

**THE NATIONAL UNIVERSITY OF ADVANCED LEGAL STUDIES,
KOCHI**

DISSERTATION

Submitted in partial fulfilment of the requirement of the award of degree of
MASTER OF LAW (LL.M)



(2023-24)

ON THE TOPIC

**LEGAL REGULATION OF ONLINE GAMING IN INDIA:
A CRITICAL ANALYSIS**

Under the Guidance and Supervision of

Dr. Sandeep M.N.

The National University of Advanced Legal Studies, Kochi

Submitted by:

Nevin A

Register No: LM0123009

Roll No: 10545

LL.M (Constitutional and Administrative Law)

CERTIFICATE

This is to certify that Mr. Nevin A, Reg No. LM0123009, has submitted his dissertation titled **“Legal Regulation of Online Gaming in India: A Critical Analysis”** in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional and Administrative Law to the National University of Advanced Legal Studies, Kochi under my guidance and supervision. It is also affirmed that the dissertation submitted by him is original, bona fide and genuine.

Dr. Sandeep M.N.,
Supervising Guide
NUALS, Kochi

CERTIFICATE ON PLAGIARISM CHECK

1.	Name of Candidate	Nevin A
2.	Title of Dissertation	Legal Regulation of Online Gaming in India: A Critical Analysis
3.	Name of the Supervisor	Dr. Sandeep M.N.
4.	Similar Content Identified	3% (Chapter 1), 9% (Chapter 2 - Parts A-C), 11% (Chapter 2 - Parts D-F), 6% (Chapter 3), 0% (Chapter 4), 2% (Chapter 5)
5.	Software Used	Grammarly
6.	Date of Verification	18/06/2024

Checked by:

Dr. Sandeep M.N.

Name and Signature of the Candidate:

Nevin A

DECLARATION

I declare that this Dissertation titled “**Legal Regulation of Online Gaming in India: A Critical Analysis**” is researched and submitted by me to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirement for the award of Degree of Master of Laws in Constitutional Law and Administrative Law, under the guidance and supervision of Dr. Sandeep M.N., and is an original, bona fide and legitimate work and it has been pursued for an academic interest. This work or any type thereof has not been submitted by me or anyone else for the award of another degree of either this University or any other University.

Nevin A

Reg No: LM0123009

LL.M (Constitutional and Administrative Law)

NUALS, Kochi

Date: 19th June, 2024

Place: Kochi

ACKNOWLEDGEMENT

The completion of this dissertation work would not have been possible without the guidance and mentorship of Dr. Sandeep M.N., my guide and supervisor who was a pillar of support throughout. His regular inputs and meaningful suggestions meant that my work was made much easier than it could have been. I would also like to extend my gratitude to the Vice Chancellor of NUALS, Justice S. Siri Jagan and the Director of Centre for Postgraduate Studies, Prof. Dr. Mini S. Thanks also to all the other faculty members of NUALS, family and friends for their constant encouragement during the course of the writing of this dissertation.

Nevin A

LM0123009

LIST OF CASES

- *Akshay Anant Matkar v. State of Maharashtra, CRWP 200/2024.*
- *All India Gaming Federation v. State of Karnataka, 2022 LiveLaw (Kar) 47.*
- *B.R. Enterprises Etc, Etc v. State Of U.P. and Grs. Etc, 1999 (9) SCC 700.*
- *Chandresh Sankhla v. State Of Rajasthan, 2020 SCC OnLine Raj 264.*
- *Dharam Dutt v. Union of India, AIR 1974 SC 669.*
- *Dr. K.R. Lakshmanan v. State Of Tamil Nadu and Anr, 1996 AIR 1153.*
- *Gameskraft Technologies (P) Ltd. v. Directorate General of Goods Services Tax Intelligence, 2023 SCC OnLine Kar 18.*
- *Gurdeep Singh Sachar, 2019 (30) G.S.T.L. 441.*
- *H. Anraj v. State of Maharashtra, 1984 AIR 781.*
- *Head Digital Works (P) Ltd. v. State of Kerala, 2021 SCC OnLine Ker 3592.*
- *Junglee Games India Private Limited and Others v. State of Tamil Nadu, 2021 SCC OnLine Mad 2762.*
- *People v. Monroe, 85 ALR 605.*
- *Social Organization for Creating Humanity v. Union of India, WP(C) 8946/2023.*
- *State Of Andhra Pradesh v. K. Satyanarayana, 1968 AIR 825.*
- *State Of Bombay v. R. M. D. Chamarbaugwala, 1957 AIR 699.*
- *Union Of India v. Dream 11 Fantasy Pvt. Ltd, IA No.14605/2020.*
- *Varun Gumber v. Union Territory of Chandigarh, 2017 Cri LJ 3827.*

TABLE OF CONTENTS

Ch. No.	Content	Page No.
1	Introduction <ul style="list-style-type: none"> ● Objectives ● Statement of Problem ● Research Questions ● Hypothesis ● Research Methodology ● Chapterisation ● Literature Review 	8 9 9 10 10 10 10 11
2	Online Gaming: Constitutional Dimensions and Legal Framework in States <ul style="list-style-type: none"> ● Part A - Online Gaming and its Classification ● Part B: The Current Legal Framework in India - An Introduction ● Part C: The Constitution and Online Gaming ● Part D: State Legislations ● Part E: Case Laws ● Part F: The Online Gaming (Regulation) Bill, 2022 	13 13 18 23 30 36 44
3	IT Rules and the Taxation Regime <ul style="list-style-type: none"> ● Part A: Changes brought about by the amendment ● Part B: Critical Analysis of the Amended Rules ● Part C: Taxation Regime 	46 48 56 65
4	Possibilities for a Fresh Central Legislation <ul style="list-style-type: none"> ● Part A: The Issues at Hand ● Part B: How can the issues be resolved? 	73 73 76
5	Findings and Conclusion <ul style="list-style-type: none"> ● Part A: Key Findings ● Part B: Conclusion 	85 85 88
6	Bibliography and References	90

Chapter 1: Introduction

In the current day and age of modern entertainment and leisure, online gaming has broken new grounds and advanced rapidly to capture the minds of youngsters around the world. In the Indian context, with the ever-growing availability of the internet, news relating to online gaming has become extremely common, which on an unfortunate note, deal more often than not with suicides, depression, losses and scams. Therefore, it has become evident that proper laws and regulations must be in place to ensure that there is a well-established online gaming framework in the country. However, the current legal landscape is complex and confusing, with each state implementing its own regulations. This can be attributed to the fact that online gaming is considered to be a part of List II of the Seventh Schedule of the Indian Constitution under Entry 34 which concerns betting and gambling when there is an element of chance involved. Games that are predominantly based on skill get protection under Article 19(1)(g) but questions arise on how exactly to determine the amount of skill and chance involved in a game. This problem of classification opens a can of worms on whether a central legislation to govern online games can be a solution.

Now, the uncertain regime surrounding online gaming at present, characterised by regular developments, strengthens the argument that a fresh central legislation could be a welcome move. But the problems of classification with respect to the presence of games that involve both skill and chance in the State List act as barriers to this move. With each state coming up with its own legislations, inconsistencies and jurisdictional issues have arisen. This is only complicated by the existence of certain judgments such as *State Of Andhra Pradesh v. K. Satyanarayana*¹ and *K.R. Lakshmanan v. State Of Tamil Nadu And Anr*² where betting on rummy and horse racing respectively were held to be legal by the Supreme Court upon being considered to be games of skill as opposed to chance. Further, recently, there have been a slew of recent High Court judgments such as *Junglee Games India Private Limited v. State of Tamil Nadu*³ and *All India Gaming Federation v. State of Karnataka*⁴ which have attempted to answer the question of whether games of skill can be legislated on by states. Further, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 have also included online gaming under their purview to add to the

¹ State Of Andhra Pradesh v. K. Satyanarayana, 1968 AIR 825.

² Dr. K.R. Lakshmanan v. State Of Tamil Nadu and Anr, 1996 AIR 1153.

³ Junglee Games India Private Limited and Others v. State of Tamil Nadu, 2021 SCC OnLine Mad 2762.

⁴ All India Gaming Federation v. State of Karnataka, 2022 LiveLaw (Kar) 47.

uncertainty. With inconsistencies becoming the norm, the whole regime surrounding online gaming has become uncertain.

The aforementioned problems will be attempted to be addressed by this dissertation which will critically analyse the online gaming regime in the country. The problems associated with it such as the hit on revenue and the like will be brought out along with the Constitutionality of it all. Finally, solutions that could fix the aforesaid problems will be given. These include bringing in a central legislation. The Information Technology Rules, 2021 was supposed to be this said legislation but it has its own share of problems that have only complicated matters. Therefore, the focus of the dissertation will remain on the key issue of classification, legislative competence and the possibility of a central legislation as a solution. The taxation regime surrounding online games which can be claimed to be too burdensome will also be discussed. By the end, a thorough idea on what the future should hold through positive changes depending on how the online gaming regime in India evolves will be gathered.

Objectives

- To understand the legal framework on online gaming in India and its states.
- To ascertain if a fresh central legislation could be the way forward for the online gaming regime.
- To analyse and discuss the shortcomings, if any, of the amendments to the Information Technology Rules, 2021 and the taxation laws surrounding online games.
- To scrutinise the connection between online gaming and betting and gambling which is a matter in List II of the Seventh Schedule of the Indian Constitution.
- To recognise the positive changes that a central legislation on online gaming and a regulatory body could bring.

Statement of Problem

The current regime on online gaming in India is evolving by the day with various states bringing in their own legislations. However, this has led to plenty of confusion and hardships for the law enforcing agencies as well as other stakeholders. The inconsistencies within the territory of India and the ascertaining of jurisdictional limits serve as barriers to the smooth implementation of these state-specific legislations. All of this has led to a need for uniformity

in the online gaming regime in India which could be brought through a fresh central legislation.

Research Questions

- Are the current legal provisions, definitions and punishments relating to online gaming in the various Indian states fair on the concerned stakeholders and law enforcement agencies?
- Should online gaming continue to be within the legislative competence of the central government when it's a game of skill and the state governments when it's a game of chance or are changes required?
- What are the factors to take into account if a fresh central legislation governing online gaming is to be introduced?

Hypothesis

- A fresh central legislation that doesn't allow states to make their own rules is the solution to address the inconsistencies and inequalities in the legal framework surrounding online gaming in various Indian states.

Research Methodology

- The research is a purely doctrinal one but will make use of already available statistical data wherever necessary.
- This dissertation will scrutinise statutes on online gaming in various Indian states and also examine the central IT rules and taxation laws to suggest a fresh central legislation.
- The sources include legislations, rules, case laws, journal articles, books and other peer-reviewed articles.

Chapterisation

- Introduction
- Online Gaming - Constitutional Dimensions and Legal Framework in States
- IT Rules and the Taxation Regime
- Possibilities for a Fresh Central Legislation
- Findings and Conclusions

Literature Review

AK Singh (2023) in his article titled “*Laws on Online Gaming and Online Gambling in India: Future Market of India*” attempts to provide a complete historic overview of the online gaming legal framework in India right from the *Public Gambling Act, 1867* to the various legislations in different states at present.⁵ It also looks to the future with respect to how the regime can be made better. The drawback lies in the fact that the focus is on taxation and the impacts of taxes on the industry which is something the dissertation would not deal with in detail.

Vishnu Gopinath’s (2022) online article titled “*Explained | Which Indian States Have Banned Online Gaming and Why?*” acts as an informative source on how different Indian states have dealt with online gaming and the reasons they have attributed.⁶ The issue with the article is that there is no judgment passed and it merely states things as they are.

A study carried out by KPMG International Limited and Google (2017) titled “*Online Gaming in India: Reaching a New Pinnacle*” provides a statistical basis for the need for a better framework on online gaming in India.⁷ The rapid growth of the industry in the recent past is highlighted and future projections are also made with respect to economic growth and taxation regimes. However, the study fails to go into specifics, be it the problems or potential solutions.

Pradeep Nair’s (2016) journal article titled “*The Indian Child: Growing Young, Urbane and Liberal with Digital Games*” in its own words attempts to ‘explore the appropriateness of growing up with digital games’ without taking a stand for or against it.⁸ The economic and anthropological impacts of online games are studied before a visualisation of what the future holds is undertaken. The shortcoming of this article is that it does not delve into the legal issues surrounding online gaming, deciding to focus on the societal aspects of it.

⁵ Aneesh Singh, *Laws on Online Gaming and Online Gambling in India: Future Market of India*, BENNETT UNIVERSITY (2023),

⁶ Vishnu Gopinath, *Explained | Which Indian States Have Banned Online Gaming and Why?*, THE QUINT (2022), <https://www.thequint.com/explainers/india-law-gambling-online-gaming-betting-state-ban-illegal-legal#read-more> (last visited Aug 23, 2023).

⁷ *Online Gaming in India: Reaching a New Pinnacle*, KPMG (2017), <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2017/05/online-gaming.pdf> (last visited Feb. 12, 2024).

⁸ Pradeep Nair, *The Indian Child: Growing Young, Urbane and Liberal with Digital Games*, 46 INDIAN ANTHROPOLOGIST (2016).

Trevor Clinger (2015) in his book titled “*Gambling and Sports Betting Online: The Forgotten Entertainment*” offers a comprehensive overview of the basics of gambling, betting and online gaming.⁹ The various facets associated with the aforesaid activities and the interrelationship among them is addressed. However, the book does not delve into the socio-legal aspects of these activities.

Garry Crawford, Victoria K Gosling and Ben Light (2011) in their book “*Online Gaming in Context: The Social and Cultural Significance of Online Games*” expound on how the position of online gaming in the leisure industry has become one of great social and cultural significance.¹⁰ The book in its own words ‘explores the opportunities, challenges and patterns of gameplay and sociality afforded by the Internet and online gaming.’ The issue with the book with respect to the dissertation at hand lies in the fact that it fails to discuss the plethora of legal aspects associated with the topic.

Roger Clarke and Gillian Dempsey (2001) in their article titled “*The Feasibility of Regulating Gambling on the Internet*” attempt to bring out how internet gambling or gaming should not be banned even amidst claims that it has negative impacts on society.¹¹ They state that licensing of service providers is the way to go. The downside of this article is that it’s written from an Australian point of view and is also outdated, having been written in 2001.

David B Jordan’s (1999) journal article titled “*Rolling the Dice on the Cyber-Reservation: The Confluence of Internet Gaming and Federal Indian Law*” provides an American perspective to the online gaming industry, talking of how the growth in the same has helped the tribal and Indian American population to achieve economic growth.¹² The need for swift and better legislation to deal with the developments that will continue to arise is also talked about. The problem with the article is that its perspective is completely American and therefore, not appropriate for India. Further, it is also outdated, having been written way back in 1999.

⁹ TREVOR CLINGER, *GAMBLING AND SPORTS BETTING ONLINE: THE FORGOTTEN ENTERTAINMENT* (1 ed. 2015).

¹⁰ GARRY CRAWFORD ET AL., *ONLINE GAMING IN CONTEXT: THE SOCIAL AND CULTURAL SIGNIFICANCE OF ONLINE GAMES* (1 ed. 2011).

¹¹ Roger Clarke & Gillian Dempsey, *The Feasibility of Regulating Gambling on the Internet*, 22 *MANAGERIAL AND DECISION ECONOMICS* (2001).

¹² David B. Jordan, *Rolling the Dice on the Cyber-Reservation: The Confluence of Internet Gaming and Federal Indian Law*, 24 *AMERICAN INDIAN LAW REVIEW* (1999).

Chapter 2:

Online Gaming: Constitutional Dimensions and Legal Framework in States

Part A: Online Gaming and its Classification

In order to carry out an analysis of the shortcomings of the present legal framework on online gaming, a step by step process of understanding is required. Firstly, online gaming needs to be understood from the perspective of a layman. Then, it must be followed by getting a deeper understanding with respect to its classification as well as the pros and cons from the perspective of those affected by as well as involved in the industry. It is then that the laws and regulations need to be scrutinised. Following an understanding of the legal framework by looking at the Constitution as well as various statutes, bills and recommendations of commissions, potential solutions can be proposed.

What is Online Gaming?

The legally recognised definition of online gaming in India can be found in Rule 2(1)(qa) of the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* where it is said to be a game ‘*that is offered on the Internet and is accessible by a user through a computer resource or an intermediary*’. In general parlance too, such definitions are widely accepted and used. For example, the Encyclopedia of Multimedia defines online gaming as ‘*playing games over the network using a personal computer, a game console, a personal digital assistant, or a smartphone*’.¹³ So online gaming can be said to denote the digital sphere where players from different geographical locations come together for an interactive entertainment experience thanks to the internet. As opposed to conventional gaming which involves one playing against another player in the same location or against the device (through artificial intelligence) itself, online gaming can connect people from across the globe. This realm encompasses a broad spectrum of game genres, including first-person shooters, role-playing games, strategy games, and massively multiplayer online role-playing games (MMORPGs), accessible across various devices such as computers, gaming consoles, and mobile devices.¹⁴ Therefore, a key aspect of online gaming lies in its capacity to foster communities and forge connections among players.

¹³ Stefano Ferretti et al., *Online Gaming*, ENCYCLOPEDIA OF MULTIMEDIA, (2008), https://link.springer.com/referenceworkentry/10.1007/978-0-387-78414-4_166 (last visited Feb. 12, 2024).

¹⁴ Dwight Pavlovic, *Video Game Genres: Everything You Need to Know*, HP TECH TAKES, (2020), <https://www.hp.com/us-en/shop/tech-takes/video-game-genres> (last visited Feb. 12, 2024).

Through features like chat functions, voice chat, and online forums, players can collaborate and get entertained together, frequently integrating elements of teamwork and competition.¹⁵ What started out as a budding industry in the 1990s and early 2000s was propelled to the very top due to technological advancements such as better graphics, internet, and capabilities. With these aspects only advancing with time, the industry is set to keep growing with leaps and bounds, furthering the need for proper laws and regulations to be in place.

This growth of the online gaming industry can be better understood by going through certain statistics. According to the Academy of Animated Art, there are as many as 2.8 billion online gamers in the world.¹⁶ While not all of the 2.8 billion players spend their time actively engaging in the same, they definitely have access to such games or have had in the past. This means that a whopping 35% of people in the world are exposed to online games. Further, the revenue from online games stands at \$176 billion as of 2023. While mobile gaming remains the most popular form due to its ease of access, platforms such as Playstations and PCs also see massive growth. The number of persons who earn a living through professionally competing in online games (e-sports) or creating content on the same is ever-increasing. E-sports accounted for \$641 million in 2021 from advertisement revenue and sponsorships alone, reaching a revenue of \$1.63 billion.¹⁷ Each of these figures is expected to grow with each passing day thanks to the rapid advancements in technology. By 2030, it is projected that revenue from online games will breach the \$500 billion mark.¹⁸ In fact, it won't be a surprise if the numbers are even higher, given that there are bound to be unforeseen and revolutionary changes. The advent of Virtual Reality (VR) and Augmented Reality (AR) has already created a stir in the markets and once they are well-developed, the sky's the limit for the industry. The aforementioned statistics make it clear that the online gaming industry is here to stay. They also point at a universal appeal that such activities have over its target audience which is mostly children and young adults. Having said that, there is still plenty of

¹⁵ Kaveri Subrahmanyam & Patricia Greenfield, *Online Communication and Adolescent Relationships*, 18 THE FUTURE OF CHILDREN, 119, 120-121 (2008).

¹⁶ Jasmine Katatikarn, *Online Gaming Statistics and Facts: The Definitive Guide*, ACADEMY OF ANIMATED ART (2024), <https://academyofanimatedart.com/gaming-statistics/> (last visited Feb. 12, 2024).

¹⁷ Id.

¹⁸ Sumita Kareer, *Global gaming market projected to grow over \$500 billion by 2030; bullish on Indian: Sudhir Kamath of Nazara Tech*, ECONOMIC TIMES (2023), <https://economictimes.indiatimes.com/markets/stocks/news/global-gaming-market-projected-to-grow-over-500-billion-by-2030-bullish-on-indian-market-sudhur-kamath-of-nazara-tech/videoshow/98142493.cms> (last visited Feb. 12, 2024).

stigma surrounding the playing of such games especially among parents. This can be attributed in large to how they are viewed as distractions, unnecessary, and addictive.

Classification of Online Games

Online games can be divided into three categories, especially for the purpose of bringing in regulations. They are games purely of skill, games purely of chance, and games that involve both skill and chance. Games of skill are games where the result is determined by one's physical or mental skill. The element of chance, if any, is low. While there can be no denying that luck does play a role in just about any contest, games of skill are very likely to end up with the most skilled person on the particular day ending up winning it.¹⁹ Therefore, one of the defining features of these games is the high degree of player agency wherein the outcome can be controlled by the players' actions, strategies and decisions. They normally require a learning curve whereby the players can put in effort towards becoming proficient in the game's mechanics. In this way, there is plenty of room for competitive play and continuous improvement.²⁰ That is exactly why e-sports, more often than not, involve games of skill.

A game of chance, on the other hand, is one where the result is influenced and determined largely by pure luck and randomisation. The element of chance is extremely high and that of skill is minimised. While skill and experience can help in improving one's chances, the result will ultimately boil down to who is luckier on a given day.²¹ Therefore, player agency is reduced and the players' actions, strategies and decisions do not come of much use. The dynamics in these games revolve around risk and reward and therefore, are usually played with money, bringing them under the garb of betting and/or gambling. Therefore, regulations on such games are usually stricter as opposed to games of skill which are mostly not subject to too many regulations. The all-important question on what to do is when online games involve both skill and chance in that players have the ability to shape outcomes through strategic decision-making, yet the inclusion of luck factors injects an

¹⁹ Michael Orkin, *Games of Chance and Games of Skill*, CHANCE (2021), [https://chance.amstat.org/2021/11/games/#:~:text=It%20has%20been%20customary%20to,the%20middle%20\(when%20golf%20and](https://chance.amstat.org/2021/11/games/#:~:text=It%20has%20been%20customary%20to,the%20middle%20(when%20golf%20and) (last visited Feb. 13, 2024).

²⁰ Stephen Carter, *The games of esports — skill, chance and everything inbetween*, IGB (2021), <https://igamingbusiness.com/esports/the-games-of-esports-skill-chance-and-everything-inbetween/> (last visited Feb. 13, 2024).

²¹ Id.

element of unpredictability and variability. This will be attempted to be answered later on in this dissertation.

