

# Navigating the Evolving Landscape: An Analysis of Gaming Laws in India

The gaming industry has experienced a substantial surge in popularity and witnessed remarkable expansion in recent times, as numerous individuals engage in diverse forms of gaming. The rapid rise of e-sports and professional gaming in India has been expedited by well-structured competitions, leagues, and tournaments. The proliferation of smartphones and the availability of internet connectivity have further contributed to the widespread appeal of online gaming, attracting a diverse range of participants.



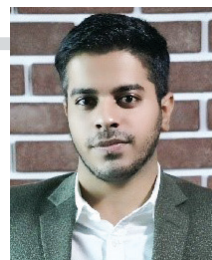
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## INTRODUCTION

The gaming industry has experienced a substantial surge in popularity and witnessed remarkable expansion in recent times, as numerous individuals engage in diverse forms of gaming. The rapid rise of e-sports and professional gaming in India has been expedited by well-structured competitions, leagues, and tournaments. The proliferation of smartphones and the availability of internet connectivity have further contributed to the widespread appeal of online gaming, attracting a diverse range of participants. Moreover, since the advent of gaming in India, the youth have wholeheartedly embraced it as a legitimate career option, dedicating their time and efforts to honing their skills. As a result, they have not only earned substantial sums of money but also garnered widespread recognition on a global scale. However, gaming in India confronts obstacles such as regulatory issues, addiction and health concerns, and associated societal stigmas.

The primary objective of this article is to thoroughly examine the existing regulations governing gaming in both the online and offline realms and evaluate the recent legislative measures and guidelines introduced in India by the pertinent authorities.

## WHAT IS GAMING?

As per the prevailing gaming laws, the terms “gambling” or “gaming” is defined as “the act of wagering or betting”

for money or something else with a monetary value. The State of Telangana defines “gaming” as “playing a game for winning of prizes in money or otherwise and includes playing a game of mutka or satta or online”

The Public Gambling Act of 1867 is the main piece of law that regulates gaming. This Act does not distinguish between online and off-premises gambling. The Public Gambling Act (PGA) does not define the terms “gambling” or “gaming,” but according to the Supreme Court of India, “gambling” is the act of paying money in exchange for a chance to win a prize that is decided by accident or chance, or games where skill is not the primary determining factor.<sup>1</sup>

It is crucial to acknowledge that the interpretation of gaming can differ based on the state jurisdiction and the specific legislation concerned. The majority of gaming laws were established prior to the advent of the internet and primarily aim to restrict gambling activities in physical establishments, commonly referred to as “gaming houses” or “common gaming houses.”

## EVOLUTION OF GAMING LAW

India’s gaming history is vast and multifaceted, evolving over time. A combination of long-standing cultural traditions, historical factors, and modern regulatory frameworks has collectively shaped India’s Gaming Laws.

Gaming has been an integral part of India’s rich cultural heritage, with a profound influence on society. Ancient

<sup>1</sup> *K R Lakshmanan v. State of Tamil Nadu*, (1996) 2 SCC 226.

Indian texts, such as the Mahabharata and the Ramayana, dating back thousands of years, contain references to gambling and games of chance, highlighting their enduring significance.

The legal structure controlling gambling/gaming started to develop during the colonial era when India was ruled by the British. To prohibit gambling practices, the British colonial government enacted the Public Gambling Act in 1867. By making it unlawful to gamble in public places, this measure also outlawed the functioning of gaming establishments. The act did not target online or virtual gaming, however, because online games were not yet a thing.

Post Independence, the Indian Constitution grants individual states the power to enact laws pertaining to gaming and betting under Entry 34 of State List of Schedule VII. Because of this, different states in India have different laws governing gaming, as some governments allow particular categories of gaming while others have strict limitations or complete prohibitions. According to Supreme Court decisions, games of skill are lawful commercial activities that are protected under Article 19(1)(g) of the Indian Constitution.

In the majority of Indian states, “skill-based gaming” is exempt from the laws on gambling to some extent. States like Meghalaya, Nagaland, and Sikkim, however, have a regulatory framework for the online gambling industry, whereas states like Goa permit licenced on-ground operations of gaming activities.

