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# CRITICAL ANALYSIS OF NEW ONLINE GAMING RULES OF INDIA

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## ABSTRACT

Well drafted online gaming rules are essential for the gaming industry and for the safety of the consumers since it impacts consumers of very low age to medium age. Recently introduced new online gaming rules will be critically analyzed with its challenges. Whether their introduction is in violation of separation of powers? The role of SRB will be discussed along with their justification of adopting RBI level KYC. What will be the factors on which the success of new rules will depend? This paper will compare side by side new rules with laws that were there previously and will also talk about why there was a need for changes in the previous law. Also recently with the induction of 28% GST in online games, it becomes more important to analyze new gaming rules and see whether government has gone too far with the online gaming industry. All questions arising from seeing the new rules in the mind of game developers or OGI will be answered.

**Keywords:** Self-Regulatory bodies, KYC, separation of powers, consumers, gaming industry, Online gaming intermediaries.

## **I. Introduction**

In recent years, online gaming has gained significant popularity as a form of entertainment in India.

The proliferation of mobile and computer gaming, coupled with the growing availability of internet connectivity, has led to a surge in the number of individuals who engage in online gaming as a leisure activity, including the older generation.

The International Centre for Sports Security ("ICSS") research, which states that the Indian betting market may be valued over US \$130 billion is evidence of the significant growth of the country's betting industry. The expansion of this market prompts the government to pass new legislation.

The rise in popularity of online gaming has resulted in various negative consequences that have impacted individuals, communities, and society as a whole. The following are examples of how online gaming has been improperly utilized:

1. The phenomenon of addiction.
2. The phenomenon of cyberbullying.
3. The topic of concern is the occurrence of fraudulent activities and scams.
4. Content that is deemed inappropriate.
5. Activities related to gambling and betting.
6. Risks to one's health.
7. The phenomenon of social isolation.
8. The adverse effects on one's academic or professional performance.

Acknowledging the possibility of online gaming being misused holds significant importance. Hence, the Indian government has recently proposed regulatory guidelines for internet-based gaming.

The Ministry of Electronics and Information has recently released updated regulations pertaining to online gaming.

The regulations set forth by the Ministry of Electronics and Information Technology (MeitY) are applicable to all virtual gaming platforms, encompassing mobile, console, and desktop games. The government intends to establish several self-regulatory organisations (SROs) tasked with determining the permissibility of online games, with the goal of fostering a safer and more responsible online gaming environment for players.

The newly implemented regulations entail a crucial stipulation mandating the implementation of a know-your-customer (KYC) protocol by the online gaming intermediary to facilitate the registration of the user's account. The purpose of this measure is to restrict minors from accessing games that are deemed unsuitable for their age bracket, and to counteract instances of fraudulent activities and identity theft. It is mandated that gaming platforms implement a verification system that has been sanctioned by the government to authenticate the identities of their users. The platforms will be held accountable for any transgressions of this regulation.

There can be a potential impact on innovation and growth, also it can provide much needed clarity and regulation to the sector although the definition mentioned in the new rules are still ambiguous and not clear.

Since the rules have been introduced recently it has become important to critically analyze the rules and see what shortcomings it has, what issues it fails to address and how these rules are going to affect the gaming industry becomes important.

This paper argues that various shortcomings are there in the new online gaming rules, but it is hopeful that new amendments will work on the shortcomings and rules will be improved.

This paper first discusses the validity of new online gaming rules then will discuss whether they have done justice to other non-real money online games and then will take this paper to the role of SRB's, and the power given to them. Then will discuss about KYC norm and whether these rules are a good step in enhancing ease of doing business in India.

### **Research Questions**

- Is the introduction of new rules against separation of power?

- Are KYC norms too rigorous for a game?
- What will be the impact on game developers and OGI?
- Will the new rules enhance the ease of doing business?

## II. IS THE INTRODUCTION OF NEW RULES AGAINST SOP

Since gambling is a state matter<sup>1</sup>, it is disputed whether the centre should pass laws that have an impact on gambling. Because these laws are not being made in the parliament, it violates article 249<sup>2</sup> of the Indian constitution, which states that the Rajya Sabha must pass a resolution by a 2/3 vote of the members present and voting stating that it is necessary for the parliament to make laws on any matter listed in the state list in the interest of the country.