Merits and Demerits of Online Gaming

Now, there is most certainly a need to analyse the pros and cons associated with online games in order to then go into the legal aspects and intricacies. Therefore, beginning with the pros, online gaming can be a good way to relieve oneself from stress through a leisure activity. Due to their convenience and ease of accessibility these days, they offer a comfortable and cost-effective package of entertainment. With the variety of games at one's disposal along with the various features that come with them, social interaction can be acquired and developed. Competence and confidence can be built thanks to the community-like setting of these games.²² Online games have also been found to come with cognitive benefits since they involve problem-solving, strategic thinking, quick decision making, multitasking, and so on. Teamwork and collaborative skills are also prioritised. Some games can be of educational value too, if they incorporate such subjects into their gameplay.²³ Finally, with the e-sports industry booming, online gaming offers a valuable career opportunity too for those that are extremely skilled. Content creation, game development, e-sports management, promotions, and the like are well-paid jobs which can be both fulfilling and rewarding.²⁴

Moving to the ill effects, the key argument surrounds the potential addictive nature of such games. Excessive engagement in them has been found to have the potential to foster addiction, resulting in prolonged screen time and disregard for real-life responsibilities such as employment, academic pursuits, and interpersonal connections.²⁵ This can subsequently lead to plenty of ill-effects including social isolation and health risks. For example, extended periods of sitting and looking at screens have been associated with skeletal issues and injuries from gaming are not uncommon too. Stress injuries from overuse cause pain and inflammation which can have long-lasting impacts. Two common instances in this respect are

²² *Teens, Video Games and Civics*, PEW RESEARCH CENTRE (2008), <https://www.pewresearch.org/internet/2008/09/16/teens-video-games-and-civics/> (last visited Feb 13, 2024).

²³ Darina Dicheva et al., *Gamification in Education: A Systematic Mapping Study*, 18 EDUCATIONAL TECHNOLOGY AND SOCIETY, 75, 75-82 (2015).

²⁴ Steven Canning & Anthony Betrus, *The Culture of Deep Learning in eSports: An Insider's Perspective*, 57 EDUCATIONAL TECHNOLOGY, 65, 65-69 (2017).

²⁵ Jonas Buren et al., *Screen time and addictive use of gaming and social media in relation to health outcomes*, 14 FRONTIERS IN PSYCHOLOGY, 1, 1-7 (2023).

the Carpal Tunnel Syndrome where a nerve in the wrist gets inflamed, and Gamer's Thumb / Nintendonitis) where the tendons in the thumb get inflamed.²⁶ Other sporting injuries such as Trigger Finger and Tennis Elbow have also been associated with gaming.²⁷ Apart from health issues, the problem of mental health which has especially become a worrying trend in recent times is also critical. The instances of suicides due to addiction have seen an alarming spike. According to the USA's National Institute of Health, online gaming addiction among adolescents who had access was 17.16% in 2023.²⁸ The detection rate of suicidal ideation was found to be 16.37%. The correlation between both was found to be '*significantly positive*'. In India, the lack of statistics such as the aforementioned one is a worry. However, merely staying abreast of developments through the news is sufficient to know that the correlation between mental health decline and suicides on one hand and online gaming on the other is very much present.

From the point of view of India, an arguably bigger problem than all the aforementioned drawbacks of online games is the involvement of money through betting and gambling. In the last decade or so, there have been a spate of online games that pay money to those that win. To become eligible to even play the game and win the said money, one needs to pay money in the first place. This practice is prevalent both in games of skill and games of chance (as well as those that combine both). It is these games which have been the biggest contributors to mental health problems, debts, self-harm, and suicides.²⁹ With the escalation in popularity of these games, widespread concern needs to be raised on their impact on vulnerable individuals, especially those who are predisposed to addictive tendencies.³⁰ The trap of the promise of quick money coupled with this addictive nature can make for a dangerous combination, making it all the more clear as to why proper regulations need to be in place.

²⁶ Peter Grinspoon, *The health effects of too much gaming*, HARVARD HEALTH PUBLISHING (2020), <https://www.health.harvard.edu/blog/the-health-effects-of-too-much-gaming-2020122221645> (last visited Feb. 13, 2024).

²⁷ *Id.*

²⁸ Yuntian Xie et al., *The Relationship of Internet Gaming Addiction and Suicidal Ideation among Adolescents: The Mediating Role of Negative Emotion and the Moderating Role of Hope*, 20 INTERNATIONAL JOURNAL OF ENVIRONMENTAL RESEARCH AND PUBLIC HEALTH (2023).

²⁹ Brijendra Dubey, *Online gaming and gambling - a debt-and-death trap for rural youth*, GAON CONNECTION (2022),

<https://www.gaonconnection.com/lead-stories/online-gambling-gaming-debt-children-suicides-mental-health-psychology-mobile-phones-cyber-laws-deaths-money-51454> (last visited Feb. 13, 2024).

³⁰ *Id.*

Part B: The Current Legal Framework in India - An Introduction

Having clearly established the need for regulations in the realm of online gaming, it is pertinent to enquire whether the current legal framework in India is efficient or not. The first key point to understand is that there is no comprehensive nationwide law that governs such gaming. Each state in the country has its own laws and rules to regulate, if needed. In this respect, some states have opted for arguably excessive regulations while some have given complete freedom. Therefore, overall, the subject of online gaming has been something that has never been at the forefront or on the agenda as a nationwide issue. However, now is probably the right time to change that attitude. With the advancements in access to the internet, the rise in gamers in India has been in leaps and bounds. From 2021 to 2022, this rise was 12%.³¹ The gaming market stood at \$2.6 billion in 2022 and by 2027, it is projected to reach \$8.6 billion.³² The demand for lawyers specialising in such areas is also predicted to grow and companies from around the world are beginning to set up operations in the country. This scenario is exactly why the study that this dissertation seeks to carry out is necessary.

Now, online games that involve skill and don't involve money such as video games played by children are not subject to regulations (there are some exceptions) and rightly so. The situation gets tricky and confusing when the element of chance comes into the picture and money and stakes get involved. Then, the online games begin to fall under the ambit of 'betting and gambling'. It is noteworthy here that betting and gambling is mentioned in List II (State List) of the Seventh Schedule of the Constitution, with there being no mention of games - online or otherwise. It is when it comes to these stakes that the uniformity in laws around the country go for a toss, opening a Pandora's box as different situations prevail in different states - some states have completely banned all online games with stakes, some have banned online games of chance with stakes, some allow stakes, etc. Further, with taxation on such games adding another dimension to the problem, the situation demands immediate redressal. The Centre Government's rules have also had a huge impact especially over the course of the last year through the banning of all online games that involve stakes. But before

³¹ *India Leveling Up: State of Indian Gaming FY 2021-2022 - Executive Summary*, LUMIKAI (2022), https://static.digit.in/Lumikai_Gaming_Report_Executive_Summary_021122_VF_updated.pdf (last visited Feb. 22, 2024).

³² *Dentsu Gaming Report India 2022 - 'For the Game'*, DENTSU (2022), <https://www.dentsu.com/in/en/our-news/dentsu-gaming-report-india#:~:text=Anita%20Kotwani%2C%20Chief%20Executive%20Officer,generated%20endless%20opportunities%20for%20advertisers.> (last visited Feb. 22, 2024).

delving into the Constitutional provisions, case laws, and state legislations, it is first essential to deconstruct three crucial terms - gaming, gambling and betting.

Gaming vs Gambling vs Betting

The terms gaming, gambling and betting are often used interchangeably in plenty of circles, but they have distinct meanings. Gaming as has been discussed above involves a wide range of activities, whether on consoles, computers, mobile devices, or other platforms, where games are played for recreation and entertainment. Such games can involve the wagering of money and hence, can encroach into the territory of betting and gambling too. But on a standalone and objective note, gaming is a wide term. Examples for these games can be video games such as Fortnite, Call of Duty, Minecraft, EAFC (formerly FIFA), and so on which have all created huge markets for themselves due to their immense popularity.³³ All of these games involve skill on a predominant level, with luck or chance only playing a minor role (with variance possibly compensating for the same too). Therefore, these games, their sale, availability and competitions are largely unregulated around the world and in India as well.

Gambling on the other hand is an activity that involves the risking of money or any other thing of value on an uncertain outcome in order to attempt to win more money. Here, chance plays the predominant role with skill taking the backseat. Casino games and lotteries are examples of gambling wherein the whole competition and who wins the money is determined by the luck of the draw. While gambling can also be done on games that involve a combination of skill and chance, the differentiating factor as opposed to gaming lies in the involvement of money and the domination of chance over skill. The third term, betting, can be said to be a subset of gambling. It involves placing a wager on the happening of an event. This is mostly done on sports games, but can also be done on gambling events as well as gaming events such as e-sports. Unlike traditional forms of gambling, betting does require a certain amount of skill and knowledge on the event that is being bet on for one to be successful at it. However, at the end of the day, chance and luck do play a huge role because of the ‘one-off’ nature of such events.³⁴ Therefore, to sum up the difference in these three closely related terms, gaming is an activity that focuses on playing for entertainment and

³³ Nick Baker, *Online Gaming Statistics 2023*, USWITCH (2023), <https://www.uswitch.com/broadband/studies/online-gaming-statistics/> (last visited Feb. 22, 2024).

³⁴ NEIL D. ISAACS, *YOU BET YOUR LIFE: BURDENS OF GAMBLING*, 13-15 (1 ed. 2001).

recreation while gambling involves risking money on uncertain outcomes. Betting is a subset of gambling where money is wagered on the outcome of events and unlike gambling, betting does require and involve substantial knowledge and skill.

Historical Overview

Gambling and gaming have a rich and long history in India with their acceptance, status and recognition changing from time to time. Gambling using boards and dice is mentioned in both the major Indian epics, Ramayana and Mahabharata. In the former, moral judgments are not passed but in the latter, the dangers of gambling are signified through the loss of wealth of characters.³⁵ In Buddhist texts too, gambling using astragals finds mention. Betting on animals through ram fights and cock fights is also mentioned.³⁶ In the medieval times, foreign influences began to emerge and games such as chess came into prominence. Horse racing became a common sport that was betted on. Card games were brought to India by the Muslim rulers as well as later by Europeans.³⁷ During colonial rule, cricket began to gain popularity and became the betting sport. The British took a keen interest in horse racing and thanks to their acceptance and promotion of gambling and betting, the prevalence among the public grew out of control.³⁸ It was then that the *Public Gambling Act, 1867* was passed and the legal framework surrounding gaming began to take shape. The act forbade operating gambling houses and gambling in public places was made illegal. This act was confined to gambling on physical premises and did not deal with casual playing of games.

After achieving independence in 1947, India established the Constitution granting individual states the power to make laws concerning gambling and betting. Consequently, the legality of gaming in India differs across states, with some permitting certain types of gaming while others enforce strict regulations or bans. Apart from the Public Gambling Act, some other statutes such as the *Lotteries (Regulation) Act, 1998* and the *Foreign Exchange Management Act, 1998* deal with lotteries and gambling. The former establishes guidelines for the management and operation of lotteries, detailing the criteria for acquiring licence to conduct lotteries within India while the latter oversees foreign exchange dealings in India,

³⁵ Ajit V. Bhide, *Compulsive gambling in ancient Indian texts*, 49 INDIAN JOURNAL OF PSYCHIATRY, 294, 294-95 (2007).

³⁶ Péter-Dániel Szántó, *Buddhist Homiletics on Gambling*, 65 INDO-IRANIAN JOURNAL, 340, 342 (2022).

³⁷ COLIN CHRISTOPHER MACKENZIE & IRVING L. FINKEL, *ASIAN GAMES: THE ART OF CONTEST* (1 ed. 2004).

³⁸ Mike Huggins, *Betting, Sport and the British, 1918-1939*, 41 JOURNAL OF SOCIAL HISTORY, 283, 283-85 (2007).

impacting gaming operators, especially those engaged in online gaming, by imposing specific limitations on foreign exchange transactions associated with gaming activities.

About five decades after independence, with advancements in technology, gaming began to gain importance. In the late 1990s and early 2000s, gaming on PC and consoles started gaining popularity. While the playing of such games was limited to a niche group in the beginning, the advent of social media in the late 2000s and easy availability meant that gaming became commonplace in a plethora of households. By the 2010s, with the arrival of smartphones and increased internet penetration, mobile gaming began to peak. By the 2020s, India became one of the top five mobile gaming markets in the world.³⁹ With this rise and the growth of e-sports, the legal framework surrounding gaming in India has evolved significantly. The government introduced the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules* in 2021 and later, an amendment in 2023 that extended the Rules to games, aiming to regulate online content, by mandating that online platforms adhere to specific guidelines. These rules (following the amendment) ensure that online gaming platforms do not host or promote content that is obscene, offensive, or harmful to public interest. Furthermore, various Indian states have implemented their own laws to oversee online gaming. For example, Nagaland has its own *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016* which regulates online games of skill and chance. States like Goa and Sikkim have legalised certain largely prohibited forms of gaming such as casinos and have their own regulatory framework. The Southern states of Andhra Pradesh, Telangana, Kerala and Tamil Nadu have been active in framing rules in this regard.⁴⁰

Having said these, it's important to acknowledge that there remain uncertainties and discussions regarding the legal status of gaming in India. The absence of a coherent and consistent regulatory framework across all states has led to disparities and difficulties in interpreting and enforcing gaming laws in India. Moreover, there are apprehensions about the potential adverse social and economic repercussions of gaming, including addiction, underage participation, and financial setbacks. These apprehensions have increased the

³⁹ *Beyond the Tipping Point: A Primer on Casual Gaming in India*, KPMG (2021), <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2021/06/digital-mobile-casual-gaming-in-india.pdf> (last visited Feb. 28, 2024).

⁴⁰ Vineet Bhalla, *Why the Centre must step in to regulate online gaming in India*, SCROLL (2023), <https://scroll.in/article/1060209/why-the-centre-must-step-in-to-regulate-online-gaming-in-india> (last visited Feb. 28, 2024).

demands for stricter regulations and measures to safeguard vulnerable individuals and curb illicit gaming practices. This is also exactly why a comprehensive understanding of the Constitutional and statutory provisions surrounding online gaming is required.

Part C: The Constitution and Online Gaming

The principle of federalism is one of the cornerstones of India's governance structure and the resultant distribution of power between the Union and the States is ensured by the Constitution. At the heart of this arrangement is Article 246, a pivotal provision that delineates legislative authority. It establishes a threefold distribution of legislative powers between the Union and the States, embodied in the Seventh Schedule. The Seventh Schedule comprises three lists: the Union List (List I), the State List (List II), and the Concurrent List (List III). The Union List enumerates subjects solely under the jurisdiction of the central while the State List mentions areas where states hold exclusive legislative authority. The Concurrent List outlines matters where both the Union and States possess concurrent powers to legislate. This division of powers aims to ensure a harmonious functioning of the federal structure, respecting the autonomy and sovereignty of both the Union and the states.⁴¹ As was mentioned in *Dharam Dutt v. Union of India*,⁴² the aforesaid division of powers is a fundamental aspect of a federal constitution. This principle finds its roots in the *Government of India Act, 1935*, which laid the groundwork for the federal system, which was later incorporated into the Constitution. Part XI of the Constitution which contains Article 246 was specifically crafted to delineate this federal structure, focusing on the distribution of legislative authority. There are other key provisions governing the relationship between the Union and the State in this Part as well, such as Article 248 (residuary powers of legislation with the Parliament), Article 249 (power of Parliament to legislate on a matter in the State List in national interest), Article 252 (power of Parliament to legislate for two or more States on request of such States), Article 254 (inconsistency in Parliamentary and State Laws), and Article 258 (power of the Union to confer certain powers on States in certain cases).

Constituent Assembly Debates relating to betting and gambling

Having briefly mentioned India's federal structure and distribution of power, the all-important question that it all boils down to (and also serves as the focal point of this dissertation) is where online gaming falls under, in the Seventh Schedule. In that pursuit, understanding what the framers of the Constitution intended with respect to betting and gambling is the place to start. In the Constituent Assembly Debate on September 2, 1949, a

⁴¹ M. Asad Malik, *Changing Dimensions of Federalism in India: An Appraisal*, 2 ILI LAW REVIEW, 85, 85-87 (2019).

⁴² *Dharam Dutt v. Union of India*, AIR 1974 SC 669.

motion was introduced to discuss the status of betting and gambling.⁴³ It was initially proposed that the subject would be included in Entry 45 of List II of the Seventh Schedule (this went on to become Entry 34). Such a move was opposed by quite a few of the members, with the most vociferous of the voices being that of Shibban Lal Saxena. He felt that gambling was a crime and that betting and gambling must not even find mention in the Constitution, unless it is to deem them illegal. Another member, Shri Lakshminarayan Sahu stated that Gandhian ideology and the lessons of the Mahabharata make it clear that gambling should not be encouraged. He even opposed the creation of taxation rules for betting and gambling, stating that a blanket ban was needed.

However, Dr. Ambedkar and other members of the Assembly disagreed with the above contentions. The former stated that a complete ban of betting and gambling was not possible in the country. If the subjects weren't included in the Seventh Schedule, he feared that such activities would become rampant without any control. He then stated that if the provincial governments want to ban the activities, they can through their own laws. Further, Dr. Ambedkar also brought attention to the fact that not including the subjects in List II would bring them under the purview of List I through Entry 91 (which later became Entry 97) which stated that any other matter not enumerated in List II or List III would come under the purview of the Union Government. He believed that if there was significant opposition to adding Entry 45 to List II, there should be an explicit Article in the Constitution declaring betting and gambling as illegal. He argued that this entry would serve as a preventive measure, granting states the power to either prohibit or regulate gambling as per their socio-economic needs.

His thoughts are best summed up in this quote, *“Sir, I am very much afraid that both my friends, Mr. Shibban Lal and Mr. Sahu, have entirely misunderstood the purport of this entry 45 and they are further under a great misapprehension that if this entry was omitted, there would be no betting or gambling in the country at all. I should like to submit to them that if this entry was omitted, there would be absolutely no control of betting and gambling at all, because if entry 45 was there it may either be used for the purpose of permitting betting and gambling or it may be used for the purpose of prohibiting them. If this entry is not there, the provincial governments would be absolutely helpless in the matter”*.⁴⁴ Therefore, 'betting

⁴³ CONSTITUENT ASSEMBLY DEBATES, Vol. IX (Sep. 2, 1949).

⁴⁴ Id., ¶327.

and gambling' was finally included in the State List with the aim of empowering states to enact laws based on their specific requirements, accommodating varying moral perspectives across different states.

Therefore, the current position is that Entry 34 of List II of the Seventh Schedule allows each State to frame its own laws and rules to regulate betting and gambling. Having said that, there are also some subjects in List I which are noteworthy. As per Entry 40 of List I, the Parliament possesses the power to enact laws concerning 'Lotteries organised by the Government of India or any State Government'. Given that such lotteries have been designated as within the exclusive legislative jurisdiction of Parliament, it logically follows, under Article 246, that no state legislature is permitted to enact laws pertaining to them, even if betting and gambling is closely related to lotteries. This was discussed in the case of *H. Anraj v. State of Maharashtra* where the Supreme Court said, “*There is no dispute before us that the expression "Betting and gambling" includes and has always been understood to have included the conduct of lotteries. Quite obviously, the subject 'Lotteries organised by the Government of India or the Government of a State' has been taken out from the legislative field comprised by the expression "Betting and gambling" and is reserved to be dealt with by Parliament*”.⁴⁵

Now, the presence of Entry 40 of List I along with Article 249 (Parliament can legislate on matters in List II in national interest) and Article 252 (Parliament can legislate for two or more States on request of such States) have important implications. This is because even if the Parliament were to legislate on betting and gambling, such a law would not necessarily be rendered invalid due to a lack of authority or because it trespasses upon the legislative powers of the States. However, there can still be no denying that the States have exclusive jurisdiction on paper which gives them an elevated position on the subject over the Union.

The Lens of Morality and Personal Liberty

Article 38 of the Constitution provides that States must secure a social order for the promotion of welfare of the people and Article 39 provides for securing livelihood including in clause (f) that “*children are given opportunities and facilities to develop in a healthy*

⁴⁵ H. Anraj v. State of Maharashtra, 1984 AIR 781.

manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment". It is crucial to note here that the said exploitation as well as moral and material abandonment is something betting and gambling can easily cause. It is in this context and lens of morality that betting and gambling is often examined and rightly so, because of the plethora of mishaps that have come with it. This has been the main reasoning behind regulating, prohibiting and banning such activities by certain States. One segment of society advocates for legalisation, citing the paramount importance of individual autonomy and minimal state intervention. Conversely, opponents of gambling argue that immorality justifies limitations on individual liberty, as such restrictions aid in preserving social order.⁴⁶

Within the aforesaid schools of thought, the notion of morality changes with respect to betting as opposed to gambling. While betting does involve some amount of skill such as looking into strategies, tactics and the like, gambling is completely random. Therefore, when there is a considerable amount of skill involved in the former, the argument of immorality takes a hit. Now, obviously, immorality is not a ground to challenge whether an enactment or provision or activity is constitutional or not, due to the subjectiveness of the concept. However, if dignity or liberty is compromised, Article 21 comes into picture. This article has a close relationship with betting, gambling and gaming due to the fact that indulging in the same is argued to be an exercise of one's personal liberty. Akin to the ideals of transformative constitutionalism, Article 21 can be said to impose a positive obligation on the state to ensure the protection and promotion of an individual's personal liberty.⁴⁷ This entails that the state must not only refrain from unlawfully restricting personal liberty but also take affirmative measures to safeguard and enhance it.

So how then does one reconcile the personal liberty requirement in Article 21 to regulating betting, gambling and gaming? Generally, in jurisprudence, there are two kinds of wrongful conduct: *malum in se*, which refers to inherently wrongful behaviour, and *malum prohibitum*, which denotes conduct that is wrong solely because it is prohibited. Advocates for the regulation of betting and gambling treat it as *malum in se* and view these activities as inherently immoral due to their perceived disruption of moral conduct, propensity to lead to

⁴⁶ Robert Westmoreland, *Prohibiting Immorality*, 3 PUBLIC AFFAIRS QUARTERLY, 79, 79-82 (1989).

⁴⁷ Kanad Bagchi, *Transformative Constitutionalism, Constitutional Morality and Equality: The Indian Supreme Court on Section 377*, 51 LAW AND POLITICS IN AFRICA, ASIA AND LATIN AMERICA, 367, 368-69 (2018).

criminal acts, and the potential for addiction.⁴⁸ Another argument against them is that they may exploit vulnerable populations, contravening principles of morality.⁴⁹ In this way, the aspect of personal liberty can be justified. What then about Article 19(1)(g) which provides the right to practise any profession or to carry on any occupation, trade or business to all citizens?

