingdom

The United Kingdom operates under the Gambling Act 2005, enforced by the UK Gambling Commission, which oversees licensing, compliance, and player protection. As of the 2023–24 fiscal year, the British gambling industry generated a total Gross Gambling Yield (GGY) of £15.1 billion, of which £6.5 billion

⁶³ Supra Note 3.

⁶⁴ The Hindu, 'Real- Money Gaming is Online Gambling and Must be Banned, Not Regulated: Vijay Goel', available at <https://www.thehindu.com/news/national/real-money-gaming-is-online-gambling-and-must-be-banned-not-regulated-bjp-leader-vijay-goel/article69053955.ece> (last accessed 25 May 2025).

⁶⁵ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023.

⁶⁶ Chambers and Partner, Gaming Law 2024: India Overview, available at <https://chambers.com/legal-guide/gaming-law-india> (last accessed 21 May 2024).

came from the online sector.⁶⁷

7.2 Spain

Spain regulates gambling through the Spanish Gambling Act, 2011⁶⁸, with administrative oversight by the Direccion General de Ordenacion del Juego (DGOJ). In 2024, the country's online gaming market saw a 17.6% growth, reaching €1.45 billion in revenue.⁶⁹

7.3 Australia

Australia governs internet- based gambling under the Interactive Gambling Act, 2001.⁷⁰ The 2024 valuation of the Australian online gambling industry stood at approximately USD 5.2 billion, with a forecasted growth to USD 8.9 billion by 2033.⁷¹

7.4 United States

In the United States, gambling regulation is distributed across federal, state, and local levels. While the Unlawful Internet Gambling Enforcement Act, 2006 (UIGEA)⁷² restricts certain forms of online gambling, states are free to legalize and regulate online formats like sports betting and casinos. In 2024, the U.S. commercial gaming industry recorded revenues of \$71.92 billion—marking the fourth consecutive year of record-breaking growth.⁷³

7.5 France

France's gambling market is regulated by the Autorité Nationale des Jeux (ANJ). In 2024, the country's gambling sector posted a Gross Gaming Revenue (GGR) of €14 billion, with the online segment contributing approximately 18.6% of this figure.⁷⁴

8. REGULATION OR BAN: THE CORE DILEMMA

The debate over whether online gaming in India should be regulated or banned has moved beyond legal technicalities, it now touches upon constitutional freedoms, economic opportunity, and the country's readiness to govern emerging digital spaces. On one hand, the public perception of online gaming—particularly real money gaming – remains clouded by concerns around addiction, financial exploitation, and underage exposure. These fears, amplified by political exploitation, and underage exposure. These fears, amplified by political narratives and moral apprehensions, have prompted several states to invoke blanket prohibitions. However, such bans have consistently faced judicial pushback, especially when they fail to distinguish between games of skill and chance or when they violate fundamental rights under Article

⁶⁷ Gambling Commission, 'Annual Report and Accounts 2023 to 2024', available at <https://www.gamblingcommission.gov.uk/report/annual-report-and-accounts-2023-to-2024/annual-report-23-to-24-performance-report-overview-of-the-british-gambling> (last accessed 20 April 2025).

⁶⁸ The Spanish Gambling Act, 2011.

⁶⁹ Patricia Lalanda Ordonez, Fernando A. Martin Martin, Cristina Romero de Alba, 'Gambling Laws and Regulations Spain 2025', available at <https://iclg.com/practice-areas/gambling-laws-and-regulations/spain> (last accessed 20 March 2025).

⁷⁰ Julian Hoskins, Daniel Lovecek, Bree Ryan, 'Gambling Laws and Regulations Australia 2025', available at <https://iclg.com/practice-areas/gambling-laws-and-regulations/australia> (last accessed 27 March 2025).

⁷¹ Ibid.

⁷² Board of Governors of the Federal Reserve System, 'Regulation GG: Prohibition on Funding of Unlawful Internet Gambling', available at <https://www.federalreserve.gov/supervisionreg/regggcg.htm> (last accessed 24 August 2024).

⁷³ American Gaming Association, '2024 Commercial Gaming Revenue Reaches \$71.9B, Marking Fourth- Straight Year of Record Revenue' available at <https://www.prnewswire.com/news-releases/2024-commercial-gaming-revenue-reaches-71-9b-marking-fourth-straight-year-of-record-revenue-302379664.html> (last accessed 12 March 2025).

⁷⁴ Luiz Vinicius, 'France's gaming market to reach Euro 14 billion in Revenue by 2024', available at <https://igamingbrazil.com/en/sports-betting-en/2025/05/07/frances-gaming-market-to-reach-e14-billion-in-revenue-by-2024/> (10 May 2025).

