

Online Gaming vs. Gambling: Understanding the Legal Landscape in India

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Abstract- The rapid growth of online gaming and that too involving real money has raised significant concerns in India, including issues such as legality, societal impact and regulation. Although the sector offers entertainment and economic opportunities, it also poses risks relating to gambling, including addiction, financial losses, and exploitation of vulnerable persons such as minors. This article explores the dual nature of real money online gaming, whether it represents a skill-based industry or merely a digital extension of gambling and betting.

The growth of online gaming platforms and the increased use of smartphones and the internet have made real-money gaming an attractive but controversial industry. Some say that these games are different from gambling since they are skill-based, while others claim that they take advantage of people's mentality and encourage unethical and illegal behavior. In India, where gambling is mostly illegal except in a few areas, this confusion has led to a complicated regulatory challenge.

This article explores the current regulatory framework governing online gaming in India, studying legislative measures such as the Public Gambling Act, 1867 and the state specific laws. It also looks at how the courts differentiate between games of skill and games of chance. Additionally, it draws attention to the cons of real money online gaming and gambling, such as addiction, debt and criminal activity, all of which require stringent regulation.

This article attempts to add to the continuing discussion on whether real-money gaming platforms should be classified and regulated as gambling by examining the regulatory loopholes and suggesting possible remedies.

Keywords: Online Gaming, Gambling, Regulations, Legality

INTRODUCTION

Online gaming is the act of playing video games over the internet, with or against other players, allowing players to connect and interact with others virtually. The online gaming industry in India has seen a sudden boom in the market with increased internet usage and

affordable smartphones, attracting huge investments from big business tycoons as well as the common man. India's gaming market grew 23 per cent year-on-year (Y-o-Y) by revenue to \$3.8 billion in financial year 2023-24 (FY24), despite the newly imposed 28 per cent blanket goods and service tax (GST) on online gaming, according to a report by gaming-focused venture capital firm Lumikai. With sustained growth in in-app purchases and ad revenue, the gaming market is expected to cross \$9.2 billion by FY29, growing at a five-year compound annual growth rate (CAGR) of 20 per cent, Lumikai's 'State of India Interactive Media and Gaming Research' said. (Gupta, 2024)

REAL MONEY GAMING

Real money gaming refers to online games in which players can put real money at stake, giving themselves a chance to win or lose the same. They get attracted towards the fact of winning tangible rewards and also having an opportunity to win big in a short span of time. With the recent developments in the gaming industry and widespread internet access, nowadays gamers can involve themselves into games and competitions where real money is at stake. Examples of such games are traditional casino games like poker, blackjack, roulette, fantasy sports like rummy and certain other skill based competitions.

ONLINE GAMING VS GAMBLING

Are the terms online gaming and gambling the same? The industry itself sometimes uses these terms interchangeably, making it difficult to understand the difference between the two. Although betting and gambling are banned in India, modern day fantasy sport betting app allows the users to make teams and bet through these apps under the name of game of skill. That is why they are openly allowed to operate in India

currently. People of all ages love to play games online, but the problem is that of addiction.

SOCIO-ECONOMIC IMPACT OF REAL MONEY GAMING

- **ECONOMIC GROWTH:** The real money gaming industry has witnessed a tremendous growth in recent years. This has also led to increased revenue through licensing fee, taxation and all kinds of domestic and foreign investments. According to Statista, India recorded about 455 million online gamers in the year 2023. This was an eight percent growth from the previous year and is likely to reach over 491 million by 2024. About 90 million of these gamers reportedly paid for online games that year. (Basuroy, Number of online gamers in India from 2017 to 2023, with an estimate for 2024, 2024)

The market value of the gaming industry in India grossed over two billion U.S. dollars and was estimated to almost quadruple by fiscal year 2027. The number of new job opportunities in the country's gaming industry is a clear indicator of the constant evolution of this sector with around 60,000 jobs available in the market. Real money games were among the chief revenue earners within this sector. (Basuroy, Online gaming in India - Statistics and Facts, 2024)

There has been a growing interest in fantasy sports such as Dream 11, Mobile Premiere League, My11Circle. The e-sports market is likely to expand in the coming years in terms of revenue, viewership and number of players. India has a large population of youth leading to a rapid growth in mobile gaming industry as well. During the Covid-19 pandemic, the mobile gaming industry grew pretty quickly. It was also supported by the widespread availability of affordable smartphones and internet access.

In 2024, Indian gaming startups raised over Rs. 8,500 crore (USD 1 billion) in funding, marking a 25% increase compared to 2023. (Ventures)

- **EMPLOYMENT OPPORTUNITIES**
The growth in real money gaming industry has led to increased employment opportunities in various segments like game development, customer support, payment gateways, software

development, marketing, cyber security and various other skilled employees. It has also led to growth in startups in the country like Rummycircle and Mobile Premiere League which have gained significant attention, generated employment and expanded the gaming ecosystem.