The courts have made it clear while discussing gambling in relation to Article 19(1)(g) and Article 301(freedom of trade, commerce and intercourse) that gambling will not fall within the ambit of trade and commerce and will not get the protection under the said articles. The Roman law doctrine of *res extra commercium* is at the forefront here, as it excludes certain activities from the ambit of trade and profession. In *State of Bombay v. RMD Chamarbaugwala* in 1957, the Supreme Court said, “*We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient country's trade, commerce or intercourse to be declared as free under Art. 301... We are, however, clearly of opinion that whatever else may or may not be regarded as falling within the meaning of these words, gambling cannot certainly be taken as one of them. We are convinced and satisfied that the real purpose of Arts. 19(1) (g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and in essence are extra-commercium although the external forms, formalities and instruments of trade may be employed and they are not protected either by Art. 19 (1) (g) or Art. 301 of our Constitution*”.⁵⁰

In *B.R. Enterprises v. State of U.P* too, it was reiterated that both betting and gambling can not be considered to be trade due to their involvement of chance as opposed to a predominance of skill, and the same was held to be true for lotteries.⁵¹ Therefore, this application of *res extra commercium* is the current position surrounding gambling and Articles 19(1)(g) and 301. However, this has drawn criticism from scholars. It has been argued that the doctrine in itself is flawed and that no activity can be called *res extra commercium* - it is either allowed or prohibited.⁵² Even if the lens of morality says that

⁴⁸ Jeffrie G. Murphy, *Indian Casinos and the Morality of Gambling*, 12 PUBLIC AFFAIRS QUARTERLY, 119, 120-22 (1998).

⁴⁹ Jean-Patrick Villeneuve, *Gambling Regulation and Risk*, 1 EUROPEAN JOURNAL OF RISK REGULATION, 415, 418 (2010).

⁵⁰ *State Of Bombay v. R. M. D. Chamarbaugwala*, 1957 AIR 699, page 33.

⁵¹ *B.R. Enterprises Etc, Etc v. State Of U.P. and Grs. Etc*, 1999 (9) SCC 700.

⁵² Arvind P. Datar, *Privilege, Police Power and "Res Extra Commercium" – Glaring Conceptual Errors*, 21 NATIONAL LAW SCHOOL OF INDIA REVIEW, 133, 145-47 (2009).

gambling is harmful for society, there can be nothing to prohibit States from allowing casinos and the like to function.

Where does Online Gaming fall?

Online gaming was not around when the Constitution was framed. The framers could not have possibly anticipated the inception and growth of it as well. Therefore, there is nothing in the Constitution that specifies online games or even games for that matter. However, the Parliament and Legislatures as well as Courts have clubbed online games with 'betting and gambling' in Entry 34 of List II, thereby enabling the States to make regulations. Different states have, over the years, brought in their own regulations, rules and laws. While some states prohibit online games that are in the form of gambling and betting by involving chance, some states have banned all online games that involve money, regardless of whether they are games of chance or of skill. Such moves, coupled with inconsistencies in laws across state borders, have raised several questions on whether including online gaming along with betting and gambling is the right move.

Amongst various judgments and passing of rules, decisions to ban online games of skill (but involving money) and fantasy sports apps have been especially questioned by the companies involved as well as other stakeholders including players.⁵³ As mentioned earlier, a game of skill, unlike a game of chance which is based mostly on luck, involves the usage of strategies, knowledge, memory, experience, among others to gain advantage over the opponents. It can be considered akin to sports, and therefore, arguments on why they should also be banned are few and far between. In fact, judgments such as *K.R. Lakshmanan v. State of Tamil Nadu* have clarified that games of skill must have constitutional protection.⁵⁴ Here, the petitioner challenged the constitutional validity of the *Tamil Nadu Horse Races (Abolition and Wagering or Betting) Act, 1974* stating that it violated Articles 14 and 19(1)(g) of the Constitution. The challenge was on the basis of two contentions with the first being that the State Government did not have the legislative competence. The argument was that Entry 34 of List II of the Seventh Schedule mentioned both betting and gambling, and unless both are involved, the State cannot legislate. This was rejected. Secondly, it was argued that horse racing was a game of skill and therefore, provisions of the Act which apply to games of

⁵³ *Did the government just kill online gaming?*, FINSHOTS (2023), <https://finshots.in/archive/did-the-government-just-kill-online-gaming/> (last visited Mar. 02, 2024).

⁵⁴ *Dr. K.R. Lakshmanan v. State Of Tamil Nadu and Anr*, 1996 AIR 1153.

chance should not apply. The Madras High Court disagreed with both contentions before the case came to the Supreme Court which however, took a different view and set aside the second argument. It stated that for a legislation to not fall under the purview of betting and gambling, it must be a game of skill. These games of skill are the ones which will enjoy protection under Article 19(1)(g). Substantial amount of skill must be necessary to make the game unique. The Court believed that horse riding was one such sport. This was because in its opinion "*The winning horse is not determined by chance alone, but the condition, speed, and endurance of the horse, aided by the skill and management of the rider or driver, enter into the result. In horse racing the horses are subject to human guidance, management, and urging to put forth their best efforts to win*". Therefore, the High Court's order was set aside and the legislation was deemed unconstitutional.

As a result of the aforesaid discussion, along with the fact that they do not entail betting and gambling, it is only right that the regulation of such games of skill lies within the legislative competence of the Union as opposed to the States. This can come under Entry 31 of List I which concerns posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication (even if there can be arguments otherwise such as Entry 1 - Public Order and Entry 33 - Sports, Entertainment and Amusements of List II). This is largely the case presently also, with there being consensus that games of skill can only be regulated by the Centre. However, when there are elements of chance and stakes involved, the position becomes unclear, with each State imposing its own regulations. Even though the Central Government, through its Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, has attempted to bring in uniformity, plenty of questions remain and some central as well as all the state legislations concerning the subject remain as relevant as ever.

Part D: State Legislations

State legislations on online gaming have become a thing only in the recent past, but laws regulating betting and gambling have been around for a long time. One of the first statutes in this regard was the *Public Gambling Act, 1867* in the United Provinces, Central Provinces, East Punjab and Delhi. This Act was derived from the *British Gaming Act, 1845* and the *Betting Act, 1853*, and dealt with the operation of gaming houses which were defined as “any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever”.⁵⁵ Its objective was to impose penalties for owning such gaming houses and being found in them. For the former, the penalty was fine up to 200 rupees or imprisonment of either description (as mentioned in the Indian Penal Code which had been passed 7 years prior) not exceeding three months while for the latter, it was fine up to 100 rupees or imprisonment of either description not exceeding one month.⁵⁶ The Act also provided power to Magistrates and the police to enter and search these places. Proof of playing was not necessary to convict, as mere presence in the gaming house was sufficient. Finally, Section 12 of the statute was a key provision as it stated that ‘games of mere skill’ were excluded from its purview. Even at present, this *Public Gambling Act, 1867* remains a crucial enactment, having been extended to and adopted by states such as Haryana, Himachal Pradesh, Assam, Punjab, Chhattisgarh, Arunachal Pradesh, Uttarakhand, Manipur, Mizoram, Tripura, and more.

Several other similar legislations were made in other states from the 1860s onwards such as the *Bombay Prevention of Gambling Act, 1887*, *Tamil Nadu Gaming Act, 1930*, *The West Bengal Gambling and Prize Competitions Act, 1957*, *Kerala Gambling Act, 1960*, *Assam Game and Betting Act, 1970*, *Meghalaya Prevention of Gambling Act, 1970* and *J&K Public Gambling Act, 1977*. The *Bombay Prevention of Gambling Act, 1887* was among the popular ones here as it came first and sought to ‘consolidate the law for the prevention of gambling in the State of Bombay’.⁵⁷ While this Act did follow the template of the aforementioned *Public Gambling Act, 1867*, it had some changes which had implications. For

⁵⁵ The Public Gambling Act, 1887, No. 3, §1.

⁵⁶ These penalties changed over time with subsequent amendments

⁵⁷ The Bombay Prevention of Gambling Act, 1887, No. 4, Preamble.

example, the word ‘gaming’ was used and defined as including wagering or betting except wagering or betting upon a horse-race under certain conditions, with lotteries being excluded. In Section 3, some intriguing examples were given such as betting on the market price or numbers of commodities and stocks, occurrence or non-occurrence of natural events such as rain, quantity of rainfall, and so on. It is only as the final example that a conventional form of betting was given i.e. “*on the pictures, digits or figures of one or more playing cards or other documents or objects bearing numbers, or on the total of such digits or figures, or on the basis of the occurrence or non-occurrence of any uncertain future event or on the result of any draw, or on the basis of the sequence or any permutation or combination of such pictures, digits, figures, numbers, events or draws*”.

With such laws being prevalent for the entirety of the 20th century, it wasn’t until 2008 that technological advancements in the internet and the boom of video games necessitated the need to regulate online gaming. In the state of Sikkim, the *Sikkim Online Gaming Act, 2008* was passed with this intention which was to be achieved through the imposition of taxes and preventing exploitation. It firstly defines an online game as “*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 for money or money's worth, as may be prescribed from time to time*”.⁵⁸ Therefore, akin to earlier gambling statutes, games of skill are excluded from the conversation. However, games which have a combination of skill and chance are acknowledged. A licensing regime is also created whereby an online game could be played, organised or exhibited only if a licence is granted. Further, provisions for application of the licence, duration, fees, variation and transfer, assignment, renewal, suspension and cancellation are present. Upon failure to comply with the provisions, penalties are provided.

Various amendments and rules followed upon the passing of this statute including importantly in 2018 where a mandatory provision of requiring identity cards to enter gaming zones and play games was introduced. This provision has been alleged to have made it difficult for the locals to get into these zones, as opposed to tourists.⁵⁹ Yet another critical

⁵⁸ The Sikkim Online Gaming (Regulation) Act, 2008, No. 23, §2(1)(d).

⁵⁹ Hannah Wallace, *India's Sikkim Prohibits Residents from Wagering in State Online Betting Centers*, CASINO GAMES PRO (2018), <https://www.casinogamespro.com/2018/07/19/indias-sikkim-prohibits-residents-from-wagering-in-state-online-betting-centers> (last visited Mar. 05, 2024).

point to take into account here is that the licensing regime for online gaming is not new and similar provisions operated in an earlier statute called *Sikkim Electronic Entertainment Games (Control and Tax) Act, 2002* which in a way served to legalise gambling but upon getting the adequate permissions and licences.

Another state that has unique laws concerning online games is Nagaland where the *Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016* is active. This statute concerns the issue of licences for online games that involve skill. While gambling is completely prohibited unlike in Sikkim, games of skill that also involve chance are regulated when they involve the presence of stakes, wagers and bets. While several new laws have emerged to oversee online gaming in other states, it's significant that only the aforementioned Act offers explicit licences specifically for online skill games. In fact, it is made clear in the very beginning that once a licence has been acquired, engaging in wagering or betting on online games of skill, or making profit by facilitating the play of games of skill, will not constitute gambling.⁶⁰ This exemption applies as long as these services are being offered to players and accessed by players residing in territories where games of skill are excluded from the scope of gambling.

Further, a game of skill is defined in the legislation as including “*all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analyses or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen*”.⁶¹ Further, games that have been deemed to be games of skill by courts or statutes or games where tournaments are held domestically and internationally are included in the definition. Such games have also been classified into three categories: card based, action/virtual sports/adventure/mystery, and calculation/strategy/quiz. Schedule A of the Act also lists down games of skill which includes chess, sudoku, quiz, bridge, poker, rummy, nap, spades, auction, solitaire, and other virtual games like sports, racing, fighting, wrestling, combat, adventure, mystery, monopoly, and sports fantasy. Aside from such classifications

⁶⁰ Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016, No. 3, §2(1).

⁶¹ Id., §2(3).

and definitions, the Nagaland Act concerns licensing requirements, payment of fees, issue of licences, their validity, termination, and so on.

Down South, the States of Telangana, Andhra Pradesh, Karnataka and Tamil Nadu portray a marked difference in their attitudes towards online gaming - be it those involving chance or skill. These states have taken a stance in favour of completely banning any games when they involve stakes. Telangana was the forerunner through an amendment to the *Telangana Gaming Act, 1974*. The said Act had had provisions similar to the ones discussed above till then. But through the *Telangana Gaming (Amendment) Act, 2017*, the regime completely changed. A key change in the definition of a gaming house was brought in to include in any form of gaming, “*any house, room, tent, enclosure, vehicle, vessel, cyber space or any place whatsoever in which any instruments of gaming are kept or used for profit or gain...*”.⁶² Further, through amendments to offences and penalties, any wagering and betting including in games of skill were prohibited.

This move in Telangana was not unanimously welcomed and even as the Government sought to justify it by pointing to the social issues the games were causing, the stakeholders in gaming were far from pleased. It was argued that a blanket ban on online games was not the solution and that a distinction in terms of skill and chance was always the way to go.⁶³ The government was accused to have acted in a way ignorant of how the social evils were driven mostly by games of chance and not those of skill.⁶⁴ However, the government doubled down on its decisions by also removing advertisements of gaming apps that involve stakes from public spaces. The Director Of Enforcement, Vigilance & Disaster Management of Telangana made it clear that any display of a content that involves gaming with stakes would be immediately dealt with. The Directorate also called for all citizens to report any such content that they see in order to then take them down.⁶⁵ While such decisions were met with criticism from some circles, the Telangana government’s actions have received a boost thanks to the neighbouring State of Andhra Pradesh passing an almost exactly similar amendment in 2020⁶⁶ to make its position on online gaming similar to Telangana and also in large to the

⁶² Telangana Gaming (Amendment) Act, 2017, No. 29, §2.

⁶³ *Blanket Ban On Online Games Not A Solution: Telangana IT Official*, NDTV (2021), <https://www.ndtv.com/india-news/blanket-ban-on-online-games-not-a-solution-telangana-it-secretary-2542291> (last visited Mar. 05, 2024).

⁶⁴ Id.

⁶⁵ Director EV&DM, GHMC, @Director_EVDM, X (Twitter) Post, (Apr. 20, 2023, 1:11 PM), X, https://twitter.com/Director_EVDM/status/1648955088860512256 (last visited Mar. 05, 2024).

⁶⁶ The Andhra Pradesh Gaming (Amendment) Act, 2020, No. 43.

Information Technology Rules passed by the Central Government in 2021, which are discussed in detail later.

In Karnataka and Tamil Nadu, the situation has been largely similar. In the former state, the *Karnataka Police (Amendment) Act, 2021* amended the *Karnataka Police Act, 1963* and one of the important changes that it brought was to ban all online games including those involving skill, if stakes were involved. In Tamil Nadu too, the *Tamil Nadu Gaming & Police Laws (Amendment) Act, 2021*, passed to amend the *Tamil Nadu Gaming Act, 1930*, banned online games of skill played for stakes. However, the respective High Courts of the States struck down the amendments (discussed later under ‘Case Laws’). Tamil Nadu did not budge then as it introduced the *Tamil Nadu Prohibition of Online Gaming and Regulation of Online Games Act, 2022* which had a similar effect. This move was also struck down in 2023 and now, Tamil Nadu has approached the Supreme Court in appeal against the High Court orders. Meanwhile, in Telangana and Andhra Pradesh, challenges are pending at the High Court level itself. In the other southern state of Kerala too, a notification that sought to ban online rummy games that are played for stakes was struck down by the High Court in 2021.⁶⁷ Subject to the pendency of an appeal, the Kerala government has maintained that it favours curbing online gaming through changes to its laws.⁶⁸ It remains to be seen how this situation evolves in the state, with the passage of time and the arising of plenty of arguments both for and against such a stance.

Therefore, to sum up, each State in the country is in a different position from each other and in the country as a whole, there is a complete lack of uniformity in laws surrounding online games. There are disagreements within different parties in the same state, courts, companies, other stakeholders, politicians, players and just about every citizen. This is where the role of the Central Government could be key and such actions from it hold merit from an industry perspective too.⁶⁹ Having uniformity and consistency in regulations that are applicable to all forms of online gaming can go a long way and be beneficial for all of the aforementioned parties concerned. Therefore, the Centre emerges as the most suitable authority to establish and enforce such regulations. That is exactly why the Information

⁶⁷ Head Digital Works (P) Ltd. v. State of Kerala, 2021 SCC OnLine Ker 3592.

⁶⁸ *Kerala govt planning to amend gaming laws to curb online rummy*, BUSINESS STANDARD (2022), https://www.business-standard.com/article/current-affairs/kerala-govt-planning-to-amend-gaming-laws-to-curb-online-rummy-122082400148_1.html (last visited May 05, 2024).

⁶⁹ Vineet Bhalla, *supra* note 40.

Technology Rules passed in 2021 and its subsequent amendment rules (especially the ones in 2023) hold a great deal of importance, and need to be analysed with specific reference to online gaming.

Part E: Case Laws

Thanks to the largely confusing framework surrounding online gaming, judicial interpretations have often been necessary to settle issues. State legislations and the competency of the state legislatures have often been challenged in the concerned High Courts, contributing to the situation that prevails today. With online games and games themselves being introduced not too long ago in India, one need not go far back to look for jurisprudence relating to them. Now, there can be no denying that cases on betting and gambling have been plentiful over the course of time and a few such as *Satyanarayana v. State of Andhra Pradesh*,⁷⁰ *State of Bombay v. RMD Chamarbaugwala*,⁷¹ *K.R. Lakshmanan v. State of Tamil Nadu*,⁷² and *B.R. Enterprises v. State of U.P.*⁷³ are definitely worth recollecting. However, judgments focusing completely on online games such as fantasy sports, rummy, poker, and their validity have only been a recent phenomenon. The focus in this section will be limited to such judgments that specifically dealt with online gaming and the issues surrounding its legal framework in certain states such as Tamil Nadu, Kerala and Karnataka.

The key case to start this probe should be *Varun Gumber v. UT of Chandigarh* in 2017 which has often been brought up in subsequent judgments relating to fantasy sports.⁷⁴ Here, the petitioner approached the Punjab and Haryana High Court seeking a ban on the fantasy sports app, Dream11. He stated that he had lost a lot of cash due to betting on sports through the platform unaware of how it was the same as gambling (according to him). For that reason, he contended that the provisions of the *Public Gambling Act, 1867* must apply. However, the respondent's argument was that Dream11 was not a game of chance but one that involved skill and strategy. The Court scrutinised the provisions of the 1867 act and called attention to Section 12 which provides that "*Nothing in the foregoing provisions of this Act contained shall be held to apply to any game of mere skill wherever played*". Therefore, the interpretation of the term 'mere skill' was looked into, to find that mere skill would mean that there was 'substantial' amount of skill involved. Further, when there is an element of chance involved too, "*if a game is preponderantly a game of skill*", it would mean that the game is one of 'mere skill'.

⁷⁰ State Of Andhra Pradesh v. K. Satyanarayana, 1968 AIR 825.

⁷¹ State of Bombay v. R. M. D. Chamarbaugwala, 1957 AIR 699.

⁷² Dr. K.R. Lakshmanan v. State Of Tamil Nadu and Anr, 1996 AIR 1153.

⁷³ B.R. Enterprises Etc, Etc v. State Of U.P. and Grs. Etc, 1999 (9) SCC 700.

⁷⁴ Varun Gumber v. Union Territory of Chandigarh, 2017 Cri LJ 3827.

Interestingly, the Court also looked into the regimes of online gaming in other countries in substantiating its points. Chiefly, using the United States case of *People v. Monroe*,⁷⁵ parallels were drawn between horse races and fantasy sports. In the case decided by the Supreme Court of Illinois back in 1932, betting on the result of horse races was held to be valid. The challenge had been based on the fact that lotteries were prohibited by the State Constitution. However, the Court had observed that there were a plethora of factors that determined which horse would win such as conditions, speed, skill of the rider, and other miscellaneous factors.⁷⁶ Human guidance and the human touch plays a big role as each rider wants to ensure that their horse is best placed to win the race. Dream11 was also held to be similar where each user wants to strategies and lock in their best teams such that they have a better chance of winning against other players who are also on an equal footing. Even if the players do not necessarily communicate and interact with the players to play an active part in the outcome, they do mostly everything else that a horse owner would to place themselves in the best possible way.

Therefore, taking into account all these arguments in favour of Dream11, the Court ruled that skill did predominate over chance in the playing of these games and did not see the need to ban it. It reminded that Article 19(1)(g) provided the right to practise any profession. Even if gambling was not afforded such a protection, it was ruled that Dream11 was not engaged in gambling due to the said predominance of skill. With Dream11 being a company that had due registration and operated in good faith, it would get the protection of Article 19(1)(g). A special leave petition was also filed before the Supreme Court against this judgment later.⁷⁷ The Supreme Court heard just the initial arguments of the counsels and following the arguments of the counsel representing Dream11, promptly struck down the petition.

Following this, a public interest litigation was filed in the case of *Gurdeep Singh Sachar v. Union of India* at the Bombay High Court against Dream11, stating that it was carrying out gambling activities in the guise of a fantasy sports game.⁷⁸ Its policies to avoid tax were also brought out. However, the Court relied on the *Varun Gumber* decision to uphold

⁷⁵ *People v. Monroe*, 85 ALR 605.

⁷⁶ It is worth recalling here that in the case of *K.R. Lakshmanan v. State of TN* too, a similar parallel was drawn to horse racing.

⁷⁷ *Union Of India v. Dream 11 Fantasy Pvt. Ltd*, IA No.14605/2020.

⁷⁸ *Gurdeep Singh Sachar*, 2019 (30) G.S.T.L. 441.

the permissibility of Dream11's activities. It can be observed here that the ruling was much more vocal in its support of Dream11's legality stating that the case of petitioner was misconceived and without any merit. "*It can be seen that success in Dream11's fantasy sports depends upon user's exercise of skill based on superior knowledge, judgment and attention, and the result thereof is not dependent on the winning or losing of a particular team in the real world on any particular day. It is undoubtedly a game of skill and not a game of chance,*" the Court said. Later, another judgment of the Rajasthan High Court, *Chandresh Sankhla v State of Rajasthan* too was largely similar as the Court relied on the decisions in *Varun Gumber* as well as *Gurdeep Singh Sachar* to hold that the legality of Dream11 and other similar fantasy sports games was no longer *res integra* (an undecided point or area of law), having been decided by two High Courts as well as the Supreme Court in the aforesaid SLP.⁷⁹

Now, in the early 2020s, the situations in three southern Indian states - Tamil Nadu, Kerala and Karnataka have led to rapid evolution of the jurisprudence surrounding online gaming. Starting with the former, as briefly mentioned earlier, the state had passed the *Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021* which brought in changes to the *Tamil Nadu Gaming Act, 1930* by banning playing online games for stakes. Three key changes were introduced herein. Firstly, the definition of gaming was changed to include all games that involve wagering or betting in person or cyber space. And more importantly, Section 11 of the 1930 Act was changed to include 'games of mere skill' which would also be prohibited. However, in the case of *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, the amendment was challenged and struck down.⁸⁰ A group of private online gaming companies challenged the validity of the ban imposed on their games claiming that it will lead to the possibility of plenty of issues cropping up. For example, e-sports or even normal sporting activities which are played for a prize could be susceptible to being banned.

The Madras High Court allowed the petitions and found that Part II of the amendments dealing with blanket bans to online games played for stakes was unconstitutional. The Court examined online games such as rummy and poker and noted that they do involve skill due to the fact that memory, percentages and probability are to be taken into account to succeed. Further, for poker too, the Court found that an argument for it being

⁷⁹ Chandresh Sankhla v. State Of Rajasthan, 2020 SCC OnLine Raj 264.

