

LEGAL EYE PARTNERS

Research Article

Legal Regulation of Online Gaming and Online Gambling

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ABSTRACT

The government of India characterizes an online game as "an activity that can be downloaded on the World Wide Web as well as is available by an individual through a resource for computers or an intermediary," playing games electronically is not prohibited in the country. A new paradigm in the game business has been furthered by connectivity to the internet as well as the rise of smartphone use in isolated areas. Based on data gathered by KPMG India, it appears that the Indian internet gaming market is expected to reach a valuation of INR 25.3 billion by 2024. Globally, the online gaming business is expanding and has emerged as a significant source of amusement. Online gaming taxes, nevertheless, are still a complicated and divisive topic. This thesis investigates the legal regulation of online gaming as well as the online gambling applications the way it exists now and evaluates the various policies implemented.

Keywords – Online Gaming, Online Gambling, Market Valuation of Sector, Government Policies.

INTRODUCTION

India's electronic gaming and esports business is flourishing, with millions of people taking part in competitive esports competitions and other digital gaming formats. The Indian government has established rules and regulations to control the online gaming business, especially in the fields of gambling, esports, as well as internet gaming, in light of the sector's rising popularity. The legal environment around internet gaming as well as esports in India is complex since several laws apply to different facets of the sector. For instance, gaming is forbidden in India by the '**Public gambling Act of 1867**'¹. Yet there has been considerable misunderstanding over the legality of internet gambling throughout the nation considering this law neglects to expressly address it.

Esports along with gaming are often used in the same sentence. It's important that everyone understands the key differences between the two notions, even when there is considerable resemblance. The worldwide pandemic has only enhanced the immense development potential of esports in India. India's sizable and youthful population, growing middle class, and active gaming community put it in a position to be a major player in the esports industry. Although the Indian esports scene is relatively young, there is a lot opportunity for it to grow

¹ Public Gambling Act (Visited on 4th January 2024, 21:00) available at <https://indiankanoon.org/doc/1824663/>

and attract both local and international competitors. India has the capacity to develop into a premier destination for esports championships and events, creating new prospects for players, supporters, and businesses.

The proposed ‘**Sikkim Online Gaming Act of 2008**²’ was enacted to limit the industry's manipulation and to govern the gaming industry's aims through taxation. However, a new requirement for playing online games was added to the ‘**Sikkim Online Gaming Regulation Rules**’ when an amendment was suggested. Sikkim's identity photo requirement makes it impossible for residents to enter these betting zones without incurring negative financial and psychological consequences. The government of Karnataka has changed its gaming regulations to forbid its citizens from engaging in online gaming or gambling. These legal measures aim to shield individuals against monetary losses, substance abuse, and psychological distress.

INDIAN RULES & REGULATIONS

Although online gambling has become more popular in India, the laws that control it are still being developed. Though it doesn't have any special laws governing it, the main legislation controlling electronic payments, including online gambling, is the ‘**Information Technology Act of 2000**³’. Laws including the ‘**Contract Act**’, the ‘**Indian Penal Code**’, as well as the ‘**Copyright Act**’ apply to internet gaming, however it's unclear to what degree. The lack of industry standards and a defined set of regulations makes it difficult for operators and producers of video games to understand the laws. In order to provide a precise set of rules for the online gambling business, the Indian government is considering introducing a thorough legal framework.

Legislation affecting online gaming in different states:

‘Bombay Prevention of Gambling Act, 1887’

‘Punjab Public Gambling Act, 1867’

‘Madhya Pradesh Public Gambling Act, 1867’

‘Tamil Nadu Gaming Act, 1930’

‘Uttar Pradesh Public Gambling Act, 1961’

After examining the gaps in state legislation regarding online gaming, the Department of electronics and information technology proposed new rules in April 2023 to shield users from hazardous material and addiction. These provisions are added to the Information Technology ‘**(Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021**⁴’ (“IT Rules”). These suggestions are limited to real-life money games along with free skill entertainment, such as card games, digital fantasy sports competitions, and e-sports, in the IT Rules of 2021 modifications.

² Sikkim Online Gaming Act of 2008 (Visited on 4th January 2024, 21:00) available at https://www.indiacode.nic.in/bitstream/123456789/11161/1/the_sikkim_online_gaming-edited.pdf

³ Information Technology Act (Visited on 4th January, 2024, 21:30) available at https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf

⁴ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (Visited on 4th January 2024, 21:30) available at <https://www.meity.gov.in/writereaddata/files/Information%20Technology%20%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20%28updated%2006.04.2023%29-.pdf>

First, a three-tier mechanism for dispute resolution will be established by the government, consisting of a complaints redressal structure for the gaming system, an autonomous structure for the appropriate authorization and registration of online activities, and the approval of activities only after they meet the new regulations. Furthermore, it lists activities where players deposit money or other assets with the hope of gaining additional money as allowed real money games to be played online. Additionally, the self-regulatory organisations should verify these real money games that are played online. Additionally, the Amendments establish rules that are applicable to mediators in online gaming, which are described as "an intermediary that permits consumers of its computer hardware to participate in several online activities."