- **SOCIAL IMPLICATIONS: GAMING, GAMBLING AND YOUNG PEOPLE**

Video games are a lot of fun, especially for young generation. They get their thrill and excitement fulfilled by playing these games. But there are a lot of video games that have some elements of gambling. People spend real money in buying virtual currency, skins and opening loot boxes, to move ahead in a video game. Often these games normalize monetized gambling among the youth, posing possible gambling harm in the future.

The real money online gaming increases the risk of gambling addiction in future. People get attracted to the thought of earning a huge amount of money in short span of time. This type of addiction has got some severe negative consequences in a person's life like financial losses, mental health issues and relationship issues. Nowadays, we either see or read regularly how people have huge debts on them because of online gaming and gambling, leading to stress, mental health problems, broken relationships, loss of productivity at work.

It also poses the risk of increased income disparities among the people. While some may gain extreme profits, others may face extreme losses which may even be beyond their capacity. It has a significant effect on young generation or the minors who get attracted to these games very easily due to rewards offered by them as well as lack of intelligence. This may again lead to financial losses and stress, underperformance in academics, problems in family relationships etc. In real life also, we have come across instances where the minors get involved in these games and incur huge financial losses either knowingly or unknowingly, which sometimes becomes a reason for them getting involved in some kind of criminal activity to recover their losses.

The online gaming platform increases the risk of criminal activities like hacking, fraud, money

laundering, etc. People fall prey to such illegal activities. This creates an environment of mistrust among the people, lack of user safety etc. Therefore, it is important to regulate online real money gaming, for protection of players and the industry as well.

UNDERSTANDING THE LEGAL ASPECTS OF ONLINE GAMING IN INDIA

The legislative powers are divided between the Centre and the States in the Constitution of India. “Betting and gambling” is a matter stated in Entry 34 of List II, that is, States can enact their own laws for their territory. Real money gaming refers to online gaming where players can wager and win real money. In India, the Public Gambling Act of 1867 is still in force, which is adopted by several states like Uttar Pradesh, Madhya Pradesh, Punjab and Haryana. Some other States have adopted by making amendments to it. Other States have enacted their own piece of legislation to regulate online gaming/gambling within their own territory.

Online games can broadly be divided under two categories, “games of skill” and “games of chance”. Any game that involves some element of skill, that is, calculation, intuition, skills of the gamer or his knowledge, is considered legal. While a game that involves no skill and is purely based on luck is considered illegal and is banned in India. Therefore, real money gaming is a business setup which is not entirely based on the principles of gambling but rewards those with higher skill or knowledge and understanding.

A majority of State Gaming Laws are pre internet statutes and therefore prohibit gaming in physical premises which are referred to as “gaming houses”. The States of Sikkim and Nagaland have State Gaming Laws and a licensing regime for online games. Sikkim has a licensing regime for all online games, whether based on skill or chance or both. Nagaland has a licensing regime only for online skill games and a prohibition on gambling. The States of Telangana and Andhra Pradesh prohibit all activities related to real money online gaming including skill gaming. The State of Tamil Nadu currently prohibits real money online gambling. (Chang, 2024)

The Information Technology Act 2000 is the primary source for governing online transactions, including online gaming. Although, there are no specific provisions as such. It is also unclear as to what extent, the Contract Act, the Copyright Act and the Indian Penal Code apply to online gaming. (Singh, 2023) The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (New IT Rules) were amended on April 6, 2023, by the Union Ministry of Electronics and Information and Technology (MeiTY). The aim was to regulate online gaming and protect the players from potential harm.

The IT Amendment Rules, 2023, introduced the concept of “permissible online game”, “permissible online real money game”, “online real money game” and “online gaming self regulatory body”. Only permissible online games can be hosted and offered to users in India. If it is a real money online game, it should have been recognized by the self regulating body set up under the new rules. According to the new IT Rules, the online gaming operators have to fulfill the requirement of due diligence. The Rules require registration of online games with a self regulatory body (SRB) which is registered with MeiTY and they shall comply with the guidelines issued by such bodies. Currently, two self-regulating bodies, the All India Gaming Federation [‘AIGF’] and the Federation of Indian Fantasy Sports [‘FIFS’], have issued charters to regulate online gaming for their respective members.

Online games, including skill based games and chance based games, were placed under the 28% GST tax slab in the 50th GST meeting in July 2023. (EOnline, 2024) It came into effect from 1st October, 2023. It covers all types of online games including fantasy sports, casino, horse racing and other forms of online gambling.