⁸⁰ Junglee Games India Pvt. Ltd. v. State of Tamil Nadu, 2021 SCC OnLine Mad 2762.

a game of skill could be allowed. This was because an American case, *United States of America v. Lawrence DiCristina* was cited by the petitioners where it was held that poker was a game of skill. Even if the case's decision was reversed upon appeal, the holding relating to poker being a game of skill was left undisturbed. Therefore, in the end, the Court held that by imposing a blanket ban, the State intruded too much into the rights of the petitioners under Article 19(1)(g), stating that the amendment was '*capricious, irrational, excessive and disproportionate*'. However, the Court also acknowledged that the State was not prevented from bringing in further amendments that conform to the Constitution being brought in, if they felt the need to regulate the sector due to the rising issues in the State relating to debts and deaths. This is especially because the state of Tamil Nadu had pointed out that "*multiple instances of suicides have been reported across the State, given the addictive tendency of these games and the financial losses*". It is worth noting here that the amendment was completely struck down as opposed to using the doctrine of severability because the Court felt that the meaning of gaming that was construed ran through the entirety of the amending act. For this reason, the intentions of the Legislature were found to be difficult to gauge and even if they were to be attempted to be understood, they would have been far removed from the intentions of the original 1930 Act's framers.

Following this judgment of the Madras HC, the TN government responded by constituting a committee under the chairmanship of Justice K. Chandru to help draft a new legislation. Following the submission of the committee's report, the government promulgated an ordinance titled the *Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022* which became an Act. Now, this legislation was also largely in the nature of the prior 2021 amendments, operating to ban online games of skill if they were played for stakes. Once again, the issue went up to the Madras HC in the case of *All India Gaming Federation v. The State of Tamil Nadu*.⁸¹ Here, again, it was held that the legislation should not apply to games of chance. However, it was not struck down as the bench felt that the Act was not ultra vires in its entirety, but only in restricting the online games' (skill-based) right to trade and business. When the TN government remained firm in its stance that it could regulate online games of skill for the 'public health' of the citizens, the HC acknowledged the same. However, the limit of such regulation was questioned. "*The concern expressed by the State about public health of its citizens is but natural. The State has*

⁸¹ All India Gaming Federation v. The State of Tamil Nadu, 2023 SCC OnLine Mad 6973

to take care of the public health of its citizens. The State certainly has the power to regulate online games of skill. It can control and regulate the games of skill. The State can provide for the time limit... It can also regulate the age restriction and other aspects," the judgment said. However, imposing a complete ban was held to be beyond its legislative competence, with the Court remaining unconvinced in the government as well as the committee report's arguments, like in the prior case. Special criticism was drawn to the investigation of the harms that online games could cause which was carried out. "*What has been done by the State and the Committee, submitting the report, is only interviewing school teachers. Moreover, the school teachers would be supervising students below 18 years of age. Students below the age of 18 years are prohibited and not permitted to play online games in the instant case,*" the judgment said. The TN government has now appealed against this decision before the Supreme Court and a judgment is awaited.

Meanwhile in Kerala, in 2021, the State government put forth a notification to ban online rummy played for stakes, stating that it was not a game of skill.⁸² This was challenged by a group of online rummy companies in *Head Digital Works (P) Ltd. v. State of Kerala*.⁸³ These companies pointed out that online rummy that is played for stakes is no different than rummy (for stakes) that is played in physical venues such as clubhouses. Therefore, it was argued that online and offline rummy should not be differentiated with different laws. Further, the element of skill involved in rummy was also mentioned, stating that skills regarding holding or discarding cards, memorising prior cards used, and the like were essential to win the game. The State meanwhile argued that online rummy could be manipulated and cheated using algorithms which take away elements of skill. The injury that such games can cause to the public interest was emphasised and the instances of indebtedness and addictions were brought out. The Kerala HC heard these arguments before ruling that a complete ban on online gaming is unconstitutional as it does not fall under the reasonable restrictions envisioned under Article 19(1)(g). The Supreme Court's earlier rulings in *K. Satyanarayana* and *Lakshmanan*, which had made it clear that rummy was a game of mere skill, were reiterated. The fact that "*playing for stakes or not can never be a criterion to find out whether a game is a game of skill*" was also mentioned.

⁸² Home Department, Government of Kerala, G.O.(P)No.26/2021/HOME, Issued on 23/02/21.

⁸³ *Head Digital Works (P) Ltd. v. State of Kerala*, 2021 SCC OnLine Ker 3592.

In Karnataka, the State government passed the *Karnataka Police (Amendment) Act, 2021* which brought in changes to prohibit online games of skill that were played for stake, similar to the Tamil Nadu and Kerala governments. These games were brought under the purview of betting and gambling and penal provisions were also amended to enhance punishments. Companies that provided such online games as well as users who played them were therefore made liable to such risks of punishment. This amendment was challenged in the case of *All India Gaming Federation v. State of Karnataka*⁸⁴ with the petitioners contending that the amendment was unconstitutional as it hampered their right to freedom of trade and business. It was also argued that the amendment did not acknowledge the distinction between games of skill and games of chance. Meanwhile, the State, like the aforementioned others, contended that the Act was brought in to protect the public interest and ensure that the public health of the citizens is protected. The ill effects of playing such games were emphasised to add weight to their arguments. The HC did not agree with the State's contentions and stated that there was most certainly difference between games of skill that are played with stakes and games of chance. Therefore, it was held that the State did not have the legislative competence to impose a ban on games of skill under Entry 34 of List II of the Seventh Schedule. The fact that games of skill constitute business activities under Article 19(1)(g) was also discussed, stating that the ban imposed was not proportional to the so-called evils that it seeks to correct. It was also stated that the ban was 'manifestly arbitrary' and therefore, violated Article 14 also. The decisions in *Jungle Games India Pvt. Ltd* as well as *Head Digital Words Pvt. Ltd* were cited for their persuasive precedential value. However, the entire amendment act was not struck down, but only the specific provisions that were deemed invalid. The HC also advised the State to bring in a new legislation to regulate the position of such games, taking into account the judgment.

Another issue that was pointed out was that there was no material or statistics available with the government to state with assurance that online games played for stakes were the cause for problems such as indebtedness and addiction. The HC asked the government to provide significant evidence to substantiate such points. This aspect is something that has been highlighted in other cases too. As discussed earlier, the case of *All India Gaming Federation* also had such a discussion where the findings of the Chandru Committee were criticised for focusing its statistical studies on children who were not

⁸⁴ All India Gaming Federation v. State of Karnataka, 2022 LiveLaw (Kar) 47.

eligible to play the games in question in the first place. The courts have been of the view that even as the States continue to claim that online games have been root causes for addictions, debts, mental illnesses leading to even suicides, the correlation has not had a solid backing. However, with the courts themselves advising the state governments to conduct studies, this situation could change for the better soon and a clearer picture of the gravity of the situation at hand could be obtained.

Now, a cursory look at the cases mentioned above make it clear that the decisions of the Courts have been more or less uniform, but the State governments continue to make attempts to classify games of skill and chance in a different way. Plenty of examples for such cases can be cited here, but at risk of repetition of similar arguments, these will be limited to just two more cases - one in Maharashtra and another in Karnataka itself. Beginning with the former, in the case of *Akshay Anant Matkar v. State of Maharashtra*, the issue was the filing of a First Information Report against the proprietor of an online gaming company called Wingame Enterprises.⁸⁵ The said proprietor was booked for gambling under the *Maharashtra Prevention of Gambling Act, 1887*. However, this FIR was quashed by the Bombay HC because it was held that the games offered by the company were ones of skill and not chance. It was held, "*We are of the considered opinion that this online game is not game of chance but there is mathematical skill involved. Apart from said skill, observation and ability to solve mathematical equations within time bound manner is also required, which definitely requires skills. In our view, the present online game stands on better footing and it is definitely preponderantly a game of skill and therefore, it cannot be said from mere averments in the FIR that any offence was committed under the said Act*". Therefore, the conclusion drawn was that if the petitioners were to face trial, it would constitute an abuse of the due process of law, because the facts of the case does not make clear the presence of any offence prima facie.

Finally, in a tax matter in *Gameskraft Technologies (P) Ltd. v. Directorate General of Goods Services Tax Intelligence*,⁸⁶ the Karnataka HC discussed at length about the classification of games of skill and chance, due to the implication that it had on the payment of tax.⁸⁷ This was because the taxation would have been 28% if the game was one of chance

⁸⁵ *Akshay Anant Matkar v. State of Maharashtra*, CRWP 200/2024.

⁸⁶ *Gameskraft Technologies (P) Ltd. v. Directorate General of Goods Services Tax Intelligence*, 2023 SCC OnLine Kar 18.

⁸⁷ Note that the tax regime will be discussed in greater detail later.

but only 18% if it was of skill.⁸⁸ The petitioner asserted that the majority of games offered by them were rummy and since rummy was a game of skill, the taxation must be lesser. Meanwhile, the GST department argued that the taxation should be higher due to the elements of chance involved in rummy. The department therefore claimed a whopping Rs. 21,000 crore in payment as GST. However, the HC struck this down and labelled it a “*vain and futile attempt to cherry-pick stray sentences from the judgments of various courts*” so that they could build what they called a non-existent case. The attempt was said to amount to “*splitting hairs and clutching at straws*”. The already-established positions relating to rummy being a game of skill were reminded yet again and it was clarified that such a regime would apply to both online and offline modes. However, in a turn of events, the Supreme Court ordered an ad interim stay of the HC’s judgment, and the result is a deadlock that continues till today.

⁸⁸ This position would go on to change later with 28% being imposed uniformly through a meeting of the GST Council on July 11, 2023.

Part F: The Online Gaming (Regulation) Bill, 2022

With the burgeoning state legislations and case laws, along with confusing taxation regimes, a Bill was introduced in the Lok Sabha on April 1, 2022 to create a framework that would regulate the online gaming industry and prevent misuse and fraud. For a period of 6 months prior to the introduction of the said Bill, there had been plenty of discussions in the Parliament about the need to regulate the online gaming industry and how addiction and social evils were being increasingly associated with online gaming.⁸⁹ A Member of Parliament, Mr. Sushil Kumar Modi had brought up the subject vehemently in December, 2021 saying, “*Online gaming is becoming a big addiction. I would like to highlight that this sector, like the crypto industry, certainly has regulatory lacunae. So, I would urge the government to bring a uniform tax on online gaming. I urge the government to make a comprehensive framework of regulation for online gaming*”. This was one of the key triggers for the introduction of the bill called the *Online Gaming (Regulation) Bill, 2022* by another MP, Mr. Dean Kuriakose a few months later. Even if this Bill did not address the taxation regime surrounding online gaming as Mr. Modi had wanted, it sought to regulate the online industry as a whole.

The 2022 bill shared similarities with another private member Bill which lapsed in 2018 called the *Sports (Online Gaming and Prevention of Fraud) Bill, 2018*. The major call of the bill was the creation of a regulatory commission that would be responsible for the entire industry. An online game was defined in the bill as “*any game played on electronic devices such as personal computers, mobile phones, tablets, and other devices,*” thereby not differentiating between games of skill and games of chance.⁹⁰ The aforesaid regulatory commission was to be called the Online Gaming Commission (OGC) and would consist of five members. These five would be nominated by the Central Government with one expert from the field of law and cyber technology and one from law enforcement. The OGC was empowered to “*oversee the functions of online gaming websites; make periodical or special reports on matters pertaining to Online Gaming; suggest appropriate measures to control and curb illegal Online Gaming; grant, suspend and revoke licenses for online gaming*

⁸⁹ Neelam Pandey, *BJP MP Sushil Modi wants online gaming taxed & regulated, says youngsters getting addicted*, THE PRINT (2021), <https://theprint.in/india/governance/bjp-mp-sushil-modi-wants-online-gaming-taxed-regulated-says-youngsters-getting-addicted/775838/> (last visited Mar. 16, 2024).

⁹⁰ The Online Gaming (Regulation) Bill, 2022, No. 78, §2(3).

*websites and determine the fee for license applications and license renewals of such websites”.*⁹¹

As is evident from the functions mentioned, the Bill followed the model of creating a licensing system to govern the framework. Therefore, an operator of an online gaming server or a website had to get a licence from the commission and stick to the rules mentioned in the bill. Operating games without obtaining the licence was deemed to be an offence punishable with imprisonment of up to three years along with fine. The validity of the licence was fixed for a period of six years after which it would have to be renewed. The power to revoke and suspend the licences were also given to the OGC, as mentioned earlier. This could be if the licensee violates any condition that was the basis for the granting of the permit or if any provision of the act or other rules are violated. Having said that, the Bill does exclude persons and organisations providing backend services such as maintenance of servers and hosting (especially in association with international gaming websites based out of India) from its purview.

The Bill did not get passed and the subsequent amendments to the *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* took over to bring in regulations and create regulatory bodies. The biggest reason for this was the lack of comprehensiveness in the Bill. Provisions related to a plethora of issues such as grievance redressal, data protection, due diligence requirements on all parties concerned, etc were conspicuously absent. Further, the Bill did not address mobile applications at all as an online gaming website which comes under the purview of it was defined as “*the internet domain registration or URL address of the Licensee through which Online Sports Gaming is conducted*”.⁹² The online games were not classified in any manner too such as games of chance and skill nor was there any addressing of e-sports, fantasy sports, etc. The uncertain situation surrounding the legislative competence of the state governments and the union government (as given in the Seventh Schedule) with respect to online games was another factor that worked against the bill. However, a good proportion of the shortcomings of the bill was rectified in the amendment rules that were introduced to the Information Technology framework.

⁹¹ Id., §4.

⁹² Id., §2(g).

Chapter 3: IT Rules and the Taxation Regime

The *Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021* (hereinafter 'IT Rules') which were passed in accordance with the rule-making power granted by Section 87 of the *Information Technology Act, 2000* to the Central Government (along with the Ministry of Electronics and Information Technology (MeitY) and the Ministry of Information and Broadcasting (MIB)), is one of the most striking statutes for its importance in changing the digital landscape of India. Its seeds were sown in 2018 when a motion concerning the misuse of social media and the rapid spread of fake news was admitted in the Parliament.⁹³ The MeitY then released a statement affirming the "*resolve of the Government to strengthen the legal framework and make the social media platforms accountable under the law*".⁹⁴ In 2022, the *The Online Gaming (Regulation) Bill, 2022* was another step, even if it did not see the light of day. Draft rules were then framed with the main agenda being to make clear the liabilities as well as duties of intermediaries. These were aimed at ensuring the prevention of spread of fake news as well as the elimination of objectionable content online such as child pornography, rape, etc. During the process, according to MeitY, consultation was carried out with other ministries, stakeholders including major social media platforms like Facebook, Google, Yahoo, WhatsApp, Twitter (now 'X'), as well as associates of intermediaries.⁹⁵

The result was the creation of a crucial set of rules which provided for a regulatory framework for intermediaries to ensure responsible content moderation and dissemination. Through the prioritisation of user rights wherever necessary, a safer online environment was envisioned too. An example for this is the appointment of grievance officers to address user complaints as well as to communicate to intermediaries on the removal of unlawful content.⁹⁶ Further, the Rules introduced a Code of Ethics for digital news media and over-the-top platforms, promoting responsible journalism and content creation.⁹⁷ Above all else, the Rules offered much needed legal stability and clarity concerning the duties and responsibilities of digital intermediaries. Through the establishment of clear guidelines, these regulations led to

⁹³ *Archive - Cyber Law, MEITY* (2022), [https://www.meity.gov.in/archive-cyber-law#:~:text=Accordingly%2C%20the%20Information%20Technology%20\(Intermediaries,in%202018%20\(Monsoon%20session\)](https://www.meity.gov.in/archive-cyber-law#:~:text=Accordingly%2C%20the%20Information%20Technology%20(Intermediaries,in%202018%20(Monsoon%20session).). (last visited Mar. 05, 2024).

⁹⁴ *Ministry of Electronics and IT - Draft IT rules issued for public consultation*, PRESS INFORMATION BUREAU (2018), <https://pib.gov.in/PressReleasePage.aspx?PRID=1557159> (last visited Mar. 05, 2024).

⁹⁵ *Id.*

⁹⁶ *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*, G.S.R. 139(E), §2j.

⁹⁷ *Id.*, Part III.

better accountability standards and provided for compliance to legal obligations from the parties concerned.

However, in relation to online gaming, the IT Rules were criticised for not providing any clarity on the online gaming industry and the regime surrounding the playing of such games with stakes. Questions as to why this was so dominated parliamentary proceedings in the aftermath and there were calls to bring online gaming platforms under the head of ‘intermediaries’ in the IT Rules. This was so much so that after a point, it seemed only like a matter of time before the rules would be amended.⁹⁸ Now, before discussing the implications of the amendment to the rules, it is necessary to understand what an intermediary is. An intermediary was defined in Section 2(1)(w) of the *Information Technology Act, 2000* as meaning “any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes”. Intermediaries take up different roles including content hosting, data collection and analysis, enabling communication and information sharing, as well as internet usage. Examples of these intermediaries include social media platforms like WhatsApp, X, and Reddit, e-commerce websites such as Flipkart and Amazon, search engines, etc.

With these intermediaries being governed by the IT Act as well as the rules, there was an omnipresent question as to whether online gaming platforms are intermediaries. All of these came to a head when on April 06, 2023, the Central Government addressed the uncertainties by introducing amendments to the IT Rules of 2021. These revisions, termed the "Online Gaming Rules" represent a significant step forward in providing comprehensive regulatory frameworks for the online gaming industry. The decision to amend the Rules stemmed from the Central Government's recognition of the necessity for a modern, coherent legal framework to govern the rapidly expanding online gaming sector, not only to support industry growth but also to protect consumer interests.

⁹⁸ Ranjana Adhikari et al., *MeitY Notifies Amendments To It Rules 2021: Online Real Money Gaming Platforms Now Regulated By The Centre*, INDUS LAW (2023), <https://www.mondaq.com/india/gaming/1305570/meity-notifies-amendments-to-it-rules-2021-online-real-money-gaming-platforms-now-regulated-by-the-centre> (last visited Mar. 05, 2024).

Part A: Changes brought about by the amendment

Definitions

The amendment rules introduced plenty of changes in the IT Rules and chief among them is the introduction of certain definitions. By adding five important definitions immediately succeeding Rule 2(1)(q) of the IT Rules, online gaming is firmly brought under the purview of them. Firstly, 'online game' is defined as a game '*that is offered on the Internet and is accessible by a user through a computer resource or an intermediary*'.⁹⁹ Further, the term 'online gaming intermediary' is defined as one that '*enables the users of its computer resource to access one or more online games*'.¹⁰⁰ This definition aligns with the broader understanding of an intermediary under the IT Act, encompassing any entity that handles electronic records or provides related services on behalf of others. The rules also alter the scope of what online games are permissible by specifying two categories: 'permissible online real money games' and other online games.

With such confusing and closely related terminologies being used, the key definition that all of this boils down to is that of 'online real money game' which is defined as an '*...online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit*'. In the context of this definition, 'winnings' encompass '*any prize, in cash or kind, which is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online game*' while 'deposit' is the '*deposit made or committed to, in cash or in kind, by the user for participating in an online game*'.¹⁰¹ This definition covers any online game where users participate, whether through cash payments or other forms of payment, with the expectation of receiving rewards such as vouchers, discounts, or similar benefits, not limited to monetary prizes. Further, it's important to note that a 'permissible online real money game' as per the amendment is dependent on verification by a proposed 'online gaming self-regulatory body' (SRB), indicating the regulatory framework's stress on validation within the online gaming industry as well as the objective of instilling confidence among users and stakeholders while fostering a fair and responsible gaming environment (discussed later).¹⁰²

⁹⁹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), §2(1)(qa).

¹⁰⁰ Id., §2(1)(qb).

¹⁰¹ Id., §2(1)(qa).

¹⁰² Ranjana Adhikari et al, *supra* note 98.

Compliance

Another significant change that the amendment rules bring in is the due diligence requirements for online gaming intermediaries. An intermediary must take proactive measures by itself to prevent users of its platform from engaging in activities prohibited under the rules. This includes to not ‘...*host, display, upload, modify, publish, transmit, store, update or share any information...*’.¹⁰³ This addition suggests that online gaming intermediaries are subject to an elevated standard of compliance, leading to the need for more rigorous efforts to ensure regulatory guidelines are adhered to. Also, the scope of information that is prohibited has been expanded by the Act. For example, an online game that causes ‘user harm’ by being detrimental to the user or children is prohibited.¹⁰⁴ This definition of ‘user harm’ is expansive, allowing for subjective interpretation by both the government and self-regulatory bodies to determine whether certain activities are indeed detrimental. This wide scope suggests a concerted effort to ensure more regulation. Further, unverified online games being portrayed or informed to be verified by the SRB are not allowed and so are advertisements that promote such games (also called surrogate advertisements), reiterating the point.

Certain duties are also imposed through the stipulation of time periods. This includes promptly informing users about any changes in terms, privacy policies, or user agreements. For intermediaries facilitating access to permissible online real money games, they must notify users of these changes swiftly, ensuring notification within twenty-four hours of the modification taking effect. Additionally, these intermediaries are mandated to provide lawful information or assistance requested by the Indian government or authorised agencies within the same twenty-four-hour timeframe.¹⁰⁵ It's important to emphasise also that the Amendment Rules have clarified the requirement for intermediaries, including online gaming intermediaries, to "prominently publish" their terms of use and privacy policy.¹⁰⁶ This entails ensuring that such policies are clearly displayed on the homepage of the website or the home screen of the mobile application, or both. Alternatively, they should be readily accessible from the homepage or home screen through a direct link on a separate web page or app screen.

¹⁰³ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), §3(1)(b).

¹⁰⁴ Id., §2(1)(b)(ii).

¹⁰⁵ Id., §3(1)(j).

¹⁰⁶ Id., §4A(c).

Grievance Redressal

Amendments have also been introduced to the grievance redressal mechanism, which online gaming intermediaries were previously obligated to uphold under the pre-amendment IT Rules. The amended rules now outline additional roles and responsibilities for the Grievance Officer appointed by an online gaming intermediary. Specifically, the Grievance Officer is tasked with addressing user complaints related to the supplementary due diligence expected from online gaming intermediaries, as outlined previously. Additionally, specific timelines for responding to user complaints regarding certain compliance matters have been established. As previously stated, prior to the amendment, the IT Rules mandated intermediaries to establish a grievance redressal mechanism and appoint a Grievance Officer to handle complaints related to prohibited content categories or violations within the specified timeframe.