The PGA’s inclusion of an exception for games of pure skill was one of its notable features. Games of pure skill were thus exempt from the PGA’s prohibition and application, as well as both. However, neither the PGA nor the state gambling or gaming legislation define the term mere skill or elaborates upon the principles that are consistent with games of skill.

A game of skill is one in which success depends primarily on the superior knowledge, training, attention, experience, and adroitness of the player, according to the Supreme Court of India, even though the element of chance is unavoidably present in all game.<sup>2</sup>

For instance, in the Satyanarayan case, the Supreme Court classified rummy as a game of skill.

However, several states, including Assam, Andhra Pradesh, Telangana, and Odisha, have refused to acknowledge this exception for games of skill, making all real money games prohibited. On the other hand, several governments, including Sikkim and Nagaland, have established a licencing system for the operation of real money gaming.

*In India, the following laws are in effect for gaming:*

#### **Casino:**

Casino gaming, which encompasses activities like slots, roulette, and blackjack, is subject to regulation in India

at the state level. These games, classified as games of chance, fall under the purview of state-level anti-gambling laws, commonly referred to as “Gaming Laws.” The state of Sikkim allows the operation of casino games, such as roulette and blackjack, by obtaining a license under the Sikkim Online Gaming (Regulation) Act, 2008 (referred to as the “Sikkim Act”), with the condition that these games are offered exclusively through intranet terminals.

Similarly, the state of Meghalaya has introduced the Meghalaya Regulation of Gaming Act, 2021 (referred to as the “Meghalaya Act”), which permits operators to obtain licenses for offering both online and land-based games of chance, including slots, roulette, keno, wheel of fortune, etc., within the state. The Finance, Revenue, and Expenditure Department serve as the licensing authority under the Sikkim Act, while the state government, with the Commissioner of Taxes overseeing the licensing process, holds the authority under the Meghalaya Act.

In specific regions of India, such as Sikkim and Meghalaya in the northeast, as well as Goa and the union territory of Daman and Diu in the west, land-based casinos are regulated. In Goa, Daman and Diu, the operation of casinos is governed by the Goa, Daman and Diu Public Gambling Act, 1976 (referred to as the “Goa Act”). Meanwhile, the Sikkim Casinos (Control and Tax) Act, 2002 (referred to as the “Sikkim Casino Act”) regulates casinos in Sikkim. In Meghalaya, casino games are regulated under the Meghalaya Act. The respective authorities responsible for overseeing these regulations are the Home Department in Goa, the Tourism Department in Sikkim, and the state government in Meghalaya.

#### **Poker:**

With the exception of Sikkim, Nagaland, and Meghalaya, which have specific regulations for skill-based gaming, and Tamil Nadu, which explicitly prohibits real-money poker, the skill-based variations of poker remain unregulated in other states of India. In Nagaland, the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 (referred to as the “Nagaland Act”), and in Meghalaya, the Meghalaya Act, govern poker as a skill-based game.

When it comes to poker played in casinos, the rules and regulations applicable to casino gaming are enforced. However, certain skill-based variants of poker, such as Texas Hold’em and Omaha Hold’em, are not restricted by the provisions of the Gaming Laws (refer to the corresponding section on “Skill games”). Consequently, these particular variations can also be played in physical premises.

#### **Bingo and Lotteries**

Bingo can be played in a variety of ways, but regardless of whether it’s played in a physical location or online, all of these variations fall under the umbrella of games of chance or lotteries.

Lotteries are specifically exempted from the scope of the Gaming Laws and are instead regulated by central laws

<sup>2</sup>. Dr. K.R. Lakshmanan v. State of Tamil Nadu (1996) 2 SCC 226.

and specific state-level lottery laws, referred to as “Lottery Laws.” Private lotteries, unless authorized by a valid license issued by the state government, are prohibited under the Indian Penal Code, 1860 (referred to as the “IPC”). State governments that organize lotteries themselves conduct physical lotteries through their designated departments or the State Finance Ministry. States like Punjab, Kerala, Maharashtra, and others only permit physical lotteries to take place.

### Betting

In accordance with the Gaming Laws, betting on games of chance would be prohibited.