Further, while allowing the user to make their initial cash or kind transaction into any approved online real money match, the online gaming intermediary must check the user for the purpose of KYC (Know your customer). Due diligence and surveillance procedures are used by regulated companies, such as banks, NBFCs, financial institutions, etc., in the KYC process for client authentication. Lastly, the ban on gambling-related online games will guarantee that the games go by the rules of the avoidance of addictions including mental damage through parental supervision. This includes the ban on the advertisements for the games as well as the player restrictions.

In the case of, **“Varun Gumber V Union Territory of Chandigarh (2017)”⁵**, The complainant in this case, "Varun Gumber," filed an application with the Punjab Haryana High Court requesting the gaming website "Dream 11" to be banned since it is classified as a game of luck. He added that he played many games on the app and lost approximately fifty thousand dollars. The responders then argued that Dream 11 is not an actual activity of luck and went on to describe the idea behind fantasy activities, in which players establish teams in virtual environments and must first choose the game they wish to play, such as cricket; eventually must then choose members from the two squads that are there to construct his own squad, and he joins a large field of competitors in the competition. The way fantasy sports operate is based on the players who actually participate in the competition; as a result, the number of points earned varies corresponding to who is on the pitch. The player who finishes the match with the highest possible score wins the money. Respondent's attorney also argued that in order to succeed in playing a game, a player needs to be very knowledgeable about the sport, the makeup of the team, the nature of the event, etc. Therefore, it is quite unlikely to regard Dream 11 as a game of randomness. As a result, the Court determined that the main result of Dream 11 games is "the element of skill." Furthermore, it is free from the provisions of the **Gambling Act of 1867 (PGA)** based on the argument presented above.

In the case of, **“Galactus Funware technology v State of Karnataka (2022)”⁶**, The Karnataka High Court received a writ petition from the online gaming industry in the present matter, citing ‘**Article 226 of the Indian Constitution**’. The petition challenges the ‘**Karnataka Police (Amendment) Act 2021**’, which outlaws

⁵ Varun Gumber V Union Territory of Chandigarh (2017) (Visited on 4th January, 2024, 21:30) available at <https://www.casemine.com/judgement/in/596dd1ee4a93260b5a0444e0#:~:text=Conclusion%3A,considerable%20skills%20by%20the%20user.>

⁶ Galactus Funware Technology V State of Karnataka (2022) (Visited on 4th January 2024, 21:30) available at <https://indiankanoon.org/doc/35272859/>

gambling, betting along with playing games, including playing games of chance as well as skill. Additionally, it covers all forms of wagering including betting. On the other hand, the government does not forbid playing games when no money or kind is exchanged. The Amendment's '**Section 2(7)**', which forbids the playing of internet-based games of skill with real money, has expanded the definition of "gaming." The petitioners claimed that increasing populism and paternalism are the causes of this Amendment. The Court determined that the Amendment violates '**Article 14**' of the Fundamental Rights to Equality because it forbids games of chance and skill with stakes, even where there are clear distinctions between the two. The Act outright bans the competition of skill because it disobeys the proportionality principle. The altered '**Section 176**' of the Principal Act, which stipulates to preserve the distinction between the games of skill and chance, is directly at odds with the revised definition of gaming in '**Section 2(7)**'. The Court additionally found that the legislation could have been passed without going against the fundamental principles of the constitution and that there is no evidence to support the reasons for outlawing all games with financial stakes in the best interests of society.

CONCLUSION

A serious risk has been raised in society as a result of the recent growth in the online gaming business and the absence of federal legislation governing this sector. Appearing in the state list gives the government the authority to enact laws pertaining to betting and gambling, which breeds misunderstanding and disarray in society. It is therefore imperative that the central government place gambling and betting on the union list and create comprehensive legislation to control the whole gambling as well as the gaming sector. The District Court of Delhi stated that even though the courts have noted that skill-based games are not considered gambling, playing skill-based games for money in a virtual environment could be deemed illegal. The court also noted that the level of skill in games performed offline cannot be compared to that of games played online because playing the same games in a virtual environment increases the possibility of multiple tampering such as insider misconduct, conspiracy, and inconsistency.

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