Under the IT Rules, any individual, including users who were not satisfied with a decision made by the Grievance Officer (appointed by an intermediary), had the option to appeal to a Grievance Appellate Committee consisting of three members, as per Rule 3A of the Rules. The Committee would comprise a chairperson and two full-time members appointed by the Central Government.¹⁰⁷ One member would serve *ex-officio*, while the other two members would be independent appointees. The appeal to the Committee had to be filed within thirty days of receiving the Grievance Officer's decision. The committee would then deal with the appeal accordingly and ‘*make an endeavour to resolve the appeal finally within thirty calendar days from the date of receipt of the appeal*’.¹⁰⁸ The intermediary was then required to comply with this Grievance Appellate Committee's order. As an additional obligation, the intermediary also had to publish a written report on its website ensuring its compliance with the committee's order. However, under the amended IT Rules, any individual now possesses the right to appeal to the Grievance Appellate Committee within the prescribed thirty-day period, not only if they are dissatisfied with the Grievance Officer's decision but also if their grievance remains unresolved within the specified timeframe.¹⁰⁹ Furthermore, these orders issued by the Grievance Appellate Committee will be binding on the proposed SRB that is set up.¹¹⁰

¹⁰⁷ Id., §3A(2).

¹⁰⁸ Id., §3A(4).

¹⁰⁹ Id., §3A(3).

¹¹⁰ It must be noted here that the amendments talked about here were from a prior set of amendments introduced in the year 2022.

Additional Due Diligence Requirements

Amongst all these changes, the biggest one in terms of quantity and arguably impact, is the inclusion of due diligence requirements for online gaming intermediaries. Before amending the IT Rules, additional due diligence requirements were specified only for intermediaries that met the criteria of a ‘significant social media intermediary’ in the country. However, with the amendment rules in April, 2023, these requirements have been made applicable to any online gaming intermediary facilitating access to permissible online real money games. Now, online gaming intermediaries as well as significant social media intermediaries have to appoint a Chief Compliance Officer who will be responsible for ensuring that the provisions of the IT Act as well as its rules are adhered to. Further, a Nodal Contact Person will also have to be appointed to ensure that law enforcement agencies are not kept in the dark and swift communication happens. Finally, a Resident Grievance Officer (mentioned earlier) is also provided for. It is mandated that these three officers must all be resident in India. While earlier, the Nodal Contact Person need not have been a resident of India, the amendment rules changed the same to ensure that only residents of India are appointed as officials in matters concerning due diligence requirements of intermediaries.

Other key due diligence amendments in this regard include the requirement that an online gaming intermediary (that enables access to permissible online real money games) must have a physical contact address in India which is published on either its website or application or both so that communication can be received.¹¹¹ Such an intermediary must also implement grievance redressal mechanisms in accordance with Rule 3(2) of the IT Rules in such a way that the complainants are able to keep track of the status of their complaint (through a unique ticket number).¹¹² When action is taken based on such complaints, the intermediary must also provide the complainant with reasons as to why the same was done or not done. Another requirement is that the intermediary must ensure that users who register for their services from India or use the services in India voluntarily verify their accounts.¹¹³ This can be through mechanisms such as providing an active mobile number or any other ID proof. Once the user verifies their account by providing such information, it is mandated that they be given a ‘demonstrable and visible mark of verification’ which must be visible to all

¹¹¹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 275(E), §4(5).

¹¹² Id., §4(6).

¹¹³ Id., §4(7)

others who use the services.¹¹⁴ The rules restrict the intermediaries from accepting deposits in cash or kind from users without identifying them and verifying their identity. In this respect, the amendment rules state that the KYC procedure mandated for entities regulated by the Reserve Bank of India for customer identification and verification must also be adhered to, with any necessary modifications, for identifying and verifying users of online gaming intermediaries. Any information that is obtained in the process of verification must not be used for any other purpose but verification (unless informed and express consent is obtained prior). Now, an online gaming intermediary has to inform its users of its rules, regulations, privacy policy, terms of service and user agreements as already mentioned in Rule 3(1) of the IT Rules. With the amendment, when it is a permissible online real money game in question, the intermediary must include more information such as the policy concerning the withdrawal or refund of deposit of money, the manner of determine and distributing it, fees, charges, know-your-customer procedure to identify users, measures for protection of deposit made by users, and more.¹¹⁵ An important aspect herein is that the intermediary that allows access to such games cannot directly provide credit or enable third-party financing for its users to engage in the games.¹¹⁶

Role of SRBs

The insertion of Rule 4A in the April, 2023 amendment is another critical change that provides for the verification of online real money games which shall be the work of the online gaming self-regulatory bodies (SRB). These bodies are designated by the MeitY through notifications.¹¹⁷ Several criteria follow in clause (2) of the Rule for an entity to be an SRB. This includes registration, membership being representative of the gaming industry, members offering and promoting online games in a responsible manner, sufficient financial capacity, etc. The composition of the Board of Directors is also mandated by the need for it to be composed of ‘...individuals of repute and do not have any conflict of interest and possess special knowledge or practical experience suitable for the performance of the functions of such self-regulatory body...’.¹¹⁸ Therefore, it is made compulsory that the BOD shall be composed of individuals with a diverse range of expertise. For example, an individual who has special knowledge or has practical experience in the online gaming industry is needed.

¹¹⁴ Id., §4(10).

¹¹⁵ Id., §4(11).

¹¹⁶ Id., §4(13).

¹¹⁷ Id., §4A(1).

¹¹⁸ Id., §4A(2)(d).

An individual who has experience in promoting user interest is also required and so is an educationist. Other experts include those in the field of mental health and psychology; information and communications technology; protection of child rights; public policy, public administration, public finance, law enforcement, etc. Other individuals can also be appointed but only with the approval of the MeitY. Aside from the composition of the BOD, the composition of the memorandum of association as well as articles of association are also dictated by the rules. This includes provisions relating to ‘*redressal of grievances in a manner free from conflict of interest and at arm’s length from its members*’, ‘*disclosure and reporting by... members*’, ‘*criteria for acceptance and continuation of a person as its member and for revoking or suspending such membership after giving such person an opportunity of being heard*’.¹¹⁹ Any amendments made to these documents is possible only with prior government approval.

As previously mentioned, the SRB has the responsibility of declaring online real money games as ‘permissible’ or not. It can do so only upon receiving an application to that effect and after conducting an inquiry.¹²⁰ If the SRB is satisfied that there is no wagering involved in the game, and that the intermediary has complied with all provisions under Rules 3 and 4, it can declare it to be permissible. This must be notified on its website or application or both. In this way, the SRB must keep updating its list of all the permissible online real money games along with details such as the name of the applicant, data and period of validity of the verification certification, reasons for verification, details relating suspension or revocation of the certification if any, etc.¹²¹ Now, there is a proviso to the concerned rule which states that initially, the SRB may rely just upon information that is provided by the applicant for verification. This can be followed by a temporary declaration as a permissible online real money game for a period not exceeding three months. Within these three months, the SRB must complete the inquiry and declare the game finally as permissible. If the game is deemed to be non-permissible, reasons must be sent to the applicant in writing. In addition to the aforesaid requirements, the SRB must also ensure that the applicant complies with other legal provisions relating to age and competency to enter into a contract.¹²²

¹¹⁹ Id., §4A(2)(e).

¹²⁰ Id., §4A(3).

¹²¹ Id., §4A(4).

¹²² Id., §4A(3)(b).

One more significant obligation that an SRB has with respect to publishing on its website or application or both is that of a framework for verifying an online real money game.¹²³ Such a framework includes measures that ensure that the game does not go against the interests of the sovereignty and integrity of the country, security of the State, relations with foreign States and public order. Other measures include safeguards against any harm to the user including self-harm and psychological harm, safeguards for children including parental control and age-ratings, safeguards against addiction, financial loss and fraud. It is explained in the amendment rules itself that the latter can be done by putting forth repeated warning messages at high frequencies if a reasonable duration has been spent on games as well as setting limits on how much money can be spent in a particular period. Other publication requirements include the list of its members including details on suspensions and revocations, grievance redressal framework including details of the Grievance Officer. In all these provisions concerning publications, they have to be prominent which means ‘*publishing in a clearly visible manner on the home page of the website or the home screen of the mobile based application, or both, as the case may be, or on a web page or an app screen directly accessible from the home page or home screen.*’¹²⁴

Role of the Ministry

Even as the amendment rules have provided for the creation of self-regulating bodies, the ultimate power, especially that of discretion, lies with the Central Government through the MeitY. In fact, the rules clearly state that the Government can direct SRBs to furnish any information that the former may specify in its direction.¹²⁵ The same can be asked to be published as well. Further, even if it is provided that MeitY will take into account reasons that SRBs give in respect to verification, if the Ministry thinks that such verification of a permissible online real money game is not in conformity with the rules upon giving an opportunity to be heard, it may communicate the same in writing and direct to rectify.¹²⁶ The rules also state that the MeitY may suspend or revoke the designation of SRBs (upon giving an opportunity to be heard). This can be done if the Ministry is satisfied that it is necessary to do so and the reasons are clearly recorded in writing.¹²⁷ Also, if it deems that it is in the interest of the users of the online game, the Ministry can pass interim directions to allow

¹²³ Id., §4A(8).

¹²⁴ Id., §4A(14).

¹²⁵ Id., §4A(9).

¹²⁶ Id., §4A(12).

¹²⁷ Id., §4A(13).

quick access prior to verification. Additionally, through the addition of Rule 4B through the amendment to the rules, the MeitY took a step towards lessening the compliance burdens by allowing the intermediaries time to comply with the new requirements. A period of three months were given until the expiry of which, the obligations under Rules 3 and 4 would not apply in relation to online games. This period of three months was to be counted from the date on which at least three online gaming self-regulatory bodies are designated. Although the MeitY reserved the power to reduce this period through a notification, it did not ultimately do so.

Finally, Rule 4C of the Rules gives the Central Government more power to change the regime through notifications. If the government deems it necessary for the interest of the sovereignty and integrity of the country or security of the State or friendly relations with other States or public order or preventing user harm, it can direct that obligations imposed on online real money games be extended to other online games too. For the same, reasons have to be given in writing in the notification in the Official Gazette. *Mutatis mutandis*, the provisions mentioned in Rule 3(1), Rules 4(1), (5), (6), (7), (10), (11) and Rule 4A will begin to apply for the notified games. To recall these already discussed provisions, they (exhaustively) include due diligence requirements such as prevention of surrogate advertisements, appointment of officers, mandatory Indian physical contact address, grievance redressal mechanisms, verification of accounts, display of verification mark, and informing users of policy, apart from the role of SRBs and the Ministry as mentioned in Rule 4A. When such a move of extending the provisions is carried out, a period will also have to be specified within which the online games shall begin to observe the obligations. In this way, the power that the Central Government wields is considerably high thanks to the conferring of discretionary power.

Part B: Critical Analysis of the Amended Rules

At this point of the dissertation, it must be noted that the aforementioned discussions on the IT Rules and their amendments might seem like the answer to solve the problems envisioned in the introduction such as lack of uniformity and so on. However, the rules are quite narrow with respect to addressing the problems and in no way has uniformity been brought. Various other issues and Pandora's Boxes have been opened which all point to the fact that there is still a lot to fix with respect to the online gaming regime, with plenty of legislations and rules still in play. So what exactly are these issues and implications of the amendment rules to online gaming?

Aspect of 'Permissibility'

First and foremost, only permissible online games are now allowed to function and be offered to users in the country. Online gaming intermediaries have an obligation to ensure that they comply with the due diligence requirements and make their games permissible either through them not being online real money games or through verification by recognised SRBs. An essential point to note here is that the amendment rules do not go deep into how the SRBs will verify online real money games and what criteria they will use. Discretionary power has been granted in that respect, even if Rule 4A(3) provides for certain checks. In the said rule, sub-rule (a) which states that online real money games must not involve wagering on any outcome and that the SRB must be satisfied that the condition is met, has been criticised for being too vague and exposing certain classes of games to the risk of not being approved.¹²⁸ Questions as to whether wagering means a game of chance have cropped up, leading to the age-old conflict of game of skill versus chance. Therefore, this area suffers from a lack of clarity and opens the door for conflicts to arise.

Certificate Requirements

Another pivotal aspect that has been pointed out by critics of the amendment Rules is the change from the draft rules regarding certain certificate requirements. The draft version of the Rules had made it compulsory for all online gaming intermediaries to obtain a 'No Bot' certificate as well as a 'Random Number Generator (RNG)' certificate. The former is a certificate given by licensed testing organisations such as iTech Labs which certifies that the game does not involve the use of bots and other automated processes to influence

¹²⁸ Ranjana Adhikari et al, *supra* note 98.

outcomes.¹²⁹ An RNG certificate on the other hand involves the use of an algorithm that generates random numbers in code in the game. The statistical randomness is examined to see if tests like Marsaglia's Diehard Test are satisfied.¹³⁰ The process involves examining the source code of the game to check if patterns relating to predictability and repeatability are found.¹³¹ This is followed by generating random numbers to see the response of the code. Finally, the outputs are sampled and scaled. Such tests scrutinise the quality of random number generators and results can be used to see how random the particular test subject is. If the test is passed, it means that the game has enough randomness to ensure that sequences are 'unpredictable, non-repeatable and uniformly distributed' thereby ensuring that it is fair on the users who play it, without giving undue advantage in favour of the game to influence outcomes.¹³² The game having the ability to do that could result in cheating users of money when the same is involved. Having said all of this, a surprising development after the draft Rules was that the requirement for the aforesaid certificates did not make the final cut. The 'No Bot' and RNG certificates are not required as of now. However, the SRBs can still mandate such requirements as a part of the online gaming intermediaries' due diligence compliances.

Self-Regulatory Bodies vs Government Regulatory Bodies

The introduction of SRBs in the IT Rules in 2021 was a game changer that was envisioned to ensure flexibility as well as speed of operation. It was possibly thought that law-making in the traditional sense or involving government administrative bodies would hamper progress.¹³³ Even as the creation of these bodies was both welcomed and panned in equal measure, the amendment rules extended the related provisions to online gaming intermediaries too. Now, these SRBs are at the forefront of the regulations on online gaming, although various state laws continue to operate. The power of the bodies to verify online real money games as permissible or not has been welcomed for the fact that it saves plenty of time. This is because when conflicts arose and it had to be determined whether a game was a game of skill or chance, the court had to be approached. Only upon recognition by the court

¹²⁹ *RNG Testing*, ITECH LABS, <https://itechlabs.com/compliance-testing/rng-testing/> (last visited Mar. 12, 2024).

¹³⁰ Bruce Jay Collings, *Compound Random Number Generators*, 82 JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION, 525, 525-27 (1987).

¹³¹ *RNG Testing*, *supra* note 129.

¹³² Taken from Winzo Games' RNG Certificate <https://www.winzogames.com/certification> (last visited Mar. 12, 2024).

¹³³ Internet Freedom Foundation, *Explainer: How the New IT Rules Take Away Our Digital Rights*, THE WIRE (2021), <https://thewire.in/tech/explainer-how-the-new-it-rules-take-away-our-digital-rights> (last visited Mar. 12, 2024).

that the game was that of skill would the intermediary or operator be able to offer the game to users legally. Such a requirement obviously took a lot of time and losses had to be incurred. The stakeholders in the industry were thus aggrieved by this situation which was deemed to not be conducive for the growth of an industry which had to operate relying on innovation, skill and speed. It was realised that such time-consuming regulatory measures would hinder the entire industry's capacity to adapt quickly to evolving demands and achieve growth. In that respect, the SRBs eased the burden of the intermediaries as well as the courts by ensuring that such recognition as permissible games could easily be obtained, so that time and money is not lost.

However, there is no guarantee that the creation of the SRB regime will be successful. Whether or not the mechanisms are friendly to the industry and its stakeholders will come down to how the bodies function. The relationship of the SRBs with MeitY and how much regulation the Ministry wants to bring will also play a big role.¹³⁴ According to the content outlined in the Online Gaming Rules, it is evident that aspects of co-regulation are implemented. For example, like stated earlier, the SRBs have to ensure that certain requirements are met to certify games as permissible. However, the process of ensuring the same as well as the methods used are left to the choice of the bodies. The MeitY can also have a vocal say in these. In fact, Rule 4A(2) which provides for the constitution of the board of directors mandates the presence of a person appointed by the Ministry. MeitY can also seek information from SRBs and change the verification process if it is deemed necessary. Therefore, even if the amendment rules seem like a move from government control towards self-regulation, there is still a lot of the former firmly in play. Finding the right balance is critical and it remains to be seen if the changes brought about by the amendment rules will succeed in doing so.

Coverage of the Rules

The amendment rules through Rule 2(1)(qb) define an online gaming intermediary as any intermediary that enables the users of its computer resource to access one or more online games. A cursory look at this short definition is sufficient to raise questions as to whether it is too narrow and would lead to confusion. There is no clarity on whether the definition is limited to the intermediaries or if it will cover publishers of games. With the growth of the

¹³⁴ Ranjana Adhikari et al, *supra* note 98.

online gaming industry, newer business models are coming up and this includes platforms that create, publish and offer their games, having full control over the content that they put out. It is not just intermediaries that merely offer third-party games that are functional in the industry at present, even if the rules only mention them. Therefore, one of the major questions has been if publishers will be covered by the definition of an online gaming intermediary. This has stumped a plethora of stakeholders with contrasting opinions becoming commonplace. In fact, as of the time of writing, it has not been made clear as to whether online game creators and publishers will be covered under the meaning of intermediary.

During the time of the consultative process before the amendment rules were passed, the MeitY's discussions seemed to hint that the provisions mentioned for intermediaries would apply to all platforms that had online real money games - be it publishers or just conventional intermediaries. However, in a session of the Parliament in February, 2023, when it was asked as to why publishers were being classified as intermediaries, the MeitY responded saying the definitions in the IT Act and rules do not include publishers within the meaning of an 'intermediary'.¹³⁵ Due to the fact that this was before the rules were passed and came into being, with there being contrasting opinions within the Ministry itself, there is still no certain answer.

Amidst all this, another move by the Central Government has caused chaos. This is in relation to a notification in July, 2023 that made the Ministry of Information and Broadcasting (I&B) in charge of matters concerning online advertisements and among others, audio-visual content made available by content providers or publishers.¹³⁶ Now, the attention has turned to this notification and the question is now whether online gaming falls under the purview of the Ministry of I&B instead of MeitY. There is most certainly room to interpret that audio-visual content that is made available by online content publishers can include games as well. However, this cannot stand because of the fact that the government had made it clear earlier that it is the MeitY which will be in charge of online gaming and that is exactly why the amendment rules were passed also. There has also not been any official

¹³⁵ Aarathi Ganesan, *Publishers Aren't 'Intermediaries', IT Ministry Says: What Does This Mean For India's Online Gaming Laws?*, MEDIANAMA (2023), <https://www.medianama.com/2023/02/223-publishers-not-intermediaries-online-gaming-india-it-ministry/#:~:text=What%20does%20that%20mean%3F%3A%20The,publish%20content%20of%20their%20own.> (last visited Mar. 12, 2024).

¹³⁶ Cabinet Secretariat, S. O. 3412(E) (Notified on July 28, 2023).

communication mentioning that online gaming is included in the aforesaid notification relating to the Ministry of I&B. Having said that, there is an argument to be made that online gaming *publishers* might come under the purview of this Ministry as opposed to MeitY (which will take care of conventional intermediaries). But again, this has not been clarified or discussed by the government and its ministries, leaving the concerned parties completely in the dark.

The Role of State Governments

The final implication is possibly the most important as well. While it will be discussed in detail in the upcoming chapter, it is necessary to get a bird's eye view of the issue of the role of state governments that make their own laws on online gaming, so that the point is hammered home by the end of the dissertation. The facts at hand are very simple - Entry 34 of List II of the Seventh Schedule of the Constitution allows the governments in each state to make laws on 'betting and gambling'. While courts have interpreted games of chance to fall under the purview of this entry, some state governments, as discussed earlier, have sought to include certain games which have elements of both skill and chance as well. At the same time, Entry 31 of List I of the Seventh Schedule allows the Union Government to make laws on '*posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication*'. When this is read in conjunction with the *Allocation of Business Rules, 1961* which distributes responsibilities among different Ministries of the Central Government, the MeitY most certainly has the power to regulate online games which are read to be a part of wireless, broadcasting and other communication.

This is where the amendment rules to the IT Rules, 2021 come into the picture to ensure uniformity across the country. However, various state governments continue to make their own laws on online gaming despite the presence of these central rules. This has led to a situation that could become ugly, marked by an abundance of conflicting laws. There is plenty of potential for more and more litigation to arise, thereby impacting policy making.¹³⁷ An example for this is the situation in the State of Tamil Nadu and its *Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022* which was discussed earlier. In this way, if separate and unique laws are being introduced in different parts of the country,

¹³⁷ Abhimanyu Chopra & Aman Chaudhary, *Inclusion Of Online Gaming Under The IT (Intermediary Guidelines And Digital Ethics Media Code) Rules, 2021: 'An Imperfect Solution?'*, AZB & PARTNERS (2023), <https://www.mondaq.com/india/gaming/1353826/inclusion-of-online-gaming-under-the-it-intermediary-guidelines-and-digital-ethics-media-code-rules-2021-an-imperfect-solution> (last visited Mar. 12, 2024).

achieving stability could become far-fetched.¹³⁸ And when there is a lack of stability in the regime, stakeholders, investors, service providers, publishers, intermediaries and just about all parties concerned are bound to feel threatened by the possibility of one legislation after another.

Case Law on Amendment Rules

At the time of writing this dissertation, the amendment rules are still at their initial stages. But plenty of discussion has already arisen on the nature of these rules and its implications. Controversies surrounding the conflict between the legislative competence of the Union and State Governments, conflicting laws and rules, need for the amendment rules, and the like have all been hotly debated. Online gaming platforms, stakeholders and users have all awaited clarity before proceeding with decisions that potentially could have a big impact. Despite all of these, judicial interventions have not really happened, and petitions seeking the court's judgement have been few and far between. However, one particular petition that was filed at the Delhi High Court has been at the forefront in this respect as it has challenged the changes brought about by the amendment. The said petition was filed by an NGO called Social Organisation for Creating Humanity (SOCH) headquartered in Noida.¹³⁹ The crux of the issue was that the amendment rules to the IT Rules were unconstitutional specifically on the changes that they bring to the online gaming framework. The organisation claimed that it is not just sufficient if there is control and regulation of online games, betting and gambling in India. It sought that there should be effective and efficient mechanisms to ensure that these regulatory measures conform to Constitutional and legislative provisions. The organisation asserted to be concerned with the increasing addiction cases among the youth thanks to the growth of online gaming. It therefore, called for '*orderly and proper regulation of online gaming in the country with a strong legislation to control the activity*'.

The organisation further submitted that online gaming platforms cannot fall within the category of intermediaries as mentioned under Section 79(2) of the IT Act. It was claimed that the idea of an intermediary envisioned in the Act was one whose function '*is limited to*

¹³⁸ Sarvesh Mathi, *Online Content Publishers, Online Advertisements Now Under The Ministry Of Information And Broadcasting*, MEDIANAMA (2023), <https://www.medianama.com/2023/08/223-online-content-publishers-advertising-ministry-of-information-and-broadcasting/> (last visited Mar. 12, 2024).