### Horse Race Betting

The Supreme Court has determined that betting on horse racing qualifies as a game of skill and is therefore eligible for the exemption provided to skill games under the Gaming Laws. Additionally, most Gaming Laws specifically include an exemption for betting on horse races, subject to certain statutory conditions outlined by the respective Gaming Law. These conditions typically require the betting to occur on the day of the race and within designated enclosures designated by the state government. Turf clubs, which are responsible for organizing the races, may also impose additional conditions on betting.

When it comes to online betting on horse races, compliance with both the requirements of the Gaming Laws and the conditions imposed by the turf club is necessary. However, meeting these requirements can prove challenging. Nevertheless, one may argue that, based on the Supreme Court’s ruling in the *Lakshmanan Case*,<sup>3</sup> betting on horse races can be considered a standalone skill game without relying on the specific exemption within the Gaming Laws.

Several State Governments, notably those of Maharashtra, Telangana, Karnataka, and West Bengal, have allowed to their turf clubs to provide online horse racing betting. However, a public interest litigation (“PIL”) challenging the legality of the licence given to the Bangalore Turf Club in July 2020 resulted in its revocation in December 2020, prompting the Karnataka High Court to request a response from the state government. The state government revoked the permit rather than responding, which caused the PIL to be dismissed. The Royal Calcutta Turf Club in West Bengal, on the other hand, has worked with overseas race organisers to provide races on an online betting platform, and its permission to do so has not run into any difficulties. Additionally, there have been recent reports of enforcement actions in Karnataka against individuals engaging in online betting on horse races.

### Fantasy Sports:

The High Courts of Punjab & Haryana, Bombay, and Rajasthan have, in separate cases, upheld the classification of the fantasy sports format offered by leading operator Dream11 as a game of skill. As a result, it has been exempted from the prohibitions outlined in the Gaming

Laws and has been protected under the Constitution as a legitimate business activity. The Supreme Court recently affirmed this in a significant observation during the *Avinash Mehrotra v. State of Rajasthan* case,<sup>4</sup> stating that the legality of fantasy sports is no longer a matter requiring fresh consideration, as petitions challenging its legality have been consistently dismissed by the Supreme Court.

Both the Nagaland Act and the Meghalaya Act have introduced licensing frameworks for the provision of fantasy sports. These acts explicitly recognize “virtual team selection games” and “virtual sports fantasy league games” as skill-based games. In Rajasthan, a proposed bill aims to regulate online fantasy sports within the state. If enacted, fantasy sports and their operators would be subject to regulation under a licensing regime. The Finance Commissioner serves as the licensing authority in Nagaland, while in Meghalaya, it is the State Government. In case, the Rajasthan Bill is introduced, state-appointed officials will serve as the licencing authority.

## VIRTUAL STOCK MARKET GAMES

Virtual stock market games are speculative games that let players exchange securities like stocks, futures, or money in a fictitious or simulated market setting. Virtual stock market games are online platforms that simulate real-time stock trading using fictitious money. These games use actual stock market data, which is the bone of contention for the National Stock Exchange (NSE). The NSE has issued several cease-and-desist notices to multiple fantasy stock trading apps to immediately stop using its data for virtual gaming platforms that are based on the real-time movement of shares. The NSE has advised that the use of NSE data should be done only for legitimate trading purposes by their clients and not for the purpose of gaming and virtual trading. These fantasy stock trading apps have been accused by the NSE of abusing its data to charge users for games, contests, and betting. NSE Data and Analytics Ltd, the data and info-vending arm of the NSE, has also demanded Rs 10 crore in damages for violating NSE’s intellectual property rights, the cost for loss of revenue and reputational loss.<sup>5</sup>

## RECENT ADVANCEMENTS PERTAINING TO REGULATION OF ONLINE GAMING IN INDIA

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 (“IT Rules 2023”) amends the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2021 (“IT Rules, 2021”). IT Rules 2023 makes stringent provisions relating to the conduct of the intermediaries connected with the online gaming arena and tries to rectify the complications connected with the same. The origin of IT Rules, 2021 can be traced back to section 87 of the Information Technology Act, 2000 wherein it could be understood that The IT Rules, 2021 is a combination of draft Intermediaries Rules, 2018 and the OTT Regulation and Code of Ethics for Digital Media and

<sup>3</sup>. *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, AIR 1956 SC 1153

<sup>4</sup>. *Avinash Mehrotra v. State of Rajasthan*, 2009 (6) SCC 398

<sup>5</sup>. <https://yourstory.com/2022/10/exclusive-nse-issues-cess-desist-notices-to-stock-gaming-apps>



that the amendment of IT Rules 2021 was imperative in order to deal with the problems associated with the sector. Better methods and channels are provided by IT rule 2023 for efficiently combating issues like fraud and addiction.

