
PROHIBITION AND REGULATION IN THE GOVERNANCE OF ONLINE MONEY GAMES IN INDIA

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ABSTRACT

When monetary risk is involved, digital play is legally transformative. The primary dilemma within Indian law is whether online money games should be grouped and classified as a screen for addiction, financial disaster, fraud and cross-border law enforcement dilemma. Whether games, the primary component of which is skill, should be classified as legal but restricted. The Article discerns judicial pathway frameworks in the constitutional law, and the resulting judicial activism, legislative action, and regulatory theory to analyze the practical consequences of the competing frameworks. It elaborates on the approach of discerning the judicial pathway/guidelines when there is a risk of skill by offering the judicial activism to a point and says the activity which is in a digital format is not truly skill based/pure digital wagering as a means to evade the law. At the same time, the Article believes the classical bailiwick is in the positivistic approach within a digital economy that is persuasive in design and monetizes offshore legally. The central hypothesis is that both the absolute banning and soft self-regulating approach should be rejected from India's position. There is a constitutional mandate to prohibit dominant money games and digital wagers and to allow games of skill subject to controls, regulations, and be to be audited. The extended hypothesis is that Indian gaming law should adopt a prudential approach to regulating the digital sphere instead of censoring by categories.

Keywords: online money games; games of skill; gambling regulation; federalism; digital governance

Introduction

In India, online money gaming intersects with constitutional doctrine, public welfare, digital markets, and federalism. The debate is beyond betting and gambling. It includes platform structure, user authentication, tax design, privacy, and how regulatory authority is divided among Union and State governments.¹

Online play has revealed the limitations of a framework formed by colonial gaming laws and physical games. The 2023 revisions to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, advanced concerns of controlled legality.² The Promotion and Regulation of Online Gaming Act, 2025 has adopted an even stricter approach, banning remote monetary games.³ The current discussion is, thus, not whether the law must intervene, but in what form the intervention must be.

This article claims the problem is not morality versus commerce but whether the State can consolidate all of the online money play into gambling despite the numerous cases that have been decided that draw the line between skill and chance. There is no loss of legal doctrine and no interpretive prediction is warranted. There is clear enforcement, no erroneous control of the market with taxation. Whether a game is a money game depends on the jurisdiction, the type of game (in this instance, online money games).⁴

Doctrinal Foundations of the Indian Debate

Any comprehensive analysis of online money games in India must start from the relevant legal doctrine, not the technology. Well before the rise of digital platforms, the Indian judiciary developed a legal framework for differentiating between gambling and lawful competition. These legal doctrines frame the field, despite attempts made by the most current legal frameworks to address platform centric risks and digitally amplified harms.⁵

The Skill-Chance Distinction

The core rulings of the Supreme Court have deemed gambling and chance-based activities to

¹ M.P. Jain, *Indian Constitutional Law* 1170 (LexisNexis, Gurgaon, 8th edn., 2022).

² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, rr. 4A to 4C.

³ The Promotion and Regulation of Online Gaming Act, 2025 (Act 32 of 2025), ss. 5, 6.

⁴ Law Commission of India, "Legal Framework: Gambling and Sports Betting Including in Cricket in India" 79 (July, 2018).

⁵ Durga Das Basu, *Introduction to the Constitution of India* 126 (LexisNexis, Gurgaon, 26th edn., 2022).

lie outside the bounds of legally permissible commerce. In the case of *State of Bombay v. R. M. D. Chamarbaugwala*⁶ and similar rulings, the Court deemed chance-based competitions to be gambling and outside the usual safeguards afforded to trade or business. The significance of this series of decisions is the manner in which the Court declined to treat all prize-linked activities as a monolithic whole and instead focused and analyzed the nature of the activity.

That methodology was further developed in the case of *State of Andhra Pradesh v. K. Satyanarayana*⁷, in which the Supreme Court concluded that rummy is a game that is not purely based on chance because it involves a degree of skill in memorizing the cards, calculating odds, and deciding which cards to discard. This reasoning will continue to be relevant to modern legal controversies because it will be the skill that will dominate the outcome of the game, and not the presence of chance in that game, that will present the legal issue. The presence of a predominance doctrine is, therefore, a fundamental characteristic of Indian gaming law.