¹³⁹ Social Organization for Creating Humanity v. Union of India, WP(C) 8946/2023.

*providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted’.*¹⁴⁰ Further, an intermediary usually does not initiate the transmission of information and does not select or modify the receiver of the transmission or the content of the information.¹⁴¹ However, online gaming platforms almost always choose and change the information in transmissions on their websites or apps, change the nature of games hosted, decide the stakes and rules that the game must be played in, match users in order to compete, etc. All of these were submitted to be contrary to what was deemed to be an intermediary. This argument in verbatim read, *“The impugned Rules seek to create a framework for regulating online gaming, including online real money games by classifying them as ‘intermediaries’ under the IT Act, 2000 and imposing several due diligence requirements and compliances... The rules traverse beyond the rule-making powers granted to it by the parent legislation, i.e., the IT Act and wrongly classifies online gaming platforms as ‘intermediaries’, going beyond the definition and scope of the parent legislation. Section 79(2)(c)r/w Section 89(2)(z) of the IT Act allows the central government to prescribe guidelines for due diligence requirements of intermediaries which do not initiate the transmission, select the receiver of the transmission or select or modify the information contained in the transmission”*. Another issue that the petition brought out was the role of the SRBs. The petitioner organisation criticised the idea of the government moving away from an active role of monitoring the online gaming regime, which could have adverse effects. It said, *“The Government cannot abdicate its role of overseeing and monitoring of the online gaming sector and outsource its responsibility to private bodies”*.

The final and most notable contention that the petition raised was that the amendment rules were beyond the legislative competence of the Union Government. The plea stated that Entry 34 of List II of the Seventh Schedule expressly gives power to the state governments to make laws on ‘betting and gambling’. Further, online gaming that involves stake and elements of chance have always been included under betting and gambling and the same has been acknowledged by the courts too. Therefore, online gaming as of right now is definitely within the purview of betting and gambling and hence, under List II as well. In fact, the plea pointed out that the minister in charge of MeitY, Mr. Ashwini Vaishnaw had himself stated specifically in the Parliament that state legislatures had the power to regulate any and all forms of betting and gambling. For games of skill too, the petition stated that even if they

¹⁴⁰ The Information Technology Act, 2000, No. 21, §79(2)(a).

¹⁴¹ Id., §79(2)(b).

don't fall under betting and gambling, they can still be regulated under Entries 1 (Public Order) and 33 (Sports, Entertainment and Amusements) of List II. It is worth noting here that games of skill are considered to be constitutionally protected and also clubbed under Entry 31 of List I which concerns '*posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication*' due to it being in the nature of the latter half of the entry dealing with communications.

This was the crux of the petition that was filed by the NGO before the Delhi HC. The two judge bench of Justices Chander Sharma and Justice Sanjeev Narula initially asked for assistance from the Additional Solicitor General (ASG), Chetan Sharma before posting the matter for a later date. The ASG, advising the court, deemed the petition to be a 'proxy personalised litigation'. "*Please see the writ petition and see the doublespeak...Your lordships must enquire who is the petitioner. These are companies who do not want to be amenable to the regulations, perhaps this individual is a front,*" he said. He did not find problems with the amendment rules, stating that due process was followed and they were formulated only after several rounds of consultations involving an inter-ministerial committee as well as other top officials such as the Cabinet Secretary and the CEO of NITI Aayog. However, the two judge bench, upon examining the submissions, found merit in the arguments of the petitioner organisation and sought response from the Central Government.

The government then took more than a month before filing its response which was in the form of a vociferous defence of its legislative competence.¹⁴² Most of what the ASG said was reiterated, stating that the petition was a 'proxy petition' and that the rules were framed only after consulting various ministries as well as stakeholders. The fact that public commentary was allowed and taken into account was also mentioned. The petitioner organisation was criticised for filing a petition after the passing of the rules as opposed to taking part in this public commentary process or discussions involving stakeholders. On the division of powers angle, the government stated that in accordance with various entries of List I such as Entry 31, 42 (inter-state trade and commerce) and 97 (residuary powers), it could regulate all forms of online gaming. Finally, on the petitioner organisation's comments regarding the government 'abdicating' its role in the online gaming sector in favour of SRBs,

¹⁴² *IT Amendment Rules ensure safeguards for children, youth against harms arising from online gaming: Meity*, ANI (2023), <https://www.aninews.in/news/national/general-news/it-amendment-rules-ensure-safeguards-for-children-youth-against-harms-arising-from-online-gaming-meity20231122020938/> (last visited Mar. 13, 2024).

it stated that these regulatory bodies are still part of a larger government framework which will function to ‘bolster the safety and integrity of online gaming platforms’. It was clarified that there was no question of the government giving up its duties or being slack in its functions. In fact, it was said to be the opposite as it would ensure efficiency with these bodies functioning solely to regulate the online gaming sector, thereby ensuring better safeguards especially for the youth and children. Judgement on this petition is awaited at the time of writing.

Part C: Taxation Regime

Apart from the changes brought about by the amendment rules, yet another area that has been in the news over the course of 2023 for plenty of contentious changes is the taxation framework surrounding online games.¹⁴³ These changes were brought through the Finance Act, 2023 which sought to clarify the taxability of winnings of money from online games of chance or skill or both. While the aforesaid alterations were to ensure that there is a separate framework concerning online games alone (instead of clubbing them with other games like lotteries), there were modifications brought in to the Goods and Services Tax (GST) framework too with the GST council imposing a 28% tax on online gaming, despite uproar from stakeholders.¹⁴⁴

Tax Deducted at Source

Two key provisions were introduced to the *Income Tax Act, 1961* through the *Finance Act, 2023* - Section 115BBJ as the charging section, and Section 194BA as the section providing for tax deducted at source (TDS) on winnings from these games. The former section stated that all winnings from any online game shall be charged to tax and the rate of tax shall be 30% (excluding cess and surcharge). This section was made applicable from 1st April, 2023 making all winnings from that day onwards taxable. The latter section on the other hand, provided that any person who pays any income to another person through winnings from online games during the financial year shall deduct income tax on the net winnings in the user account. The 30% rate of TDS was reiterated herein also. This section was made applicable from 1st July, 2023 only. Further, terms such as 'any person', 'net winnings', and 'user account' were clarified. Any person was said to refer to one making payments of winnings or an online gaming intermediary as provided in the IT Rules. Net winnings was said to be calculated by the simple formula of $A - (B+C)$ where A is the withdrawn amount, B is the aggregate of non-tax deposits made till withdrawal, and C is the opening balance during the beginning of the financial year. Finally, user account was said to refer to a user registered with an online gaming intermediary that provides one or more such games.

¹⁴³ R Kavita Rao, *Game on. Is tax regime for online gaming fair?*, THE HINDU BUSINESS LINE (2023), <https://www.thehindubusinessline.com/opinion/is-tax-regime-for-online-gaming-fair/article67102633.ece> (last visited Mar. 15, 2024).

¹⁴⁴ Vikas Dhoot, *GST Council sticks to its guns, imposes 28% tax on online gaming*, THE HINDU (2023), <https://www.thehindu.com/business/Economy/gst-council-meeting-28-tax-on-online-gaming-to-be-implemented-from-october-1-sitharaman/article67150852.ece> (last visited Mar. 15, 2024).

It is worth noting here that prior to the introduction of these sections 115BBJ and 194BA, there was no reference to online games in the Income Tax Act. That does not mean that they did not come under the taxation regime however, as they were governed by Section 115BB which dealt with taxability of income from lottery, crossword puzzles etc., and Section 194B which concerned TDS on income from lottery, crossword puzzles, etc. Due to the unique nature of online games as well as their rapid growth, the introduction of separate sections was deemed necessary. Therefore, offline games will now still be governed by Sections 115BB and 194B while online games will come under Sections 115BBJ and 194BA. There are differences in these sections as well. While the rate of TDS is 30% in both cases, there is a threshold limit in case of offline games wherein TDS shall be deducted on winnings only if the aggregate amount received in a financial year is more than Rs. 10,000. For online games however, TDS shall be deducted on any and all winnings without any limit. Even if an individual wins just Re. 1, TDS will still be deducted.¹⁴⁵ The result is that even if the aggregate winning is Rs. 9,999 in offline games, there will be no TDS deducted while for online games, mere winnings are enough to deduct the TDS irrespective of the aggregate amount.

Also, there are online games that offer bonuses for referrals and other gifts to players to eventually promote their games. These bonuses are also treated as net winnings and taxed at 30% under Section 115BBJ. Whoever pays the net winnings must deduct the TDS under Section 194BA at the end of the financial year or the time of withdrawal, whichever comes first. Other incentives such as online games and the tournaments they organise offering merchandise to participants also come under the purview of this framework. Such merchandise that is received is treated as taxable under 'Income from business and profession' and this is not limited by the market value of the merchandise. For other purposes, there is a limit where income is taxable under Section 56(2) only if the market value of the merchandise exceeds Rs. 50,000.

Amidst some discontent from online gaming companies on the changes brought about as well as the lack of clarity on how Section 194BA must be implemented, the Central Board

¹⁴⁵ Neelanjit Das, *Income Tax payable on winnings from online, offline games of chance*, ECONOMIC TIMES (2023), <https://m.economictimes.com/wealth/tax/income-tax-payable-on-winnings-from-online-offline-games-of-chance/articleshow/105564804.cms> (last visited Mar. 15, 2024).

of Direct Taxes (CBDT) issued a circular in May, 2023 for the removal of difficulties and to guide the companies on the said implementation. This circular addressed certain frequently asked questions such as how net winnings are calculated when there are multiple wallets, what will happen if the winning is in kind, at what point is money withdrawn, will deposits upon borrowing be considered taxable or not, and more. Each of these questions was answered in a detailed manner in the circular, but will not be discussed here due to its lack of relevance.

Goods and Services Tax

The GST Council on July 11, 2023 at its 50th meeting revised, among other things, the rate of levy of GST to 28% on online games that involve skill or chance or both. The rate was at 18% on the condition that the online gaming companies paid for their supplies prior to this decision. This marked increase was met with criticism from the parties concerned, but the GST council doubled down on its decision by clarifying that it was well-thought out and necessary. When Tamil Nadu's finance minister questioned what would happen to such a levy in states where online games are banned, it was clarified by the Finance Minister of India, Ms. Nirmala Sitharaman that the new norms would explicitly exclude such states from the tax levy. The Delhi Government as well as states like Sikkim and Goa protested the change, seeking a fresh review.¹⁴⁶ However, most other states not raising objections was a big positive in favour of the council's decision. Reception from the online gaming industry was unanimously cold though, as the decision was termed a 'death knell' that would endanger billions of investments and jobs. One solace that they got was that the tax would be levied only on the entry amounts exclusive of the winnings. Further, to address the issues of the smaller states like Sikkim and Goa, the council assured them that there will be reviews on the working of the new framework to ensure that any problems that might arise in the implementation are addressed and removed then and there. Reacting to the changes after such clarifications, two organisations - The E-Gaming Federation and The Federation of Indian Fantasy Sports put out a joint statement saying, "*The new tax framework, while clarifying and resolving uncertainty, will lead to a very burdensome 350% increase in GST and set the Indian online gaming industry back by several years. However, it will still allow gaming companies a fighting chance to innovate and rebuild the foundation of gaming in the country.*"¹⁴⁷

¹⁴⁶ Dhoot, *supra* note 144.

¹⁴⁷ Id.

Impact on the Government

Having discussed the taxation framework for online games, it becomes essential to critically analyse it and see what its implications for different parties are. First and foremost, the strategy of the government to step up the tax on such games has paid off in terms of the amount generated. According to the Revenue Secretary, Mr. Sanjay Malhotra, the amount collected from taxing the industry exceeded all projections and crossed Rs. 3,500 crore just from October to December in 2023.¹⁴⁸ He also expected this momentum to continue into 2024 and lead to the collection of more than Rs. 7,500 crores by the end of the financial year of 2024 (till March 31). It is worthy of mention here that the amount generated in the financial year prior was Rs. 1,600 crores only. The Revenue Secretary warned however that conclusive remarks cannot be made because it was still early days and the industry could stabilise with the passage of time - something he claimed was already almost complete. The review of the framework that was promised to the smaller states like Sikkim and Goa was said to be conducted in 2024, even if there wouldn't necessarily be changes to the tax rates, according to him.

These statements by the Revenue Secretary were not met with much satisfaction however, with many stating that the projections were erroneous. It was pointed out that no other country in the world levies tax on all money that is pooled in online games. The levy of taxes in the like of GST is almost always on whatever is charged for providing the service of the platform including platform fees, service charges, etc. Further, in order for the projections of the government as told by the Revenue Secretary to come correct within the time frame specified (or even otherwise), online games involving money worth over Rs. 60,000 crore must have to be played which is far-fetched.¹⁴⁹ Also, the idea that increasing the tax rates will lead to an increase in tax collected is a very popular misconception in taxation law, to which there is a likelihood that the government has fallen prey to. As the eminent advocate, Arvind Datar puts it in voicing his opposition to the new taxation burdens on online games, “*The*

¹⁴⁸ Nikunj Ohri & Sarita Chaganti Singh, *India aims to collect \$1.7 bln from online gambling tax in FY25*, REUTERS (2024), [https://www.reuters.com/world/india/india-aims-collect-17-bln-online-gambling-tax-fy25-2024-02-03/#:~:text=NEW%20DELHI%2C%20Feb%203%20\(Reuters,Malhotra%20told%20Reuters%20on%20Saturday.](https://www.reuters.com/world/india/india-aims-collect-17-bln-online-gambling-tax-fy25-2024-02-03/#:~:text=NEW%20DELHI%2C%20Feb%203%20(Reuters,Malhotra%20told%20Reuters%20on%20Saturday.) (last visited Mar. 15, 2024).

¹⁴⁹ Arvind P Datar, *Arvind Datar writes: With high GST on online games, death by taxes*, INDIAN EXPRESS (2023), <https://indianexpress.com/article/opinion/columns/tax-on-online-gaming-online-gambling-gst-public-gambling-act-8860106/#:~:text=Benjamin%20Franklin%20famously%20said%20that,bludgeoned%20to%20death%20by%20taxes.> (last visited Mar. 15, 2024).

*belief that an increase in tax rates will proportionally increase the tax collected is erroneous. It is futile to expect income tax collection to double if the tax rate of 35 per cent is increased to 70 per cent.*¹⁵⁰

Impact on the Players

Coming to the impact on players, due to the GST levied on the online games, users must pay tax on the full value of their initial purchase. The nature of the purchase in terms of what in-game currency is used does not matter and the value of the initial purchase will be the prime factor. The tax will be collected at the entry level only and will not be imposed on further winnings. To simply put it, if the initial purchase that a user makes in an online game is Rs. 100, Rs. 28 will have to be paid as GST due to the percentage being fixed at 28%. However, there won't be any return of this tax amount if the player receives a cash refund by reversing purchases. Further, even if this argument has been given only by the government through the GST Council in defending its move, there has been a hope that such taxation will ensure that addiction, fraud and harm that the games cause to users can be minimised through the increasing of tax.¹⁵¹

Impact on the Online Gaming Industry

The new taxation regime on online gaming companies characterised by a 28% GST on the amount deposited by users as well as a 30% TDS on the users' winnings has been criticised as being excessive. The combined taxation pressure is likely to hinder the growth of the online gaming industry and have an impact on player earnings and motivation. While there will be a rise in revenue for the GST fund, the net winnings of players is expected to decrease, thereby reducing the collections from TDS and income tax.¹⁵² Despite the fact that a lot of time has not elapsed between the time of bringing in these changes and the writing of this dissertation, the impact of the changes on the industry has already become conspicuous. For example, online gaming companies that offer fantasy sports and games like rummy and poker have switched to models that do not encourage frequent withdrawals of money in order

¹⁵⁰ Id.

¹⁵¹ *Govt to collect Rs 14,000 crore tax from online gaming: How the GST affects players*, TIMES OF INDIA (2024), <https://timesofindia.indiatimes.com/gadgets-news/govt-to-collect-rs-14000-crore-tax-from-online-gambling-how-the-gst-affects-players/articleshow/107391633.cms> (last visited Mar. 15, 2024).

¹⁵² Gunjan Prabhakaran, *Bad beat : Online gaming subject to both 28% GST and 30% TDS and applies to foreign providers*, BDO INDIA (2023), <https://www.bdo.in/en-gb/insights/articles/bad-beat-online-gaming-subject-to-both-28-gst-and-30-tds-and-applies-to-foreign-providers> (last visited Mar. 16, 2024).

to boost their earnings by reducing the tax burden. Companies like A23 have made it mandatory that only a maximum of 20 withdrawals of money can be made by users in a month.¹⁵³ Other platforms are also expected to follow suit. This is because the longer a user keeps the money with the platform's wallet and uses it for further playing, the more money the company will earn. In fact, it has also been observed that ever since the new framework, fantasy sports games have tinkered with the percentages of winnings and the money offered to winners. Another trend that has been observed is that the gaming platforms have been offering extensive rewards, cashbacks and gifts to users despite the rising taxes. While this might seem counterproductive, the reason could be that they fear that the players would also be discouraged from continuing to play due to the taxes. As a compensation to reassure the players or to take their minds away from the news, these gifts could have been given. While this does hurt the companies' earnings, in the long run, it could be beneficial in helping retain players.

The impact of the new regime can be understood with a simple example of the tax burden prior to and after the changes. Firstly, before the changes, let's say a user deposited Rs. 150 as an initial payment and used it to wager on three games and by the end, managed to increase the amount to Rs. 500. Usually, the commission earned by platforms is around 10% of the final amount after wagering, according to an official at A23.¹⁵⁴ So, the company in this example would earn Rs. 50 as commission. Out of this, 18% that is Rs. 9 would go to taxes and the remaining Rs. 41 will be the final revenue earned in the transaction by the company. However, under the new regime, the taxation is 28% on the Rs. 150 that is deposited by the user so the tax liability of the company becomes Rs. 42 as it has to compensate the user for the tax. Due to this increased liability, the company would ideally want to ensure that the deposit stays on in the platform so that it is used to wager multiple times and the aforesaid 10% commission keeps increasing.

Further, fewer the withdrawals made by the user, it is also likely that new deposits are fewer, thereby eliminating the need to keep paying the 28% tax on a repeated basis. This is exactly why the platforms have chosen to impose certain limits on withdrawals which is a much better move to retain and appease users as opposed to increasing the commission. The

¹⁵³ Soumyajit Saha, *Real-money gaming companies look for an ace to beat tax blues*, ECONOMIC TIMES (2024), <https://m.economictimes.com/tech/technology/real-money-gaming-companies-look-for-an-ace-to-trump-tax-blues/articleshow/108214813.cms> (last visited Mar. 16, 2024).

¹⁵⁴ Kavita Rao, *supra* note 143.

assumption that this operates on is that a vast majority of the players are unaware of the tax regime or the laws governing online gaming as a whole, which is most certainly true. According to an official from A23, “*The customer does not have the time to sit and understand why we are taxing them more or charging higher commissions...so it is boiling down to reworking things from the product-market fit level*”.¹⁵⁵

Now, it is also worth mentioning that user behaviour keeps changing from one gaming platform to another, depending on the nature of the game and its winnings. For example, in fantasy sports platforms such as Dream11 and MPL, user behaviour is vastly different from the online rummy games. Less than 10% of users withdraw money daily, according to statistics from the platforms.¹⁵⁶ The reason for this could be that there are lakhs of users who play everyday ‘against the house’ and a majority of these users at least get their money back, even if they do not end up multiplying their deposit. On the other hand, a very miniscule number of players (who are the ones likely to opt for withdrawal of the deposit) end up winning big. Having said that, Dream11 is still projected to decline in its revenue by up to 40% due to the changes. To compensate, the platform has modified its winnings policies and amounts, even if it remains to be seen if such a modification will continue for long. Statistics from the entire Indian Premier League cricket season of 2024 which is when the number of users of the platform will be at its highest have not yet come to determine if the platform has managed to escape from the negative effects of the changes in the tax regime. However, on the very first match, the company did announce that it had posted huge growth in its number of users.¹⁵⁷ Therefore, it has to be acknowledged that even if the tax burden might seem excessive, the company does continue to perform well.

One more point to put forth is that even if the GST collection can be considered minimal, the direct employment that the online gaming industry has is in the range of 1 lakh while the indirect employment exceeds 2 lakhs.¹⁵⁸ The GST that these employees will have to pay must also be noted, especially because they are bound to consume them.¹⁵⁹ Therefore, to

¹⁵⁵ Saha, *supra* note 153.

¹⁵⁶ Id.

¹⁵⁷ Gargi Sarkar, *Dream11 Shines On First Day Of IPL 2024, Adds 1.1 Mn New Users*, INC 42 (2024), <https://inc42.com/buzz/dream11-shines-on-ipl-debut-onboards-1-1-mn-new-users/> (last visited May 10, 2024).

¹⁵⁸ *The Expanding Gaming Industry in India: Scope and Future Prospects in 2024*, BENNETT UNIVERSITY (2024), <https://www.bennett.edu.in/media-center/blog/the-expanding-gaming-industry-in-india-scope-and-future-prospects-in-2024/#:~:text=%27%20According%20to%20Statista%2C%20about%20421,indirect%20employment%20in%20coming%20years.> (last visited Mar. 16, 2024).

¹⁵⁹ Datar, *supra* note 149.

sum it up, the levy of 28% has the potential to adversely impact the online gaming industry, even to the point of destroying it, leading to loss in employment and no increase in revenue. This is exactly why there is a need to analyse as well as criticise the taxation regime surrounding online games too, apart from the constitutional, legislative and rule-making aspects involved.

Chapter 4: Exploring the Possibility of a New Central Legislation

Part A: The Issues at Hand

Having discussed in depth the various laws governing online gaming in India and its States, it becomes necessary to look at what changes are needed in them so that the balance between preserving the interests of the state in maintaining social order and the interests of the stakeholders are managed. Therefore, firstly, a concise summary of the situation at hand is needed before possible solutions can be come up with. Issues and solutions for the same will be covered under four heads - Legislative competence of the centre/state, classification of games into those of skill and chance, the amendments to the IT Rules, and finally, the taxation regime.

For any legal framework to function smoothly, there must be absolute clarity on a plethora of matters such as who is competent to legislate, who the legislations apply to, what happens if there is an overlap of functions, etc. Unfortunately, in the online gaming setup, this has not been able to be achieved. The former aspect is the most conspicuous shortcoming. Obviously, when the constitution makers came up with the federalist separation of subjects between the centre and the States, they did not include online games under the purview because these did not exist back then. Therefore, when they did come into the picture, it was up to the governments and then the Courts to interpret where they would fall. Again, a constitutional amendment to include the subject under a List could solve things, but it is far-fetched.