19(1) (g)⁷⁵ of the Constitution of India.

On the other hand, the economic footprint of the online gaming industry cannot be ignored. With over 590 million users and foreign investment crossing \$3 billion, the sector represents both a growing digital economy and a hub of youth engagement.⁷⁶ An outright ban would not stifle innovation but may also drive users to offshore, unregulated platforms- resulting in greater legal and enforcement challenges. Global models from the UK, USA, and Singapore suggest that structured regulation, backed by licensing, taxation, digital forensics, and users' safeguards, is more effective than prohibition. The UK operates under the Gambling Act, 2005⁷⁷ through the Gambling Commission, which enforces age restrictions and licensing protocols.⁷⁸ The USA follows a combination of federal and state regulations, including the Unlawful Internet Gambling Enforcement Act 2006, which targets unregulated intermediaries but permits skill-based platforms like fantasy sports.⁷⁹ Singapore, through the Casino Control Act⁸⁰ and its regulatory authority, adopts a strict licensing and monitoring framework.⁸¹

India's recent policy shifts- such as the 30% tax under the Finance Act, 2023⁸² and the digital safeguards under the IT Rules⁸³ indicate a move toward regulation. However, in the absence of a centralized statutory regime, implementation remains piecemeal and reactive. Therefore, the real challenge is not whether online gaming should be allowed but how it should be governed. A ban may temporarily satisfy moral anxieties, but regulation offers a sustainable path forward: one that ensures transparency, consumer protection, constitutional compliance, and economic inclusivity.

9. CONCLUSION AND REFORM RECOMMENDATIONS

The evolution of India's online gaming sector has outpaced the country's legislative and regulatory response. Once seen as a recreational niche, online gaming has grown into a vast digital industry involving high-stakes financial transactions, user engagement across demographics, and complex jurisdictional questions, yet the legal scaffolding around this space remains fractured, dated, and often driven more by moral instincts than empirical regulation. This paper has traced how judicial interpretations, especially through the "preponderance of skill" test, have attempted to provide coherence in the face of legislative silence. However, state-level inconsistencies, political hesitation, and the absence of a central regulatory framework continue to create uncertainty for operators, investors, and users alike. While some states have adopted progressive licensing models, others have opted for blanket prohibitions, ignoring judicial precedents and stifling innovation.

Rather than prohibiting the industry, India must embrace a model of robust, transparent, and enforceable

⁷⁵ Supra Note 3.

⁷⁶ Basu Chandola, 'Harnessing the Potential of Online Gaming in India' available at <https://www.orfonline.org/research/harnessing-the-potential-of-online-gaming-in-india> (last accessed 15 May 2025).

⁷⁷ The Gambling Act, 2005.

⁷⁸ Department for Culture, Media & Sports, 'High Stakes: Gambling Reform for the Digital Age', available at https://assets.publishing.service.gov.uk/media/644923b5814c6600128d0723/1286-HH-E02769112-Gambling_White_Paper_Book_Accessible1.pdf (last accessed 20 April 2025).

⁷⁹ Lisa Boikess, 'The unlawful Internet Gambling Enforcement Act of 2006: The Pitfalls of Prohibition', *Legislation and Public Policy*, Vol.12 No. 151, at <https://nyujlpp.org/wp-content/uploads/2012/10/Boikess-The-Unlawful-Internet-Gambling.pdf>, p. 151-209.

⁸⁰ The Casino Control Act, 2006.

⁸¹ Ministry of Home Affairs, 'Regulating Casino and Gambling Industry', available at <https://www.mha.gov.sg/what-we-do/regulating-casino-and-gambling-industry> (last accessed 19 July 2024).

⁸² Supra Note 13.

⁸³ Supra Note 60.

regulation. Drawing from global test practices and constitutional safeguards, the following reforms are recommended:

1. **Enact a Central Regulatory Framework:** Create a statutory body empowered to define, license, and monitor online gaming platforms across states.
2. **Codify Definitions of Skill and Chance:** Adopt a legislative definition based on the preponderance of skill test to ensure legal clarity.
3. **Integrate Forensic Mechanisms:** Mandate data retention, real-time monitoring, and platform cooperation for digital audits and fraud detection.
4. **Promote Responsible Gaming:** Implement KYC norms, age – gating, spending limits, and awareness campaigns on gaming addiction.
5. **Rationalize Taxation:** Introduce a tiered tax structure that distinguishes between games of skill and chance, balancing revenue goals with industry sustainability.

In conclusion, India need not choose between moral panic and technological chaos. It must, instead, move toward data- driven governance that upholds constitutional values while nurturing digital innovation. By regulating wisely rather than banning impulsively, India can turn online gaming into a secure, economically beneficial, globally competitive digital ecosystem.