In *Dr. K. R. Lakshmanan v. State of Tamil Nadu*⁸, the Supreme Court provided a clear benchmark for what constitutes a game of skill. The case explained that a game of skill requires a player to possess a higher degree of legal aptitude to prevail. While the presence of legal skill is necessary, the role of chance, even to a limited degree, cannot be discounted. Knowledge of the law, analytical skills, and legal application may be useful to some degree. Great skill may, therefore be perceived as a certain degree of chance. The presence of chance may blur the skill-liability perception. Though something may be skill-dominant, fundamentally, and analytically, participating in a game as designed will determine both the mechanics of participation and the result.

Stakes and the Legal Character of Play

There is also the more difficult and complicated question of whether the addition of a legal stake would change a skill-dominant game. States have a more difficult time justifying legal skill game activities as legal wagering. The elevated harm associated with the added legal stake to a game of skill is a legally winnable case of harm. However, the greater harm associated with a legally skill-dominant game played for a stake does not mean that the game is legally wagering. The skill determination would become virtually irrelevant to the proposition of

⁶ AIR 1957 SC 699.

⁷ AIR 1968 SC 825.

⁸ (1996) 2 SCC 226.

whether a legally skill game played for an added legal stake is also a skill game.⁹

*Head Digital Works Private Limited v. State of Kerala*¹⁰ illustrates this point. The Kerala High Court rejected the argument that online rummy, when played for stakes, does not remain a game of skill. The same reasoning applies to *Junglee Games India Private Limited v. State of Tamil Nadu*¹¹, where the Madras High Court observed that digital play should not be considered fundamentally different from physical play just because the game occurs through digital means. The doctrinal element is clear. Digitization, even at a stronger degree, would justify stronger forms of regulation, but skill and chance cannot be interchanged.

Constitutional Position and the Burden of Justification

There is no safe haven in Indian law for game of chance to be played as a business, yet operations of skill-based games and related businesses cannot be treated as business operations devoid of protection of Article 19(1)(g). The onus is thus on the state to justify such an imposition, and not on the provider to justify its absence.¹²

When a law identifies some games as primarily skill based, a ban on gambling becomes much different than a regulation on a risky, yet different, business venture. This becomes especially important because a constitutional review examines the relationship between the means to the ends. Although in some cases it may be easier to impose a blanket ban, it does not automatically justify itself as being proportionate.¹³

Federal Design and Judicial Development

The long-standing federal rifts in India have been exacerbated by online money games. While betting and gambling are in the State List, digital gambling involves international activities and laws relating to intermediaries, taxation, and data. This creates a fragmented and interlinked space where the Judiciary has to work out constitutional limits. Courts have to disaggregate

⁹ *Supra* note 6 at 83.

¹⁰ 2021 SCC OnLine Ker 3592.

¹¹ 2021 SCC OnLine Mad 2762.

¹² H.M. Seervai, *Constitutional Law of India* 115 (Universal Law Publishing, New Delhi, 4th edn., 2015).

¹³ Mahendra Pal Singh, *V.N. Shukla's Constitution of India* 490 (Eastern Book Company, Lucknow, 13th edn., 2020).

boundaries.¹⁴

Legislative Competence and a Fragmented Regulatory Field

List II, Entry 34, gives the States the exclusive domain to legislate on betting and gambling and Entry 62, which historically affirmed the States' control over their corporations and imposed taxes, has also been the subject of legislation. While most have implemented blanket bans on online gaming that involves betting, some have opted to issue licenses and even control particular games. This results in the same behavior being a constitutionally protected skill in one State and a prohibited betting activity in another.¹⁵

Telangana demonstrates the definitiveness of the prohibitive instinct. Between the 2017 Cyber and other Gaming Amendments including the amendment to the Telangana Gaming Act, online gambling, and wagering, Telangana appears to have deemed the erstwhile skill contest betting/separately defined gambling as gambling.¹⁶ Similarly, the 2020 amendment of the Andhra Pradesh Gaming Act, online games, and broad prohibitive responses to gambling and monetary gaming, resulted in the reinterpretation of the state legislature's arrests of the normative police powers to the digital domain and the expanded reliance on prohibition, rather than the introduction of a licensing regime.¹⁷ In contrast to the foregoing, the Indian legal order demonstrates that inherently, there need not be a normative legal vacuum and legally prohibitive measures. In terms of a regulatory framework, it has always been possible to be legally regulated vis-a-vis legally prohibitive measures.

While traditional states adopted an animatedly restrictive regime, other state legislatures provided, and in particular, the state of Nagaland more recently. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, and especially the state of Nagaland, have been more liberal than the state of Telangana.¹⁸

Platform Cases and the Digital Extension of Skill Doctrine

The initial notable instance of internet-based legal disputes involved fantasy sports. Regarding

¹⁴ Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* 185 (Oxford University Press, New Delhi, 1st edn., 1999).