The Income Tax Act, 1961 inserted Section 115BBJ vide the Finance Act, 2023, which provides for taxation at the rate of 30%, excluding surcharge and cess on the net winnings from online gaming. (Salim, 2024)

All the cross border transactions in India are governed by the Foreign Exchange Management Act, 1999 (FEMA). FEMA is applicable to online gaming with regard to accepting deposits and its remittances

abroad. Section 6 of FEMA empowers RBI to regulate capital account transactions including payment, deposits and foreign investments. Also, FEM Regulations 2016 should also be complied as these are related to foreign currency accounts in India. The gaming sector should also comply with RBI regulations related to payment settlement and gateways. (Salim, 2024)

Online gaming is also governed by the Digital Personal Data Protection Act, 2023. Online gaming platforms have a large amount of personal information of the users. The DPDP Act ensures that a user's data is processed in a transparent manner thereby ensuring user safety.

JUDICIAL APPROACH

In India, the nature of games is decided after analyzing whether they are “games of skill” or “games of chance”.

In *RMD Chamarbaugwala vs Union of India*¹, the Supreme Court held that if the success of the competition does not depend upon an exercise of skill, it should be recognized as gambling. From here onwards, the Supreme Court has frequently stated that even if a game has an element of chance in it but also has an element of skill, it will be recognized as a game of mere skill.

In *Dr. K R Lakshmanan vs State of Tamil Nadu*², the Supreme Court said that horse racing is primarily a game of skill and involves horse's pedigree, rider's skills and nature of race. Therefore, horse racing cannot be considered as gambling. This judgement is an important reference as it differentiates between games of chance and games of skill.

In the case of *Varun Gumber vs Union Territory of Chandigarh*³, related to online gaming which offers its participants to win real money, it was held that participation in a fantasy league involved skill, judgement and discretion on part of the participant. These would affect the result, thereby making it a

game of skill and excluding it from the ambit of gambling. Similar decisions were given in cases involving platforms like Dream11, where it was held that fantasy sports are games of skill and not gambling.

In *Junglee Games India Private limited vs State of Tamil Nadu*⁴, the Madras High Court held that the term “betting” in entry 34 of second list of Schedule 7 in the Constitution is limited to betting on activities based on chance only.

The Madras High Court in the case of *All India Gaming Federation vs State of Tamil Nadu*⁵, analyzed the nature of the games of rummy and poker. It held that such games are purely games of skill, even in online formats. The government can prohibit games of chance but only regulate games of skill. Also, the Karnataka High Court, in *Gamescraft Technologies Private Limited vs DGGI*⁶, held that rummy, whether played with or without stakes, is a game of skill and thus does not constitute betting or gambling.

Section 30 of the Indian Contract Act states that the agreements by way of wager are void. But, it does not define “wager” or “wagering agreements”. The Supreme Court in *Gerulal Parakh vs Mahadeodas Maiya*⁷ said that ‘a promise to give money or money's worth upon determination or ascertainment of an uncertain event accurately brings out the concept of wager.’ This means that a wager should be based on an uncertain event. Thus games of chance are considered as wagering agreements.

The Madras High Court, while hearing petitions filed by online gaming companies opposing the Tamil Nadu Online Gaming Authority (Real Money Games) Regulations, 2025, said that if online real money games are addictive or cause social harm, the State can interfere to make regulations ensuring they strike a balance between fundamental rights of players and the gaming companies. The Tamil Nadu (RMG) Regulations pose a “blank hour” from midnight to 5am and made an Adhaar based verification of the user mandatory. (Arvind, 2025)

¹ 1957 SCC Online SC 12

² [1996] 1 S.C.R. 395

³ 2017 SCC Online P&H 5372

⁴ 2021 SCC Online Mad 2762

⁵ 2023 SCC Online Mad 6973

⁶ 2023 SCC Online Kar 18

⁷ AIR 1959 SC 781

CONCLUSION

Online gaming has both positive and negative consequences. Online gaming sector has significantly contributed to India's economic growth. Increased revenue imply more taxation by government. Other benefits include employment generation in various fields like customer support, software development, payment processing etc. it has also boosted the growth of startups in India.

One of the key challenges in regulation of online gaming is lack of uniformity in regulations across different States. This creates uncertainty among operators and players thereby hindering the growth of the sector. Also, there are certain other negative consequences that need to be tackled with stricter regulations such as money laundering, fraud, underage gambling, addiction etc.

However, it is crucial to balance the positive impacts with regulatory measures to ensure responsible gaming practices and minimise potential negative consequences. To maximize positive impact, there has to be strict regulations governing online gaming. The players, operators, government need to be self responsible by taking measures such as age restrictions, establishing control mechanisms, educating youth etc. By understanding and harnessing the potential of the real-money gaming industry, India can continue to leverage its economic and employment benefits while promoting sustainable growth.

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