



India's gaming industry abuzz as government signals sector shakeup

It may appear to be two steps forward, one step back, but hopes are high that online skill gaming will get the green light from central government report **Gowree Gokhale and Tanisha Khanna**

The Covid-19 pandemic has seen a steep surge in online gaming in India. With one of the world's largest populations forced to stay indoors, the industry saw burgeoning numbers of Indians seeking entertainment, mental engagement and opportunities to socialize online. As per estimates, the online gaming industry in India grew a staggering 21 percent during the national lockdown and is projected to be a US\$2.8 billion industry by 2022.¹

In particular, we saw significant growth of skill games such as Rummy, Poker and Daily Fantasy sports as, through these games, players found competition, skill and stimulation sitting indoors.

In parallel, some Indian States struggled to clamp down on illegal domestic and foreign online gambling websites. Some states took a hardline approach to prohibit all real money online gaming, including games of skill, whereas

one State sought to regulate online games by means of a licensing regime. Several interesting court rulings recently in India have also considered the scope of State power to regulate online gaming activities. We also saw crackdown by police in Hyderabad² of a 1000 crore (US\$140 million) illegal money laundering racket conducted through online betting websites/applications run by Chinese nationals.

In this article, we will review some of the latest legal developments in India's online gaming industry. But first, a quick refresher on Indian gaming laws: Similar to the United States, betting and gambling (including skill gaming) is covered by State laws. Most State laws exempt 'games of skill' from their prohibitions. Even the Supreme Court of India has recognized that offering games of skill is protected under freedom of trade and business guarantees under Article 19(1)(g) of the Constitution of India.³

1. <https://economictimes.indiatimes.com/industry/media/entertainment/skill-games-showed-hypergrowth-amid-lockdown-in-india/articleshow/83918887.cms?from=mdr>

2. <https://timesofindia.indiatimes.com/india/chinese-national-among-4-held-for-rs-1100cr-online-gambling-racket/articleshow/77535499.cms>

3. RMD Chamarbaugwala & Anr v Union of India & Anr, [1957] 1 SCR 930

Meghalaya introducing licensing regime for games of skill and chance

In a welcome development, the State of Meghalaya introduced the Meghalaya Regulation of Gaming Act, 2021, (“Meghalaya Act”) which introduces a licensing regime for online games of skill and games of chance.

This is the first Indian State to introduce a license regime for online games of chance.

The Meghalaya Act, introduced in June 2021, recognizes games such as sports betting,⁴ Poker and Rummy, as games of skill in respect of which a license may be obtained. It also provides for licenses to be obtained for some popular casino games including roulette, baccarat/Punto Banco, Wheel of Fortune and Slots.⁵

A license can only be issued to an Indian citizen or a legal entity incorporated in India.⁶ Foreign operators are not eligible for a license in Meghalaya.

Madras High Court holds Tamil Nadu law prohibiting games of skill unconstitutional

While Meghalaya in the far northeast of the country was moving towards liberalization, in the south it was a different story. In February, 2021, the anti-gambling law in the State of Tamil Nadu was amended to completely prohibit offering online games for stakes, including games of skill. Tamil Nadu, which encompasses the 11-million strong population of capital Chennai, is one of the most populous Indian States. Its amendment was challenged and the Madras High Court struck down the attempt to ban skill gaming as unconstitutional.⁷

The High Court of Madras reiterated that games of skill were business activities protected under the Constitution, and the blanket prohibition of such games was unreasonable and excessively prohibitory, violating players and operators’ constitutional rights. The court underscored that the State had failed to justify the need for the complete prohibition of all games, even games of skill, apart from anecdotal references to suicide and the perception of ‘evil’ addiction. The court also pointed out that it was unreasonable to

prohibit specifically games of skill such as Poker and Rummy if played online and for any prize/stake.

Although the judgment comes as welcome relief for operators, it may be short-lived. Soon after the judgment was pronounced, the Law Minister of Tamil Nadu announced that the Government would soon enact a new law to ban online Rummy in the State, along with appropriate justification, for the welfare of the public. It remains to be seen if other games are prohibited as well.

The industry is therefore in ‘wait and watch’ mode for Tamil Nadu. Similar legislation prohibiting games of skill for stakes exist in Telangana, Andhra Pradesh and (most recently) Karnataka. It is hoped that the principles set out by the Madras High Court in its judgment are followed by the High Courts of these States in any present and prospective challenges to these laws, and that a blanket prohibition on skill games is not continued.