#### Key Amendments brought in by the IT Rules 2023:

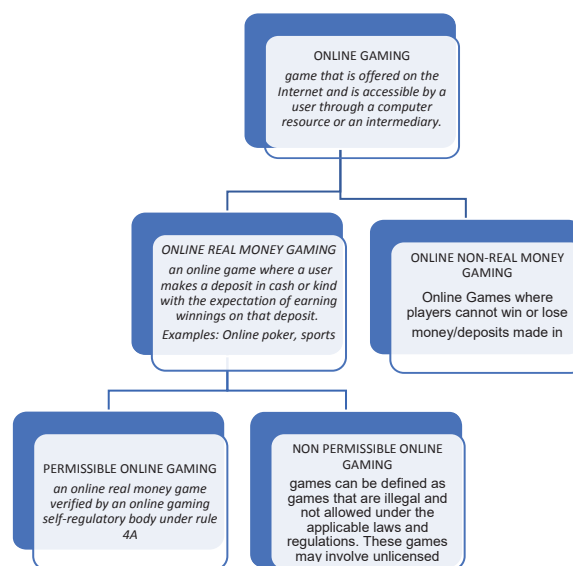
The following are the key amendments brought in by the IT Rules 2023 in order to efficiently regulate the online gaming industry in India:

#### 1. Introduction of new definition pertaining to online gaming:

The IT Rules 2023 has brought the definitions for “Online Game”, “Online Real Money Games”, “Permissible Online Games”, “Permissible Online Real Money Games” and “Online Gaming Intermediaries”. There are some key definitions which are as follows:

- Rule 2q(a) of the IT Rules, 2023 describes ‘online game’ as “A game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.” As this rule is concerned, ‘Internet’ has been described as “the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission.” Both online real money games and online games that are not real money games are covered by the definition of online game in Rule 2q(a). To make these regulations easier to grasp, this rule further defines a number of concepts, including internet, deposit, and winnings.
- Rule 2q(b) of the IT Rules, 2023 describes an ‘Online gaming intermediary’ as “any intermediary that enables the users of its computer resource to access one or more online games”. According to the rules, a person that offers users of its computer resources access to multiple online games is referred to as an intermediate in online gaming.
- Rule 2q(d) of the IT Rules, 2023 describes ‘Online real money games’ as “an online game where a user makes a deposit in cash or kind with the expectation of earning winnings on that deposit.” As this rule is concerned, ‘winnings’ has been described as “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” Since this definition does not cover games that involve wagering or betting, it has drawn criticism.
- Rule 2q(e) of the IT Rules, 2023 describes “Permissible online game” as “a permissible online real money game or any other online game that is not an online real money game.”
- Rule 2q(f) of the IT Rules, 2023 describes “Permissible online real money game” as “an online real money game verified by an online gaming self-regulatory body under rule 4A”.

Pursuant to the aforementioned Rule 2q(e) and Rule 2q(f), it can be observed that permissible online games consist of both online real money games and online games which are not real money games. The permissibility of a game is dependent on the approval by the SRB. The definitions provided under Rule 2 of the IT Rules 2023 remove the irregularities that were previously present in the IT Rules, 2021 by enhancing the understanding of the terms explained above.



#### 2. Establishment of Self-Regulatory Bodies:

The Self-Regulatory Bodies (“SRB”) must be established in accordance with Rule 4A of the IT Rules, 2023, and their main duty is to confirm whether online games are legal and to monitor whether any of them incorporate wagering and betting. According to the aforementioned Rule 4A, the Central Government may designate as many online gaming self-regulatory organisations as it deems necessary to certify that an online real money game is an acceptable online real money game in accordance with the Rules.

The following requirements have been outlined in the IT Rules 2023 for the SRB to declare an online real money game as a lawful online real money game:

- That the online real money game in question does not involve wagering or betting.
- That the game is in compliance with rules 3 and 4 of the IT rules, 2023.
- That the game follows all provisions of the law concerning the eligibility to enter into a contract.
- That both the intermediary and the game follow the guidelines laid down by the SRB.