So special reasons are required for the Centre to make laws on state subjects. Also, these new rules are not being made in parliament, they are just being announced as a regulation, so without parliamentary deliberation the new rules are misguided, undemocratic and unconstitutional.

After the implementation of the new gaming rules what will happen to the state wise anti-gambling law, who will prevail over each other will remain in contention, since gambling is a state subject.

Additionally, a bill<sup>3</sup> for the regulation of virtual online sports in Rajasthan was just recently introduced and is now open to input from interested parties. This law attempts to regulate different fantasy sports formats and virtual online sports (VOS). Even though the Centre is working on its own legislation in tandem with a state bill that is collecting input from stakeholders, the casino industry is now facing a regulatory muddle.

## III. DO THE RULES HAVE GIVEN JUSTICE TO OTHER NON-REAL MONEY ONLINE GAMES

### The Information Technology (Intermediary Guidelines and Digital Media Ethics Code)

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<sup>1</sup> Smriti Tripathi, India: Regulation of Online Gaming Through the Intermediary Guidelines, mondaq,2023, <https://www.mondaq.com/india/gaming/1326314/regulation-of-online-gaming-through-the-intermediary-guidelines>.

<sup>2</sup> INDIA CONST. art. 1, cl. 1.

<sup>3</sup>Rajasthan Virtual Online Sports (Regulation) Bill, 2022, available at: <https://finance.rajasthan.gov.in/PDFDOCS/REVENUE/10746.pdf>.

**Rules, 2021, part 1 s-2 clause q sub clause d<sup>4</sup>** says ‘Online games where players can deposit money or other assets in the hopes of winning prizes are referred to as "real money games online." Justification. —Any prize offered or intended to be granted to a player of an online game based on that player's performance and in accordance with the rules of that online game is referred to in this section as "winnings”.

So online non real money games which give tokens or coupons in the form of money will also come under this rule since ‘kind’ means anything which symbolizes a win not necessarily money. So, these types of games will also get subjected to new rules even though they are not dealing in real money, so it is a bit unfair to them.

Hiking tax rates may impact the overall wellbeing of the industry’s wellbeing and can affect the industry’s contribution to the state’s economy. There is no clarity whether the hike is only on real money games or casual gamers as well.

Hiking of the tax also affects the virtual learning games as their motive is only an education purpose.

#### **IV. AMBIGUITY IN VARIOUS DEFINITIONS**

##### **Can a game still be called an online game if it is played on an intermediary?**

Since **The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, part 1 s-2 clause q sub clause b<sup>5</sup>** says ‘online gaming intermediary’ means any intermediary that enables the users of its computer resource to access one or more online games.

Here, it is not clear who the intermediaries are since the site or app on which a user plays a game is an intermediary or the platform from where the user downloads or accesses the game. Nowadays social media also enables users to play online games, so under this social media platform will also be called as intermediary.

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<sup>4</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021,p.1, §2, cl. Q , s.cl. d.

<sup>5</sup> The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021,p.1, §2, cl. Q , s.cl. b.

So here the definition provided by the new rules is very ambiguous and needs clarity.

### **Game of Skill vs Game of Chance**

Indian law permits games of skill<sup>6</sup> but forbids games of chance. However, neither term has a set definition, although there are several decisions from the Supreme Court and several high courts that provide some clarification. The issue is not clarified by the Rules, and SRBs must use their subjective judgement to determine if an online real money game contains a gambling element, or element of chance.

There are several unresolved issues in the bill, including as the lack of a distinction between skill-based and chance-based gambling, as well as the additional bureaucracy caused by the lack of transparent processes for grievance procedures, data protection, and licensing applications. The bill's ambiguity merely serves to confuse state and federal rules, further complicating the regulatory system, and it makes no mention of how it will affect the current laws and regulations on the subject.

### **Prize Competition Act, 1955<sup>7</sup>**

In the case of *R.M.D. Chamarbaugwala & Anr. v. Union of India & Anr.* of 1957, AIR 628 1957 SCR 930, the Supreme Court ruled that the PCA would only apply to prize competitions that were of a gambling nature. This act was created to govern different forms of competitions. However, there is an ambiguity in the scope of the PCA, read with the Gaming Enactments, and in games for which a licence is necessary under the PCA due to the types of games covered by the PCA (i.e., crossword prize competitions, etc.).