Karnataka

The most controversial recent development for the Indian industry has been the introduction of the Karnataka Police (Amendment) Bill, 2021 (“Karnataka Amendment”) by the State of Karnataka. The Karnataka Amendment amends the gambling-related provisions under the Karnataka (Police) Act, 1963 (“Karnataka Act”), which formerly prohibited gambling activities in physical premises.

The Karnataka Amendment specifically extends the provisions of the Karnataka Act online, and prohibits the offering of and participating in online games, including games of skill, for stakes, in the State.

The amendment is particularly punitive since Karnataka boasts the ‘tech hub’ of India, Bangalore as its capital and several online gaming operators have operations in the State. The introduction of the Amendment raises questions about the extent to which the operators can continue their operations. As another of the most populated Indian States, Karnataka forms an important gaming market for operators and it is no exaggeration to say that the Karnataka Amendment delivered a severe blow to the online skill gaming industry threatening thousands of jobs in the sector.

4. Schedule A (viii): Prediction of the results of the sporting events and placing a bet on the outcome, in part or in whole, of sports or sporting events such as football, cricket, lawn tennis, chess, golf, horse race and such other sport games’

5. Respectively Schedule B (viii), Schedule B (i), Schedule B (ii), Schedule B (ix)

6. Section 4(2)

7. *Junglee Games India Pvt. Ltd. & Anr. v The State of Tamil Nadu & Ors.* WP Nos.18022, 18029, 18044, 19374, 19380 of 2020, 7354, 7356 and 13870 of 2021



To the extent that the Karnataka Amendment prohibits online games of skill, it too may be held to be unconstitutional in the same way as the amendments introduced in Tamil Nadu. There are also several inconsistencies and contradictions in the amended Karnataka Act which may be vulnerable to challenge. As per reports, these issues were pointed out by the opposition party in the State while the amendments were being deliberated on by the State legislature.⁸ Despite this, the Karnataka Amendment was passed nevertheless and until such time as it is challenged and potentially struck down by the High Court, operators must cease offering real money games in Karnataka.

Kerala

The High Court of Kerala has recently struck down a notification seeking to prohibit online Rummy when played for stakes in the State⁹ as being unconstitutional under Article 14¹⁰ and Article 19(1)(g) of the Indian Constitution. The court pointed out that offline Rummy had already been recognized as a game of skill by the Supreme Court.¹¹ Online Rummy would also remain a game of skill irrespective of whether it was played for stakes. In a similar vein as the High Court of Madras, the court recognized that offering games of skill such as Rummy was protected under Article 19(1)(g) of the Indian Constitution, and the complete prohibition on playing online Rummy was not a reasonable restriction of such rights.

In view of the above, the notification was struck down as unconstitutional.

Vision 2022 for India's Gaming Industry: What lies ahead

As is evident from these developments, the State-wise nature of India's anti-gambling laws is hampering business certainty for the online skill gaming industry. While some States have adopted a progressive approach and introduced licensing regimes, others have prohibited all types of online gaming activity including skill games. State laws are also ill-equipped to prohibit and penalize the many foreign gambling websites available in India since, under the Indian Constitution, only the Central Government can make laws having extra-territorial operation (i.e., applicability outside the country).

There is therefore a strong need for a federal law for the online gaming industry supplemented by standards set by industry self-regulatory bodies. It appears that the Central Government may also be thinking along the same lines. The Minister of Electronics and Information Technology reportedly responded to a letter which sought the blocking of all gambling websites and apps in Andhra Pradesh, stating that the Central Government was considering a uniform approach (i.e., a Central approach) to regulating the online gambling and real money gaming industry in India.¹² It was also reported that the Prime Minister's office was evaluating the way forward for the online gaming industry.¹³

These are promising indications, as a strong federal framework would certainly reduce regulatory uncertainty for legitimate online skill gaming businesses.



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8. <https://www.thehindu.com/news/national/karnataka/gaming-bill-passed-amid-apprehensions/article36639653.ece>

9. Head Digital Works Pvt. Ltd & Anr. V State of Kerala & Ors, WP(C) No. 7785, 7851, 7853 & 8440 of 2021

10. 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

11. State of Andhra Pradesh v K Satyanarayana 1968 AIR 825

12. www.medianama.com/2021/08/223-rti-government-online-gambling-regulation/?utm_source=feedburner&utm_medium=feed&utm_campaign=Feed%3A+medianama+%28Medianama%3A+Digital+Media+In+India%29

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