The SRB must maintain at all times, a roll of all the games that are permissible and update them accordingly.

### Structure for the formation of SRB:

- SRBs must be set up in the form of a non-profit company, under section 8 of the Companies Act, 2013.
- The members of the board are the representatives of the gaming industry.
- The board of directors will consist of people who are highly reputable and possess the necessary knowledge required to discharge the duties of the board.
- The board should include people from different sectors such as education, psychology, child rights, communication technology etc.
- The Articles of Association (AoA) and Memorandum of Association (MoA) of the SRBs should contain detailed provisions regarding its working, and functioning, grievance redressal mechanisms and finances. Prior approval of the IT Ministry is required to amend the MoA and AoA. The SRBs must always maintain an updated roll of members.

### 3. Expansion of the scope of 'Intermediary':

Rule 3(1) of the IT Rules, 2021 has been amended to include the following phrase in its understanding:

*"Due diligence by an intermediary: An intermediary, including [social media intermediary, significant social media intermediary and online gaming intermediary....",*

With the aforementioned amendments, the IT Rules 2023 have broadened the definition of an intermediary to include intermediaries in social media, significant social media, and online gaming. This is a significant development in the gaming sector, considering the fact that the Central Government will now be able to exercise greater control on online gaming intermediaries. The Central Government can now direct the intermediaries to restrict, or completely block the public access to a particular online game if that game poses any threat to the interest, sovereignty, integrity, defence, and security of India. They can also issue directions to any of the intermediaries mentioned to provide requisite information required by the law enforcement agencies, and cyber security professionals for the purpose of investigation.

### 4. Due Diligence by an Intermediary:

The IT rules 2021 have been updated to include Rules 3 (1b) (ix) and (x) in order to better safeguard gamers and stop financial fraud. The provision has been modified as follows:

*"The intermediary shall inform its rules and regulations, privacy policy and user agreement to the user in English or any language specified in the Eighth Schedule to the Constitution in the language of his choice and shall make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that*

The Public Gambling Act of 1867 is the main piece of law that regulates gaming. This Act does not distinguish between online and off-premises gambling. The Public Gambling Act (PGA) does not define the terms "gambling" or "gaming," but according to the Supreme Court of India, "gambling" is the act of paying money in exchange for a chance to win a prize that is decided by accident or chance, or games where skill is not the primary determining factor.

*(ix) is in the nature of an online game that is not in conformity with any law for the time being in force in India, including any such law relating to gambling or betting or the age at which an individual is competent to enter into a contract.*

*(x) violates any law for the time being in force"*

Pursuant to the addition of the above rules, the gamers would have to be more vigilant about the rules and regulations of the online game. These regulations have made it necessary for online gaming intermediaries to make sure that they do not authorise or allow any third-party intermediary to host the same games through their own respective platforms or even through the platform of the intermediary in order to ensure that users do not become victims of any type of financial fraud. This way users will be able to identify a real money game from a fraudulent money game.

For instance, intermediaries are prohibited from hosting, publishing, or sharing any online game that can cause the user harm or that has not been verified as a permissible online game by a self-regulatory body (SRB). They must not advertise or promote on their platform any online game that is not a permissible online game, according to an SRB. For online games involving real money, intermediaries are responsible for applying a verification mark granted by an SRB. They are also required to publish and maintain on their website an updated list of all permissible real money games and to have in place a grievance redressal mechanism.

### 5. The Online Real Money Intermediaries are required to adhere to additional compliances:

Online gaming intermediaries involved in real money games are required to adhere to additional compliance measures as outlined in Rule 4 of the IT Rules, 2023. These requirements are as follows:

1. The intermediaries must have a physical address in India that can be used for contact purposes.
2. Rule 4-A stipulates that every real money online gaming intermediary must display a proper

registration mark. This mark signifies that they are authorized to offer online real money games and have been verified by an authorized SRB (Self-Regulatory Body).