Coming to the Seventh Schedule, the situation, as mentioned already, is as follows: Entry 31 of List I concerns posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication which is relevant when it comes to games of skill as these have been interpreted to fall under 'other forms of communication'. Meanwhile, for games of chance, Entry 34 of List II deals with betting and gambling allowing the State to regulate. For the States, there is also the argument that Entry 1 (public order) and Entry 33 (Sports, Entertainment and Amusements) bring. With none of these squarely fitting online games, conflicts are bound to arise. With the Central government as well as respective states coming up with their own laws that are contradictory to each other, not only the players of such games, but also the companies are left with no comprehensibility of the whole situation. This is one glaring issue.

Another problem is the classification of games into games of skill and games of chance. There is a lack of certainty in which games fall under the former and which fall under the latter. The implications of the right classification are huge and therefore, a framework which does not ensure this will be riddled with disputes and conflicts. State governments have deemed that certain games are games of chance to strike them down through regulations. But the judiciary has thought otherwise and restored them, noting the aspects of skill involved. The host of cases in the southern states of Tamil Nadu, Kerala and Karnataka which have already been discussed are ideal examples for this, which is again, not an ideal situation.

Thirdly, IT Rules and the changes that have been brought in through their amendments have significantly changed things - but not always for the better. The amendments have introduced newer definitions and aspects of 'permissibility' to online games. Further, self-regulatory bodies have been introduced that can play huge roles in shaping the online gaming regime. Most of these changes do look good on paper, but at the end of the day, the success or failure will boil down to how they are actually implemented. Biases and confusions in understanding the stakeholders' interests on the part of these bodies can lead to killing the industry. So again, there is a need to look at whether the IT Rules can be further amended to account for these risks and to prevent them.

Finally, the taxation laws relating to online games have led to widespread criticism from the industry. As mentioned earlier, the recently implemented tax system for these games featuring a 28% GST on user deposits and a 30% TDS on winnings can impede the growth of the sector. Although it is anticipated to bolster revenue for the GST fund, players' net winnings are projected to decline, consequently diminishing TDS and income tax collections. This could in turn have the effect of crippling the online gaming companies which would then resort to strategies that make their platforms less user-friendly.

So all in all, the entire system of laws that govern online gaming from different perspectives is standing on shaky ground. There is plenty of promise, but there are also apprehensions. Is the government and the courts rapidly transforming the framework? Yes. But there is a long way to go and a need to treat with caution. In this endeavour, it must also be remembered that too many changes in a short period of time can also lead to issues in

implementation. The right balance must thus be sought. In fact, the roadmap is not as difficult as it seems. Rather, it is quite simple. The intent of regulations is very clear: the aim being preventing gambling enterprises from posing as skill-based real money games and to ensure that players are protected from the social evils of financial ruin, fraud, indebtedness and addiction.

Part B: How can the issues be resolved?

Beginning with the issue of legislative competency, there can be no denying that the Seventh Schedule of the Constitution is pivotal for its key function of delineating powers between the central and state governments. The schedule is the basis on which federalism is hinged as subjects are assigned to exclusive domains.¹⁶⁰ However, that also means that the said separation of powers must be done in a manner that is certain and robust, leaving no room for doubts. If this fails to be achieved, the result will be a rocky framework where even the Courts will find it difficult to arrive at a uniform position of law. It is in this uncertain region that the online gaming framework threatens to keep falling, unless an intervention is made.

Now, having discussed the situation at hand with respect to the Lists of the Schedule, resolving it would require either the Supreme Court to clarify the conflict or the Central Government to legislate. Yes, games of chance are under the domain of the State government because they fall under ‘betting and gambling’. However, it must be realised that very few online games are actually in this nature. For ‘other forms of communication’, the Centre is the one competent to legislate. Therefore, games of skill can only be touched by the Centre. In fact, all the High Courts of the country that have dealt with this question have agreed to it.¹⁶¹ The smooth distinction between the competency of the Centre and States to legislate on games of skill and chance respectively is complicated by two problems. The first is that certain recent decisions including that of the Madras High Court discussed earlier have given some leeway for state governments to regulate games of skills as well.¹⁶² Even if an outright ban was strongly rejected, limited regulations for the ‘public health’ of citizens were held to be allowed. This opens a Pandora’s box wherein the situation could very well spiral into one where wholesale restrictions are begun to be allowed.

The second problem is the classification of games into games of skill and chance which is not yet completely clear. This is because the number of judgments that have attempted to delineate these two are plentiful. Therefore, the distinction is something that has evolved over time. While games of chance have historically not been allowed (with some exceptions), the meaning of games of skill has changed over time, with recent judgments

¹⁶⁰ Satya Prakash Dash, *Indian Federalism & Distribution of Responsibilities*, 68 INDIAN JOURNAL OF POLITICAL SCIENCE, 697, 697-98 (2007).

¹⁶¹ Bhalla, *supra* note 40.

¹⁶² *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2762.

even holding fantasy sports to be games of skill.¹⁶³ Additionally, there has been a perpetual argument on the part of the State governments that online card games must be treated as games of chance because there is a possibility of ‘cheating’ by manipulating the algorithm on the part of the platforms themselves. While this argument has been rejected by High Courts due to insufficient evidence, that is not to say that the possibility is not there. In fact, there are various examples of games (albeit of skill) where the Artificial Intelligence software that runs the game cheats in order to ensure that certain outcomes are arrived at.¹⁶⁴ This could be in order to increase the playing hours of the player and hence, gain more profit. Therefore, such aspects must also be taken into account while looking for a means to change the laws for the better.

So a solution for the issue of legislative competence and the classification of games must acknowledge the intersection between the two. And like any other issue, the best way to do this is to revamp the framework through a new legislation that takes into account all the developments that have taken place. Yes, the amendments to the IT Rules tried to achieve this, but it still ends up being insufficient. It is still but a small part of a larger set of rules that govern not just online gaming intermediaries (now, after the amendment), but also social media intermediaries. The *Online Gaming (Regulation) Bill, 2022*, for all its failures, can be considered to be a starting point. With the growing importance of online gaming and how omnipresent it has become in households with families beginning to recognise that it has its share of positives, it warrants closer attention.¹⁶⁵ The arguments of some of the State governments such as Tamil Nadu that attempted to impose wholesale bans on online games played for stakes are extremely relevant here, because for better or for worse, the public health of the citizens is at stake. Again, even if it has been found that there is no sufficient proof to connect certain undesirable occurrences in society and online gaming, it would not be a surprise if there was such a connection. Moving ‘betting and gambling’ and hence, online games of chance away from List II of the Seventh Schedule is not feasible (although there is an argument to say that this could benefit the regime in the longer run). Therefore, clear and crisp delineation of online games of chance and skill, followed by a central

¹⁶³ Varun Gumber v. Union Territory of Chandigarh, 2017 Cri LJ 3827.

¹⁶⁴ Matthew Humphries, *Machine Learning Is Now Being Used to Cheat in Multiplayer Games*, PCMag (2021), <https://www.pcmag.com/news/machine-learning-is-now-being-used-to-cheat-in-multiplayer-games> (last visited Mar. 22, 2024).

¹⁶⁵ Jing Wen et al., *Online Games and Family Ties: Influences of Social Networking Game on Family Relationship*, IFIP DIGITAL LIBRARY (2011), <https://dl.ifip.org/db/conf/interact/interact2011-3/WenKC11.pdf> (last visited Mar. 22, 2024).

legislation that is confined only to online gaming involving a predominance of skill can work wonders. This brings us to the next question of how this fresh legislation should be and how it attempts to solve the inadequacies of the provisions in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules.

So firstly, uniformity is the need of the hour, especially when Central and State enactments are allowed to exist harmoniously. It is worth pointing out Section 3(b)(xi) of the IT Rules, 2021 which states that online gaming intermediaries must ensure that the information that they put out through online games do not contravene any laws in force in the country. So these intermediaries are burdened right now with having to adhere to central laws as well as state laws in the different states of the country. With some games (especially fantasy sports) being allowed in some states while being prohibited in others, a perpetual inconsistency prevails. Therefore, clarifying what games can be regulated by states and what can not can go a long way here. Especially the aforementioned fantasy sports are stuck in a position where the position of law is not clear on whether states can restrict them or not, despite them being cleared to be games of skill.

The ‘public health’ aspect is something that can be afforded to be removed herein. That is the only way in which consistency can be ensured. A simple classification - games of skill cannot be regulated by state governments while games of chance can be regulated by state governments, can be desirable for all parties involved. It needs to be acknowledged with respect to the ‘public health’ argument that the internet is ‘all-encompassing’.¹⁶⁶ A central law will always be better in a digital setting as opposed to states having individual legislations. Yes, the practice termed ‘geoblocking’ can prevent people from a particular geographical location from accessing restricted content, but there is no reason as to why something like that must be needed. Does ‘public health’ vary from state to state? Maybe, as the inclusion of ‘public order’ as Entry 1 of List II of the Seventh Schedule suggests. But does the digital sphere influence the public order or health of people in a particular state differently from another? Definitely not. This is exactly why a central legislation that seeks to regulate online gaming needs to be as uniform as possible. And this can be done only through a

¹⁶⁶ *Regulation of Online Gaming: IT Amendment Rules Vis-à-Vis India's Federal Structure*, LEXOLOGY (2023), <https://www.lexology.com/library/detail.aspx?g=2f982b4d-a693-4758-b340-e5e1508b49b0> (last visited Mar. 23, 2024).

comprehensive discussion within the statute itself of the classification of games as well as the legislative competence of the central and state governments.

Secondly, definitions are key in any legislation. Therefore, a new and robust legislation that is dedicated entirely to online gaming must make all of the following meanings clear: online games, stakes, games of skill, games of chance, intermediaries, publishers, hosts, fantasy sports, e-sports, and so on. The fact of the matter here is that this is not a difficult task by any means because various High Courts have given their interpretations on this matter. However, the lack of a uniform definition is what has led to certain state governments acting against such holdings. If such concepts are made clear in the definition section of the new legislation, it will not only lead to uniformity and clarity, but also lead to consistency in application.¹⁶⁷ This can work wonders for the framework as it will only end up aiding all parties involved. There is no question of any party coming worse off due to this change.

So, in that endeavour, any game played for stakes cannot be considered to be a game of chance so the definitions must reflect that. The predominance of skill being a key factor must also be emphasised. The lack of understanding on whether it is online gaming hosts that are included under intermediaries or will publishers come under the purview needs addressing too. Now, there are various reasons as to why online gaming publishers should not be treated as intermediaries, and solutions must incorporate this aspect. As Nikhil Pahwa, founder of the digital portal Medianama, says, offering games is an act of publishing and not ‘connecting’ which is what intermediaries conventionally do. According to him, *“Gaming companies traditionally have said that they are publishers. They have treated themselves like movie studios. Secondly, there is a part of the interaction that happens with a medium separately and a part of the interaction with other players. So it’s a three-way thing that happens with individuals and the medium. It’s not a conduit under the traditional definition of an intermediary”*.¹⁶⁸ Various other aspects in this publisher-intermediary quandary are critical in looking at changes. For example, safe harbour provisions mentioned under Article 79 of the IT Act allow intermediaries to claim exemptions if they do not control the content. However, online gaming publishers have complete control over the content that they put out. That would mean categorising them as intermediaries would be wrong and beyond the scope

¹⁶⁷ Huntington Cairns, *A Note on Legal Definitions*, 36 COLUMBIA LAW REVIEW, 1099, 1100-04 (1936).

¹⁶⁸ Mathi, *supra* note 138.

of the IT Act, but the confusion persists and therefore, a new legislation must remove publishers from the purview of intermediaries expressly. Yet another issue that has no answer as of now is whether intermediaries would include ‘mod creators’. Video game modding is the process by which users of games make changes in the game through alterations. This can be in the game modes available or in the gameplay. These modified games are then publicly released. No court or legislation has addressed whether such publishers of modified games can be covered by laws. The same argument can be extended to telecom operators as well, since they give access to online games. Can they then be included under intermediaries, given its wide coverage?¹⁶⁹ Now, all of these confusions can be done away with by modifying the definition of intermediaries to include or exclude certain platforms. Alternatively, the idea of intermediaries can be done away with as a whole and replaced with some other all-encompassing term such as ‘entity’.

Additionally, on this aspect of the coverage of rules itself, one area that has caused confusion in the amendment rules is regarding deposits and payments. Right now, the regime has left open the possibility of future regulations or court holdings treating any and all payments as deposits, including what are called ‘in-game purchases’. This means that even games that are free to play with the option of making certain purchases (something that is extremely common in even children’s games) could come under the ambit of online real money games.¹⁷⁰ This would be a needless exercise which only complicates matters. Therefore, a definition for deposits excluding such in-game purchases can be a positive step in the attempt to reform. Even if this is deemed too unimportant to include under the definitions (which it is not), something in the explanations or the Frequently Asked Questions (FAQs) can work. One final issue to deal with in this coverage of rules issue is how much responsibility intermediaries must take. Even if there is consensus in this regard that due diligence measures must be taken so that harm does not arise, what will be the liability if such harm does arise, despite these measures? What if a player who plays the game that has voice-chat features makes threats against an opponent and promotes let’s say racism? This is again, something that can be clarified in a new statute, if it indeed comes to fruition.

¹⁶⁹ Id.

¹⁷⁰ Arun Prabhu et al., *The Online Gaming Intermediaries Regulations: What is New?*, CYRIL AMARCHAND MANGALDAS BLOGS (2023), <https://corporate.cyrilamarchandblogs.com/2023/04/the-online-gaming-intermediaries-regulations-what-is-new/> (last visited Mar. 23, 2024).

Moving on to another aspect, the creation of the SRBs is a welcome move, yes, but there can be no assurance that it will turn into a successful one. The fact that the notification of the bodies were delayed in the first instance and are yet to be notified at the time of writing does not signal promise either. In fact, reports state that the government is not satisfied with the introduction of the said change now and would much rather like government regulatory bodies to decide permissibility of online games.¹⁷¹ While the government's argument herein is that these SRBs could get funding and backing from major players in the online gaming regime and thus hinder their autonomy, backtracking without a clear goal in sight is not ideal.¹⁷² So what is the solution? Self-regulation or government regulation? Is a balance of both even possible? What should a new legislation decide?

The government zeroed in on self-regulation as a solution in the amendment rules and it is desirable to stick to it. Given the current situation, the merits of implementing the SRBs can be seen in the big positive of saving time and money. Further, with the right funding and support, these bodies can ensure consistency and uniformity, leaving less room for disputes and litigations. So a new legislation as a solution must seek to enhance these positives while limiting the demerits, if the idea of SRBs are retained. There can be various ways to do it. For example, the rules governing SRBs can be expanded to provide for government oversight and monitoring of these bodies. This can include regular reporting requirements, audits, mechanisms for addressing complaints, and so on. These can act in the form of transparency and accountability mechanisms. Finally and most importantly, conflict of interest safeguards will be necessary. As the Minister of State for Electronics and Information Technology of India, Rajeev Chandrasekhar claims, SRBs have the potential of becoming 'industry-dominated'.¹⁷³ Therefore, a new statute can mandate measures to mitigate such conflicts of interest within the SRBs such as having a specified composition, requiring diverse representation, ensuring government leadership by prohibiting industry players from holding such positions, and much more.

¹⁷¹ Aarathi Ganesan, *A Year After Proposing Self Regulation For Online Gaming, Gov Says It May Take Control Instead: Report*, MEDIANAMA (2024), <https://www.medianama.com/2024/01/223-govt-control-online-real-money-gaming/> (last visited Mar. 23, 2024).

¹⁷² Id.

¹⁷³ Shouvik Das, *It's over to govt now in gaming regulation*, SCROLL (2024), <https://www.livemint.com/industry/online-gaming-self-regulation-hits-roadblock-meity-weighs-direct-control-1704104343456.html> (last visited Mar. 23, 2024).

Taking leaves out of other nations' books can be a good way to simplify the process of rectifying the legal framework. India can look at practices around the world and incorporate them by tailoring them to suit its needs. In fact, such a move would not be unheard of at all. For example, India's *Data Protection Act, 2023* was inspired largely by the European Union's General Data Protection Regulation (GDPR) which became a source of inspiration for many such frameworks around the world.¹⁷⁴ In similar fashion, the United Kingdom's online gaming laws can be looked at for inspiration. The UK model is considered to be one of the most effective and progressive regulatory models in the world.¹⁷⁵ Under the able hands of the United Kingdom Gambling Commission (UKGC), a self-exclusion scheme is set up. Called the Gambling Self-Exclusion Scheme (GAMSTOP), this mandates online gaming companies that offer games with stakes to register and offer self-exclusion options to its users. Users who think they are at risk of harm through addiction or financial ruin or mental illness can exclude themselves from such services across the entire country with a simple and single request. After such a request, the users will be irreversibly blocked from participating in such games, thereby encouraging responsible behaviour.

Some other European countries have their respective gaming authorities that carry out compliance checks, grant licences, and operate with user interests as their priority.¹⁷⁶ In India too, the SRBs can be made to operate in this manner. They can be tasked with carrying out routine checks on the online gaming companies, the services they offer, their advertisements, privacy and security measures, etc. In all of these, certain threshold standards can be set, which if not met, games must not be allowed to be operational. The small European country of Malta is known for having a well-developed scheme in this regard. The Malta Gaming Authority (MGA) has a licensing process that is both comprehensive and rigorous. For online gaming platforms to be able to operate in the country, a nearly two month process requiring disclosures, audits, passing of tests, certificates needs to be completed. Once this is complete, a licence will be granted and they will then be able to access the market. Strict diligence requirements are imposed on online games and the priority is always limited to users' safety,

¹⁷⁴ Anirudh Burman, *Understanding India's New Data Protection Law*, CARNEGIE INDIA (2023), <https://carnegieindia.org/2023/10/03/understanding-india-s-new-data-protection-law-pub-90624> (last visited Mar. 23, 2024).

¹⁷⁵ Rajesh Mehta, *How international insights can guide India's online gaming regulations*, THE SUNDAY GUARDIAN (2024), <https://sundayguardianlive.com/business/how-international-insights-can-guide-indias-online-gaming-regulations> (last visited Mar. 23, 2024).

¹⁷⁶ Id.

even after the granting of the licence.¹⁷⁷ To prevent companies that seek to avoid legal obligations from operating, background checks are carried out by the authority and all transactions are secured to ensure transparency as well as accountability. Now, yes, while looking at foreign countries for inspiration, such strong regimes of other countries cannot be reproduced right away in India. This is because user behaviours are not similar in these countries and the development of the industry is not in the same stages as well. However, the schemes can be modified to fit India's needs through regular checks on user behaviour and user support that encourages taking part in these schemes.

On the taxation regime that has received widespread criticism, a mere reversal of the changes can be of great help to the overburdened gaming companies. Prior to the changes, the 30% TDS with threshold limits (after which tax would apply) and the 18% GST were not met with criticism from any front. The stepping up of taxes will only end up benefiting off-shore gaming companies that abound in illegalities.¹⁷⁸ Revenue maximisation should not always be the sole focus as other factors must also be taken into account such as the growth of the industry and the employment it could generate. Therefore, for the future of the industry as a whole, decreasing the tax burden (possibly to the regime prior to the changes) can be a step to ensure good employment rates as well as more than reasonable revenue.

Finally, there can be various qualitative approaches that focus on raising awareness and promoting corporate ethical responsibility which can help make the online gaming framework in India better. For example, awareness programs can be implemented to educate users of games about being responsible while gaming, especially involving stakes. The risks of addiction and financial ruin must be emphasised. This can be mandated on the part of the online gaming companies themselves to educate. While the guidelines issued by the Advertising Standards Council of India (ASCI) are required to be used by online real money games involving disclaimers, they are still inadequate and companies have been found to violate these norms regularly.¹⁷⁹

¹⁷⁷ Id.

¹⁷⁸ Datar, *supra* note 55.

¹⁷⁹ *Dream11 and My11Circle skip the ASCI-mandated word "addictive" in ad disclaimers*, G2G NEWS (2021), <https://g2g.news/gaming/are-dream11-and-my11circle-violating-asci-guidelines-on-gaming-ads/> (last visited Mar. 23, 2024).

Another welcome initiative can be the mandating (or encouraging) of online gaming companies to have designs that are ethical. The focus must always be on the user and their well-being as opposed to making them spend more and more on the game. While the companies cannot profit without the users spending on them, it must be realised that a balance is needed to ensure that social evils do not become the norm. Therefore, features such as parental controls, limits on spending and time limits per day (even if effectiveness and the possibility of workarounds will remain an issue) can all be included in online games. Further, users can be provided with tools and resources that help them make decisions on their gaming behaviours. This can include access to support services, information, statistics, self-assessment, etc. Lastly, research must be carried out to better understand the impact that online gaming has on society. This is something the Indian courts have also called for. If reliable data and statistics are available, it will help not just the government but also the online gaming companies and its users in making informed decisions in relation to their practices. Therefore, investments on such studies on addiction, mental health, online games usage, deposits made, money won, tax collected, effectiveness of the functioning of regulatory bodies etc., across the country can go a long way in helping make the online gaming framework better.

Chapter 5: Findings and Conclusion

Having dealt with the evolution of the online gaming framework, the contentious IT Rules, the taxation regime, and the centre-state conflicts, it is evident that a transformation is required. The framework ideally must be one that achieves a balance between giving the online gaming companies their freedoms and regulating their content to ensure public order. This is especially because of the recent spate in possible cases of debts, addiction, depression and suicides. There is most certainly a dark side to online gaming that needs to be done away with, all while not compromising on the basic rights that just about any person or company needs. This is where a new statute as mentioned in the previous chapter will work wonders and the sooner that happens, the better.

Part A: Key Findings

This Part will be a short summary of the key findings in this dissertation serving as a TL;DR (internet term for “too long, didn’t read”). So through this dissertation, the first and key finding has been the lack of clarity in the legislative competence of the central government and states buoyed by the uncertainty in the classification as games of skill and games of chance. With states having the power to regulate ‘betting and gambling’ as per Entry 34 of List II of the Seventh Schedule, games of chance come under their domain. However, when it comes to games of skill, they are treated as ‘other forms of communication’ under Entry 31 of List I bringing them under the centre’s purview. But what about games that involve both? Then, it boils down to a predominance of one over another. Does that mean states cannot have any say in games of skill? That is not the case. This is because states can enact legislations to protect ‘public order’ in the State (Entry 1 of List II) and ensure the public health of their citizens. So if games of skill interfere with the said order through their playing for stakes, it is only right that states have a right to intervene. However, while this right has been upheld in plenty of cases, it has been held to be very limited. A blanket ban or wholesale restrictions on operations of games of skill played for stakes cannot be initiated by States. This is exactly why when states like Tamil Nadu, Kerala and Karnataka have tried to completely remove from operation certain games that have been held to be games of skill such as rummy, poker and fantasy sports, the Courts have ruled that they do not have the right to impose such bans. However, this situation is not something that has been set in stone as this jurisprudence does not arise from any statute but only by High Court rulings.