## **V. KYC NORMS**

Before starting a user account, the Online gaming intermediaries were obligated by the new rules to identify and confirm the user's identity. When users register for an account with a gaming platform, the rules stipulate that the platform must identify the user and confirm his identification in accordance with the standards established by the Reserve Bank of India (RBI).

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<sup>6</sup> Farhat Basir Khan, Skill, not chance, will be needed to differentiate game of skill from game of chance, *The Times Of India*, 2023, <https://timesofindia.indiatimes.com/blogs/voices/skill-not-chance-will-be-needed-to-differentiate-game-of-skill-from-game-of-chance/>.

<sup>7</sup> THE PRIZE COMPETITIONS ACT, 1955, No. 42, Acts of Parliament, 1949 (India).

The given KYC norms are too rigorous and can be said to be RBI like norms. They have done one size fits all approach by making similar KYC norms for real money online games and non-real money online games. The KYC, which is prescribed looks like banks, NBFC's, financial institution, however online gaming intermediary doesn't operate in that manner, they simply provide wallet functionality. Since online games involve both real money online games and non-real money online games but no distinction has been made to limit KYC and full KYC. The KYC norms provided are very stringent and can make it difficult for gaming companies to gain customers and can make gaming companies lose their customers. It won't be ideal when you sign up because you may play the game for free to see whether you like it before you invest any money in it. Why do you need KYC information when someone is simply trying it out?

## **VI. IMPACT ON GAME DEVELOPERS AND OGI**

Under the new rules an OGI<sup>8</sup> will be something which can enable users to play online games because of this social media and Internet service provider will also be treated as an intermediary since they enable users to play online games.

New rules are nothing less of a challenge for game developers and OGI since the rules have been stringent and can impact their industry in a negative manner. With the introduction of 28% GST in online games, gaming companies' profit margin is going to hamper and no. of users can decrease and will impact the industry. Countries such as China and US are far ahead of us in gaming and such high tax rate will hamper our growth in gaming sector. The ease of business is not going to improve with these new rules since lots of obligation are there for the developers to fulfill which in turn can restrict them to try new things and make profit out of it, so we can say that these rules can also impact the profit of the gaming companies.

## **VII. SUGGESTIONS**

To protect kids and students while ensuring the possibility of job creation, revenue generation, and international collaborations, a strong and intelligent regulatory framework on online gaming should include regulations imposing time as well as monetary constraints on participants taking part in gaming. Legislators must completely alter their strategy in light of

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<sup>8</sup> Breaking down MeITY's new online gaming rules: How it will impact the Indian gaming industry, The Indian Express, 2023, <https://indianexpress.com/article/technology/gaming/meity-new-online-gaming-rules-explained-8544334/>.

the international nature of online gaming because they have been unable to outlaw it. Regulating these activities would be preferable since it would allow them to produce income and employment possibilities. After all, doing something is always preferable to doing nothing, and these activities are unprofitable when carried out illegally. Members of SRB should be adopted independently without partiality so that clearance will be fair and just, also how SRB introduce and enforce their framework will have major impact on the success of these new online gaming rules. Also, the government should make sure that SRB's don't use their power abruptly. KYC shouldn't be made compulsory for everyone, only users who are putting money in the game should be subject to KYC, since users who are just playing games casually will not want to give their personal details to the game.

## **VIII. CONCLUSION**

The new online gaming rules tries to bring clarity to the gaming rules, but a lot must be done to remove irregularities in definition and other things. Government has need to think from the game developers and user point of view to make improvements in the new rules. The 28% GST in the gaming sector can destroy the industry to a very large scale, hence limiting investments. The government need to think from the global point of view, countries like US and China are far ahead of us and to make our presence in world e-sports we need to seriously consider our rules and regulation to Favour the growth of the industry. A bill should be pass in parliament regarding online gaming and proper debates and discussions should happen before implementing these rules. All the sides, including the stakeholders and gaming companies, should be heard and proper reasoning and clarity should be given to every aspect of the rules and must try to make rules which will have a positive result in the growth of the industry. The KYC norms are bane for the industry and shouldn't be there for the non-real money online games and if they want to do they should do KYC which is more relaxed in nature.

Seeing the new rules, it is hopeful that government should reconsider these rules and new amendment should be passed improving these rules and making this industry grow and shouldn't be looked as if gaming involves only gambling which is only a part of it and shouldn't be mixed with proper gaming which involves skill.



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