3. The intermediaries must prominently display on their website the mechanism for addressing grievances and provide the contact details of the designated grievance officer.
4. The intermediaries must inform users about the terms and conditions, user agreement, and steps taken to safeguard deposited funds. They must also disclose their policy regarding money withdrawal, the Know Your Customer (KYC) process they follow, and the procedure for approving online real money games.
5. Before taking deposits from users, gaming intermediaries must adhere to RBI requirements for confirming the users' identity.
6. Any changes in the privacy policy, user agreement, or rules and regulations must be promptly communicated to users within 24 hours of the change.
7. Rule 4 prohibits intermediaries from financing users to play games on their platforms, and they must ensure that no third party provides such financing.
8. In regards to real-online non-monetary gaming, Rule 4B says that Rules 3 and 4 of the IT Rules 2021 will only be relevant three months after they expire.

It should be noted that the government reserves the right to modify real non-money games as it sees fit, particularly if these games pose a threat to the country's sovereignty, integrity, or have a harmful impact on users.

#### *New Obligations for Online Gaming Intermediaries (OGIs) under the 2023 Amendment to IT Rules 2021*

The 2023 Amendment has made changes to Rule 3(1) (f) of the IT Rules 2021. This rule previously required intermediaries to regularly inform their users, at least once a year, about their rules and regulations, privacy policy, user agreement, or any changes made to these policies. However, for online gaming intermediaries (OGIs) facilitating real money games, the new amendment mandates that users must be notified of any policy changes within 24 hours of implementation.

Additionally, OGIs hosting permissible online real money games are now obligated to include certain provisions in their Platform Policies. These provisions consist of guidelines regarding the withdrawal, refund, and protection of user deposits, as well as the procedures for determining and distributing winnings. The Platform Policies must also encompass the fees and charges that users are required to pay. Furthermore, OGIs must adhere to the know-your-customer (KYC) procedure specified in the Reserve Bank of India's KYC Directions 2016, which involves verifying the identity of users. Lastly, a Verification Framework pertaining to the online game must be established by the OGIs.

#### *Reduced Timeframe for OGIs to Provide Information to Government Agencies*

In accordance with Rule 3(1)(j) of the IT Rules 2021, intermediaries are obligated to furnish information to the appropriate government agency within 72 hours of receiving an order. However, an exception applies to online gaming intermediaries (OGIs) that enable users to access permissible online real-money games. For OGIs, the timeframe for providing information or assistance is reduced to 24 hours. The purpose of this requirement is to facilitate identity verification and support investigative, protective, or cyber security activities. It is essential for the government's order to be provided in writing, clearly stating the purpose for seeking information or assistance.

#### *Grievance Redressal Mechanism*

Under Rule 3(2) and 3A of IT Rules 2021, OGIs are required to establish a grievance redressal mechanism to address complaints from users. OGIs are required to appoint a grievance officer who must be a resident of India. The system for handling grievances is well-tiered, time-limited, and emphasises prompt resolution. Each registered self-regulatory body will be required to establish a mechanism for the resolution of complaints of users. The IT Ministry has proposed a self-regulatory mechanism, grievance redressal mechanism, and mandatory verification of players and physical Indian addresses for online gaming companies in India, in the draft online gaming rules. The amended rules require OGIs to publish and maintain on their website an updated list of all permissible real money games and to have in place a grievance redressal mechanism. Additionally, OGIs must provide systems for (i) complaint receipt and tracking the same, and (ii) user verification that is voluntary.

#### *Amendment to Grievance Redressal Mechanism*

The IT Rules, 2021 have introduced the ability of users to appeal to the Grievance Appellate Committee (GAC) if their grievance is not resolved within the timelines specified in the IT Rules. This is in addition to the user's current right to appeal a Grievance officer's ruling to the Grievance Appellate Committee. This will strengthen grievance redressal for users. The provisions relating to the grievance redressal mechanism of intermediaries also require the intermediary to prominently publish the contact information for the grievance officer and the procedure for filing a complaint regarding a violation of these rules or any issue relating to the intermediary's computer resource.

According to the new amendments, "prominently publish" refers to publishing in a way that is clearly visible on the home page of a website, the home screen of a mobile application, or both, as appropriate. It also refers to publishing on a web page or an app screen that is easily accessible from the home page or home screen.