The next key area covered in this dissertation is the IT Rules, 2021 and its amendments in 2023 that had key implications on online gaming. These amendments brought in several key changes with a crucial one being the addition of definitions on terms like ‘online game’, ‘online gaming intermediary’, ‘online real money game’, ‘winnings’, and so on. For the online gaming intermediaries (an intermediary that enables the users of its computer resource to access one or more online games),¹⁸⁰ an elevated standard of compliance was put forth. Actions that are detrimental to users were prohibited and duties that involved stipulation of time periods were introduced. Further, a sound grievance redressal mechanism involving Grievance Officers and Grievance Redressal Committees was envisioned. Several due diligence requirements were also mandated. Finally and most importantly, a system of regulation headed by the creation of Self-Regulatory Bodies (SRBs) was created. While all of these changes seemed desirable on paper, their execution so far has been far from perfect and several questions that online gaming companies have raised remain unanswered.

The critical and glaring issue with the amendment rules relates to the coverage. There is no clarity on whether an online gaming publisher will be included under the purview of the rules or it will only be intermediaries that host games. The SRBs’ role has also not been well-established. Even if these bodies have not yet seen the light of day, if they do come into fruition, there is a possibility that they are either dominated by the government or by the industry. The rules also do not explain how these bodies will verify the permissibility of games, what procedures will be used, what checks and balances will be there, etc. Additionally, some desirable certificate requirements that were envisioned in the draft amendment rules were removed before passing them. While the SRBs can still ask for these certificates such as ‘No Bot Certificate’ and Random Number Generator (RNG) from the companies before permitting them to function, the lack of a statutory provision is a worry. Therefore, overall, while the amendment rules of 2023 seem like a step in the right direction, its shortcomings are a stark reminder that there is still a long way to go to ensure that the framework is comprehensive enough to make sure that users as well as companies are protected.

¹⁸⁰ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 139(E), §2(1)(qa).

The third key area covered is the taxation regime surrounding online games which also went through a plethora of changes in 2023. With changes being brought to the taxability of winnings through TDS as well as the GST, online gaming companies have claimed that they are being overburdened. Through the introduction of two provisions to the *Income Tax Act, 1961* through the *Finance Act, 2023* - Section 115BBJ as the charging section, and Section 194BA as the section providing for tax deducted at source (TDS) on winnings from these games, all winnings from online games were made taxable at 30%. While this rate of TDS is 30% in normal games too, there is a threshold for offline games only after which tax will be levied (Rs. 10,000). This threshold is absent for online games with the new sections added in 2023. Coming to GST, the rate was increased from 18% to 28% leading to companies resorting to practices to ensure that their revenue does not take a hit. So here as well, changes in the form of relaxation of taxes can help, not just in helping online gaming companies survive but also in ensuring solid employment rates along with a good stream of revenue.

Above all, the all-important step to transform the framework and protect the online gaming companies as well as its users will undoubtedly be the introduction of a new statute dedicated entirely to online gaming. A fresh legislation can help solve the confusions that remain on the topics of legislative competence, classification of online games, coverage of IT Rules, burdens of taxation, etc. The aspects to take into account while framing such a legislation are there for the world to see and it is only about giving life to them. Inspiration can be drawn from the online gaming laws prevalent in European countries like the UK and their provisions can be modified to suit India. Finally, plenty of qualitative initiatives can be taken such as implementing advertising guidelines, conducting awareness programmes, encouraging ethical gaming designs, providing easy access to support services, and many more.

Part B: Conclusion

India's online gaming framework is not perfect. But, the country is, in fact, well-placed to become one of the most effective regulators and protectors of the activity in the world. The reason for India being in such a desirable position is that the framework has had a steady evolution and the jurisprudence has become well-established. The plethora of High Court decisions as well as the opinions of experts in the field have made things such as the classification of games and legislative competence clear. Yes, some doubts still remain but cues can be taken from various sources. This includes foreign legislations. India can synthesise the crucial aspects of other laws around the world such as the UK and other European countries in order to then customise them to fit India's landscape.¹⁸¹ The solutions are right in front of the nation's eyes and it is only a matter of when the need is realised. But what remains unclear is if this need for change will be acknowledged and steps will be taken in that direction.

As established early on in this dissertation, online gaming is a huge industry in India. It contributes a great deal to the country's development. It arguably brings with it more merits than demerits. However, its demerits consist of an extremely dark side that signify the need for regulation. This side is characterised by addictions, mental illness, debts, and even suicides. Advertisements have been known to trap vulnerable users who fall for the trap of easy money and only end up losing money. Such advertisements showing a rags to riches story due to winnings from the online game have become more and more commonplace despite the advertising regulations that are in place. The mandated disclaimers are shown, yes, but they are completely dominated by the overarching theme and voice of the advertisement.¹⁸²

Therefore, the potential for things to go awry is very much present. There can be no denying that online gaming companies will primarily operate to earn as much money as possible and seal profits. Any business operates in this way for that matter. So regulations are the only way in which social, moral and ethical responsibilities can be made compulsory. These regulations must be robust enough to protect the users and ensure compliance and

¹⁸¹ Mehta, *supra* note 175.

¹⁸² Mehul Reuben Das, *The dark side of online gaming: From people in debt to ruined families, online gaming in India needs to be regulated*, FIRSTPOST (2022), <https://www.firstpost.com/tech/news-analysis/the-dark-side-of-online-gaming-from-people-in-debt-to-ruined-families-online-gaming-in-india-needs-to-be-regulated-11784821.html> (last visited Mar. 24, 2024).

diligence on the part of the online gaming companies. In that endeavour, the rights and freedoms that companies have can also be ill-afforded to be compromised. The need for this balance while framing laws must be the biggest takeaway from this dissertation and the sooner a fresh legislation is brought for online gaming, the better it will be for the organic growth of the industry, combined with user satisfaction and a much-needed dearth of social evils.

Bibliography and References

Statutes and Legislations

- Bombay Prevention of Gambling Act, 1887
- Constitution of India
- Finance Act, 2023
- Income Tax Act, 1961
- Information Technology Act, 2000
- Information Technology Act, 2000
- Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021
- Karnataka Police Act, 1963
- Kerala Gambling Act, 1960
- Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016
- Online Gaming (Regulation) Bill, 2022
- Public Gambling Act, 1867
- Sikkim Online Gaming Act, 2008
- Tamil Nadu Gaming Act, 1930
- Telangana Gaming Act, 1974
- West Bengal Gambling and Prize Competitions Act, 1957

Books

- ADITYA DESHBANDHU, GAMING CULTURE(S) IN INDIA: DIGITAL PLAY IN EVERYDAY LIFE (1 ed. 2020).
- CA. R.S KALRA, TAXATION REGIME FOR ONLINE GAMING (1 ed. 2023).
- FALTIN KARLSEN, A WORLD OF EXCESSES: ONLINE GAMES AND EXCESSIVE PLAYING (1 ed. 2013).
- GARRY CRAWFORD ET AL., ONLINE GAMING IN CONTEXT: THE SOCIAL AND CULTURAL SIGNIFICANCE OF ONLINE GAMES (1 ed. 2013).
- KATHRYN R.L. RAND & STEVEN ANDREW LIGHT, INDIAN GAMING LAW AND POLICY (2 ed. 2014).
- STANLEY GARDNER, ONLINE GAMES: BUSINESS OF ONLINE GAMES (1 ed. 2015).

- STEPHEN MONKCOM ET AL., *THE LAW OF GAMBLING* (4 ed. 2017).

Journal Articles

- Amnon J. Suissa, *Gambling and Cyber-Addiction as a Social Problem: Some Psychological Benchmarks*, 30 CANADIAN SOCIAL WORK REVIEW (2013).
- Austan Goolsbee, *In a World without Borders: The Impact of Taxes on Internet Commerce*, 115 QUARTERLY JOURNAL OF ECONOMICS (2000).
- Bernadeta Lelonek-Kuleta & Rafał Piotr Bartczuk, *Online Gambling Activity, Pay-to-Win Payments, Motivation to Gamble and Coping Strategies as Predictors of Gambling Disorder Among e-sports Bettors*, 37 JOURNAL OF GAMBLING STUDIES (2021).
- Brad R. Humphreys, *Online Sports Betting and International Relations*, 31 THE SAIS REVIEW OF INTERNATIONAL AFFAIRS (2011).
- Bruce P. Keller, *The Game's the Same: Why Gambling in Cyberspace Violates Federal Law*, 108 THE YALE LAW JOURNAL (1999).
- Catherine So-Kum Tang et al., *Addiction to Internet Use, Online Gaming, and Online Social Networking Among Young Adults in China, Singapore, and the United States*, 29 ASIA PACIFIC JOURNAL OF PUBLIC HEALTH (2017).
- Constance Steinkuehler, *Massively Multiplayer Online Games as an Educational Technology: An Outline for Research*, 48 EDUCATIONAL TECHNOLOGY (2008).
- David M. Houghton et al., *From Fantasy to Reality: The Role of Fantasy Sports in Sports Betting and Online Gambling*, 38 JOURNAL OF PUBLIC POLICY & MARKETING (2019).
- James C. Brau et al., *The Impact of Video Gaming and Social Media on Finance Class Grades*, 47 JOURNAL OF FINANCIAL EDUCATION (2021).
- Jean-Patrick Villeneuve, *Gambling Regulation and Risk*, 1 EUROPEAN JOURNAL OF RISK REGULATION (2010).
- Jennifer Christie Siemens & Steven W. Kopp, *The Influence of Online Gambling Environments on Self-Control*, 30 JOURNAL OF PUBLIC POLICY & MARKETING (2011).
- Jonathan Conon, *Aces and Eights: Why the unlawful Internet Gambling Enforcement Act resides in 'Dead Man's' Land in attempting to further curb online gambling and why expanded criminalization is preferable to legalization*, 99 THE JOURNAL OF CRIMINAL LAW AND CRIMINOLOGY (2009).

- Kenneth N. Caldwell, *The Shifting Tide in Internet Gambling—Survey of Recent Developments*, 69 THE BUSINESS LAWYER (2013).
- Mark Baxter, *Brain Health and Online Gaming*, 35 GENERATIONS: JOURNAL OF THE AMERICAN SOCIETY ON AGING (2011).
- Pradeep Nair, *The Indian Child: Growing Young, Urbane and Liberal with Digital Games*, 46 INDIAN ANTHROPOLOGIST (2016).
- Raadhika Gupta, *Legalising Betting in Sports: Some Reflections on Lawmaking*, 48 ECONOMIC AND POLITICAL WEEKLY (2013).
- Roger Clarke & Gillian Dempsey, *The Feasibility of Regulating Gambling on the Internet*, 22 MANAGERIAL AND DECISION ECONOMICS (2001).
- Stevie Watson et al., *The Legalization of Internet Gambling: A Consumer Protection Perspective*, 23 JOURNAL OF PUBLIC POLICY & MARKETING (2004).
- Tobias Effertz et al., *The effect of online gambling on gambling problems and resulting economic health costs in Germany*, 19 THE EUROPEAN JOURNAL OF HEALTH ECONOMICS (2018).
- Xiao Ma et al., *Online Gambling Behavior: The Impacts of Cumulative Outcomes, Recent Outcomes, and Prior Use*, 25 INFORMATION SYSTEMS RESEARCH (2014).

Web Sources

- Abhimanyu Chopra & Aman Chaudhary, *Inclusion Of Online Gaming Under The IT (Intermediary Guidelines And Digital Ethics Media Code) Rules, 2021: 'An Imperfect Solution?'*, MONDAQ (2023), <https://www.mondaq.com/india/gaming/1353826/inclusion-of-online-gaming-under-the-it-intermediary-guidelines-and-digital-ethics-media-code-rules-2021-an-imperfect-solution> (last visited Mar. 25, 2024).
- Amar Patnaik, *Regulating India's online gaming industry*, THE HINDU (2024), <https://www.thehindu.com/opinion/op-ed/regulating-indias-online-gaming-industry/article67740783.ece> (last visited Mar. 25, 2024).
- *An Analysis Of Online Gaming Regulations In India*, LEX ORBIS (2023), <https://www.lexorbis.com/an-analysis-of-online-gaming-regulations-in-india/> (last visited Mar 25, 2024).
- Arun Prabhu et al., *The Online Gaming Intermediaries Regulations: What is New?*, CYRIL AMARCHAND MANGALDAS (2023),

<https://corporate.cyrilamarchandblogs.com/2023/04/the-online-gaming-intermediaries-regulations-what-is-new/> (last visited Mar. 25, 2024).

- Elizabeth Sramek, *iGaming Regulations Around The World: What You Must Know*, SCALEO (2023), <https://www.scaleo.io/blog/igaming-regulations-around-the-world-what-you-must-know/> (last visited Mar. 25, 2024).
- Farhat Basir Khan, *Skill, not chance, will be needed to differentiate game of skill from game of chance*, TOI (2023), <https://timesofindia.indiatimes.com/blogs/voices/skill-not-chance-will-be-needed-to-differentiate-game-of-skill-from-game-of-chance/> (last visited Mar. 25, 2024).
- *Innovating for public interest: Building a fair and competitive online gaming ecosystem*, TOI (2024), <https://timesofindia.indiatimes.com/gadgets-news/innovating-for-public-interest-building-a-fair-and-competitive-online-gaming-ecosystem/articleshow/106634979.cms> (last visited Mar. 25, 2024).
- Mehul Reuben Das, *The dark side of online gaming: From people in debt to ruined families, online gaming in India needs to be regulated*, FIRSTPOST (2022), <https://www.firstpost.com/tech/news-analysis/the-dark-side-of-online-gaming-from-people-in-debt-to-ruined-families-online-gaming-in-india-needs-to-be-regulated-11784821.html> (last visited Mar. 25, 2024).
- Rajesh Mehta, *How international insights can guide India's online gaming regulations*, THE SUNDAY GUARDIAN (2024), <https://sundayguardianlive.com/business/how-international-insights-can-guide-indias-online-gaming-regulations> (last visited Mar. 25, 2024).
- Vinayak Kulkarni & Ashok Bannidinni, *Can States have Additional Restrictions on Online Gaming?*, SCC TIMES (2023), <https://www.sconline.com/blog/post/2023/02/18/can-states-have-additional-restrictions-on-online-gaming/> (last visited Mar. 25, 2024).
- Vineet Bhalla, *Why the Centre must step in to regulate online gaming in India*, SCROLL (2023), <https://scroll.in/article/1060209/why-the-centre-must-step-in-to-regulate-online-gaming-in-india> (last visited Mar. 25, 2024).

PLAGIARISM REPORTS

Chapter 1 - 3%

Chapter 1: Introduction

In the current day and age of modern entertainment and leisure, online gaming has broken new grounds and advanced rapidly to capture the minds of youngsters around the world. In the Indian context, with the ever-growing availability of the internet, news relating to online gaming has become extremely common, which on an unfortunate note, deal more often than not with suicides, depression, losses and scams. Therefore, it has become evident that proper laws and regulations must be in place to ensure that there is a well-established online gaming framework in the country. However, the current legal landscape is complex and confusing, with each state implementing its own regulations. This can be attributed to the fact that online gaming is considered to be a part of [List II of the Seventh Schedule of the Indian Constitution](#) under Entry 34 which concerns betting and gambling when there is an element of chance involved. Games that are predominantly based on skill get protection under Article 19(1)(g) but questions arise on how exactly to determine the amount of skill and chance involved in a game. This problem of classification opens a can of worms on whether a central legislation to

1,640 words

Plagiarism detected (APA)

1% of this text matches TRS MP raises question on...
TRS MP raises question on fantasy...
<https://cricketprediction.com/gambling/trs-mp-raises-question-...>

Detected Reference
TRS MP raises question on fantasy sports legality.
<https://cricketprediction.com/gambling/trs-mp-raises-question-fantasy-sports-legality/>

Copy reference Dismiss

1% of this text matches TRS MP raises question on...
1% of this text matches Search Results "..."
1% of this text matches Online Gaming in Context:..."
1% of this text matches Achilles As A Marketing To...

3% of your document matches text on the web or in academic databases.

72 Overall score
Goals
Generative AI
3% Plagiarism

Chapter 2 (Parts A-C) - 9%

Chapter 2:
Online Gaming: Constitutional Dimensions and Legal Framework in States

Part A: Online Gaming and its Classification

In order to carry out an analysis of the shortcomings of the present legal framework on online gaming, a step by step process of understanding is required. Firstly, online gaming needs to be understood from the perspective of a layman. Then, it must be followed by getting a deeper understanding with respect to its classification as well as the pros and cons from the perspective of those affected by as well as involved in the industry. It is then that the laws and regulations need to be scrutinised. Following an understanding of the legal framework by looking at the Constitution as well as various statutes, bills and recommendations of commissions, potential solutions can be proposed.

What is Online Gaming?
The locally recognized definition of online gaming in India can be

6,104 words

Plagiarism detected (APA)

1% of this text matches Information Technology...
Information Technology...
<http://indiaenvironmentportal.org.in/content/474855/informat...>

Detected Reference
Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 - India Environment Portal | News, reports, documents, blogs, data, analysis on environment & development | India, South Asia.
<http://indiaenvironmentportal.org.in/content/474855/information-technology-intermediary-guidelines-and-digital-media-ethics-code-amendment-rules-2023/>

Copy reference Dismiss

1% of this text matches Does Digital Nature...
1% of this text matches How to Win at Slot Onlin...

9% of your document matches text on the web or in academic databases.

72 Overall score
Goals
Generative AI
9% Plagiarism

Chapter 2 (Parts D-F) - 11%

Part D: State Legislations

State legislations on online gaming have become a thing only in the recent past, but laws regulating betting and gambling have been around for a long time. One of the first statutes in this regard was the *Public Gambling Act, 1867* in the United Provinces, Central Provinces, East Punjab and Delhi. This Act was derived from the *British Gaming Act, 1845* and the *Betting Act, 1853*, and dealt with the operation of gaming houses which were defined as "any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever". Its objective was to impose penalties for owning such gaming houses and being found in them. For the former, the penalty was fine up to 200 rupees or imprisonment of either description (as mentioned in the Indian Penal Code which had been passed 7 years prior) not exceeding three months while for the latter, it was fine up to 100 rupees or imprisonment of either description not exceeding one month

5,992 words

Plagiarism detected (APA)

1% of this text matches Saving Cricket: A...
1% of this text matches THE GUJARAT...
1% of this text matches Jagat Singh Kishor Singh...
Jagat Singh Kishor Singh Darbar Vs...
<https://www.advocatekhaj.com/library/judgments/index.php?>

Detected Reference
Jagat Singh Kishor Singh Darbar Vs. The State of Gujarat [1979] INSC 29 (6 February 1979) | Judgments | Supreme Court Judgments: February, 1979 | Law Library | AdvocateKhaj.
<https://www.advocatekhaj.com/library/judgments/index.php?go=1979/february/4.php>

Copy reference Dismiss

1% of this text matches Lockdown - A potential...

11% of your document matches text on the web or in academic databases.

71 Overall score
Goals
Generative AI
11% Plagiarism

Chapter 3 - 6%

Chapter 3: IT Rules and the Taxation Regime

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter 'IT Rules') which were passed in accordance with the rule-making power granted by Section 87 of the Information Technology Act, 2000 to the Central Government (along with the Ministry of Electronics and Information Technology (MeitY) and the Ministry of Information and Broadcasting (MIB)), is one of the most striking statutes for its importance in changing the digital landscape of India. Its seeds were sown in 2018 when a motion concerning the misuse of social media and the rapid spread of fake news was admitted in the Parliament. The MeitY then released a statement affirming the "resolve of the Government to strengthen the legal framework and make the social media platforms accountable under the law". In 2022, the The Online Gaming (Regulation) Bill, 2022 was another step, even if it did not see the light of day. Draft rules were then framed with the main agenda being to make clear the liabilities as well as duties of intermediaries. These were aimed at ensuring the prevention of spread of fake news as well as the elimination of objectionable content online such as child pornography.

9,934 words

Plagiarism detected (APA)

1% of this text matches MeitY Notifies Information...

MeitY Notifies Information...

<https://www.legaleaonline.com/news/meity-notifies-informa>

Detected Reference
MeitY Notifies Information Technology Amendment Rules: Empowers Centre to Identify 'Fake News' in Social Media About Central Government.
<https://www.legaleaonline.com/news/meity-notifies-information-technology-amendment-rules-empowers-centre-to-identify-fake-news-in-social-media-about-central-government-859182>

Copy reference Dismiss

1% of this text matches MeitY Notifies...

1% of this text matches Government Responses...

1% of this text matches E-Commerce Liability...

6% of your document matches text on the web or in academic databases.

73 Overall score

Goals

Generative AI

6% Plagiarism

Chapter 4 - 0%

Chapter 4: Exploring the Possibility of a New Central Legislation

Part A: The Issues at Hand

Having discussed in depth the various laws governing online gaming in India and its States, it becomes necessary to look at what changes are needed in them so that the balance between preserving the interests of the state in maintaining social order and the interests of the stakeholders are managed. Therefore, firstly, a concise summary of the situation at hand is needed before possible solutions can be come up with. Issues and solutions for the same will be covered under four heads - Legislative competence of the centre/state, classification of games into those of skill and chance, the amendments to the IT Rules, and finally, the taxation regime.

For any legal framework to function smoothly, there must be absolute clarity on a plethora of matters such as who is competent to legislate, who the legislations apply to, what happens if there is an overlap of functions, etc. Unfortunately, in the online gaming setup, this has not been able to be achieved. The former aspect is the most

4,327 words

No plagiarism detected

We compared your document to billions of web pages and academic papers and found no duplicate text.

See all suggestions

72 Overall score

Goals

Generative AI

Plagiarism

Chapter 5 - 2%

Chapter 5: Findings and Conclusion

Having dealt with the evolution of the online gaming framework, the contentious IT Rules, the taxation regime, and the centre-state conflicts, it is evident that a transformation is required. The framework ideally must be one that achieves a balance between giving the online gaming companies their freedoms and regulating their content to ensure public order. This is especially because of the recent spate in possible cases of debts, addiction, depression and suicides. There is most certainly a dark side to online gaming that needs to be done away with, all while not compromising on the basic rights that just about any person or company needs. This is where a new statute as mentioned in the previous chapter will work wonders and the sooner that happens, the better.

Part A: Key Findings

This Part will be a short summary of the key findings in this dissertation serving as a TL;DR (internet term for "too long, didn't read"). So through this dissertation, the first and key finding has been the lack of clarity in the legislative competence of the central government and states

1,657 words

Plagiarism detected (APA)

1% of this text matches No action on online gaming...

No action on online gaming companie...

<https://www.nationalheraldindia.com/national/no-action-on-onli>

Detected Reference
No action on online gaming companies: K'taka govt to HC.
<https://www.nationalheraldindia.com/national/no-action-on-online-gaming-companies-ktaka-govt-to-hc>

Copy reference Dismiss

1% of this text matches All You Need To Know Abo...

1% of this text matches The Economic Impact of t...

2% of your document matches text on the web or in academic databases.

72 Overall score

Goals

Generative AI

2% Plagiarism