#### *Critical Analysis Of the Amendments:*

After examining the recent amendments introduced by the IT Rules 2023, the following critical analyses can be made:



**Lack of Definition for ‘Wagering’ and ‘Betting’:** While the IT Rules 2023 are necessary and timely, they fail to provide clear definitions for wagering and betting. According to these rules, the responsibility lies with the SRB (Self-Regulatory Body) to determine if a game involves wagering. However, the rules do not specify what constitutes ‘wagering.’ This absence of clarification could lead to arbitrary and discretionary powers for the Central Government.

**Foreign Investment Concerns:** The issue of foreign investment and funds related to the uncertainties surrounding wagering and betting persists. Consequently, allowing foreign investments in this industry could pose significant risks for intermediaries. Foreign Exchange Regulation Rules prohibit foreign investment in games involving betting and wagering. This restriction could impede the growth of the online gaming industry in India.

**Ambiguity in the Definition of Online Gaming Intermediary:** The definition of an “online gaming intermediary” lacks clarity. It does not explicitly state whether platforms hosting games by third-party publishers or gaming studios are included. Based on the definition provided in the IT Rules 2023, two possible conclusions can be drawn:

1. An intermediary that enables users to access any type of game.
2. An intermediary that enables users to access games published by any third party.

It is essential to address these ambiguities to ensure a clear and comprehensive understanding of the rules and their implications for the online gaming industry.

### Other Relevant Provisions:

#### *Foreign investment prohibited in gambling and betting*

Foreign investment is prohibited in the realm of gambling and betting. Based on the preceding discussion, if a company’s real money gaming business is categorized as gambling, it would be considered illegal in most states, depending on their respective legislative frameworks. In addition, India also restricts foreign direct investment in activities such as ‘gambling and betting including casinos, etc.’ Foreign investment falls under the jurisdiction of the Central Government, not the states, as it is part of the ‘union list’ in the Constitution. Consequently, if a company’s gaming business qualifies as gambling, foreign direct investment is not allowed.

The Foreign Exchange Management Act, 1999 (FEMA) and its associated rules and regulations, particularly the Foreign Exchange Management (Current Account Transaction) Rules (Current Account Rules), govern various transactions, including remittances. According to these rules, remittances related to lottery winnings, the purchase of lottery tickets, banned or prescribed magazines, football pools, sweepstakes, income from racing/riding, and other hobbies are prohibited. Skill games have the potential to fall under the category of “hobby” in the aforementioned



provisions, as the term “hobby” has not been defined or specifically categorized.

Since there haven’t been any comprehensive directives from regulators or courts regarding online real money games, the Reserve Bank of India (RBI) has raised queries in certain cases regarding the legality of foreign investment received by companies involved in such activities. Although there is some ambiguity and risk associated with online real money gaming, the exchange control regulator has not taken any action thus far.

#### *Applicability of payment regulations to gaming companies*

The regulations regarding payment systems apply to gaming companies in various ways. Typically, gaming companies allow players to create digital accounts or wallets where they can deposit money for gaming purposes. Some companies allow users to withdraw the deposited money regardless of their game outcomes, while others permit withdrawals only for winnings.

Under the Payment and Settlement Systems Act, 2007 (PSSA) and its associated regulations, non-banking companies can issue and operate prepaid payment instruments (PPIs) subject to certain conditions outlined in the Master Directions on Prepaid Payment Instruments. PPIs are generally understood as instruments that facilitate the purchase of goods, services, financial services, and remittance facilities using the stored value.

However, the operation and issuance of a small PPI or a full KYC PPI require prior registration with the Reserve Bank of India (RBI) in accordance with Section 4 of the PSSA.

According to the PPI Master Directions, all PPI issuers (except CSP issuers) must comply with Know Your Customer (KYC) and anti-money laundering (AML) regulations specified in the KYC Master Directions issued by the RBI. These regulations include the following requirements for RBI-regulated entities:

Adoption of a board-approved KYC policy covering customer acceptance, risk management, customer identification procedures, and transaction monitoring.

1. Reporting suspicious transactions to the Financial Intelligence Unit-India (FIU-IND).
2. Appointment of designated officers to ensure compliance with KYC and AML requirements, with their details provided to the FIU-IND.

3. Maintenance of transaction logs using PPIs for at least 10 years, accessible for inspection by the RBI.
4. Completion of customer identification procedures before establishing a relationship with any customer.
5. Capturing KYC information for sharing with the Central KYC Records Registry.

It is important to note that Customer Service Providers (CSPs), which are not regulated by the RBI, are not obligated to comply with KYC and AML requirements. These obligations only apply to entities regulated by the RBI, such as banks, non-banking financial companies, and payment systems. However, online gaming intermediaries (OGIs) that typically operate as CSPs are now required to verify the identity of each user in accordance with the KYC Master Directions, as mandated by amendments introduced in the Information Technology (Intermediary Guidelines and Digital Media Ethics Code), 2021 (Intermediary Guidelines). This verification is necessary before accepting any deposits, whether in cash or kind, from users.

#### *Prevention of Money Laundering in Gaming*

The Prevention of Money Laundering Act, 2002 (PMLA) is the legislation that regulates the prevention of money laundering activities in India. It imposes certain obligations on “reporting entities” to maintain transaction records and report them. A reporting entity includes individuals or entities involved in cash or in-kind games of chance, including activities associated with casinos. Currently, operators offering games of skill are not classified as reporting entities, and therefore, the obligations under the PMLA do not apply to them. However, there are reports suggesting that the Central Government intends to bring online skill gaming operators within the scope of the PMLA as reporting entities.

#### *Income Tax*

The primary legislation governing income taxation in India is the Income Tax Act, 1961 (ITA) along with its accompanying rules, notifications, and circulars. According to the ITA, non-residents, including foreign companies, are subject to taxation in India on income that is accrued, arises, received, or deemed to accrue, arise, or be received in India. Residents are liable to be taxed on their global income, which includes income earned both within and outside India.

When a resident earns income through winnings from games, betting, gambling, etc., that income is subject to taxation at a rate of 30%, along with applicable surcharges and cess. The ITA mandates that any person responsible for paying such income exceeding INR 10,000 to an individual, foreign company, or any other defined entity must withhold the applicable tax at a rate of 30%. In cases where the winnings are in kind or a combination of cash and kind, and the cash component is insufficient to fulfil the withholding obligation for the entire winnings, the payor is required to ensure that the tax at the specified rate is paid before releasing the entire winnings to the payee.

It's important to note that the tax prescribed under the ITA does not apply if the income is already subject to the Equalisation Levy, as discussed in the following section.

#### *GST*

Indirect taxes in India are imposed through the Goods and Services Tax (GST), which is applicable to all activities falling within the definition of “supply.” GST is levied on the supply of goods or services. Activities related to lottery, betting, or gambling are considered actionable claims under Indian law. Actionable claims are classified as goods and therefore transactions related to betting or gambling are treated as the “supply of goods” subject to a 28% GST on the entire bet amount. However, actionable claims related to games of skill are exempt from GST. Services such as admission to entertainment events or access to casinos are taxable at a rate of 28%.

For online platforms providing services through the internet, particularly those that are automated and heavily reliant on information technology, they are categorized as “online information and database access or retrieval services” (OIDAR), which includes online gaming. The tax rate for OIDAR services is 28% for games of chance (betting/gambling) and 18% for games of skill. The tax is applied to the service fee or commission charged by the gaming operators. The precise impact of the taxation structure will depend on the specific business or gaming model.

#### *Enforceability of Wagering Contracts*

In India, the enforceability of gambling debts is addressed by the Indian Contracts Act, 1872, which governs contractual matters in India. According to Section 30 of this Act, agreements categorized as “wagers” are considered void, and it explicitly states that no legal action can be taken to recover anything claimed to be won through a wager. As a result, in India, gambling debts, in general, cannot be enforced.

## CONCLUSION

The gaming laws in India present a complex landscape that varies across different states. While some states have embraced a more permissive approach towards real money online gaming, others have imposed strict prohibitions on betting and wagering activities, including any acts intended to facilitate them. The absence of comprehensive legislation specifically addressing the legality of online gambling has created a regulatory grey area. Nonetheless, it is crucial to acknowledge that the gaming sector in India is experiencing rapid growth, necessitating the establishment of a robust legal framework to propel its expansion. Striking a balance between regulation and innovation is essential in governing online gaming, and the implementation of a detailed and comprehensive licensing policy is imperative to combat unlawful activities effectively. Importantly, it should be noted that games of chance played for monetary or material gain, with an expectation of winning, are explicitly prohibited under Indian law.