¹⁵ The Constitution of India, arts. 246, 254.

¹⁶ The Telangana Gaming (Amendment) Act, 2017 (Act 29 of 2017), s. 2.

¹⁷ The Andhra Pradesh Gaming (Amendment) Act, 2020 (Act 43 of 2020), s. 2.

¹⁸ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 (Nagaland Act 3 of 2016), ss. 3, 4.

the case of *Varun Gumber v. Union Territory of Chandigarh*¹⁹, the Punjab and Haryana High Court noted that in the Dream11 model, game outcome could not be attributed to mere luck and was rather contingent on a selection strategy, player knowledge, and evaluative judgment. This case was important, given that it codified the skill doctrine on a new platform and provided the opportunity for subsequent courts to use this framework for digital analytics on the new platform.

The Bombay High Court in the case of *Gurdeep Singh Sachar v. Union of India*²⁰ took a similar path. While the Supreme Court later intervened in other related proceedings, this judgment supported the argument that the various fantasy sports formats could be legally evaluated via the same pre-eminence test as the other gaming case precedents. Collectively, these rulings broadened the digital application of the skill doctrine and invited the industry to postulate that online real money systems could be constitutionally protected unless the State could substantiate bona fide gambling attributes.

The following phase became progressively hostile. *Junglee Games India Private Limited v. State of Tamil Nadu*²¹ caused the Madras High Court to overturn the 2021 Tamil Nadu changes, and the Madras High Court also decided that Games of Skill cannot be categorized as Games of Chance. These same results happened with *All India Gaming Federation v. State of Karnataka*²². Criminalizing the amendments that ban all internet Gaming for Profit, the Karnataka High Court ruled against the changes. These decisions confirmed the modern state of the ability to control, with proper regulation, the potential of gambling and fraud based (or “predatory”) gaming and to respond to the state’s concerns regarding gaming addiction, etc.

Tamil Nadu, as a result, produced a more sophisticated legislative approach. *All India Gaming Federation v. State of Tamil Nadu*²³ case. The Madras High Court ruled that the 2022 Tamil Nadu Gaming Act was generally allowed, but also ruled that the Tamil Nadu 2022 Act was also not constitutional. The harm approach to the State’s obligation to regulate (and legislate) the control of internet Gaming Act is reinforced by the state’s ability to respond to the harms of the Regulation of Gaming Act, as the judgment stated. Hence the Tamil Nadu case reopens

¹⁹ 2017 SCC OnLine P&H 5372.

²⁰ 2019 SCC OnLine Bom 13059.

²¹ *Supra* note 13.

²² 2022 SCC OnLine Kar 435.

²³ 2023 SCC OnLine Mad 6973.

the state's ability to regulate as a response to the harms of the Gaming Act, and also to restrict blanket classification.

The *Play Games 24x7 Private Limited v. State of Tamil Nadu*²⁴ case from June 2025 represents the most recent recalibration. The Madras High Court quashed challenges against various provisions of the Tamil Nadu Online Gaming Authority (Real Money Games) Regulations, 2025. This is significant because it shows courts may be more willing to accept specific provisions dealing with verification, and in some cases, enforcement of different types of age related restrictions, warnings, verifications, and time limits, rather than generalized prohibitions. In other words, the court has focused more on the specific rather than the abstract(s) of the skill doctrine judicial review.

Prohibition as a Governance Model

The case for prohibition is based on the assumption that social concern is positively correlated with the prevalence of online gambling games. However, when considering the omnipresence of the digital and ever-present pervasive design, anonymous payment systems, and cross-border gambling risks, financial and psychological perils are more pronounced than ever. This would mean that the classical distinctions between skill versus chance would be arbitrary and possibly even too numerous when dealing with the organised ecosystem around resource intensive monetization, compulsive gambling, and (i) enforcement.²⁵

Public Harm and the Legislative Turn

Digital gaming products are likely to leverage cognitive biases, create repeated round deposits through reward loops, and give players a false sense of control over random game outcomes. Because of these facts, public concern stretches beyond just doctrinal gambling. It also extends to product design tech and the overall social harm of monetized games, which are always available. In the digital economy, design choices can exacerbate a player's vulnerability, even if the game isn't based on chance, which is why the case for prohibition is based on behavioral and public health concerns rather than legal classification alone.²⁶

²⁴ W.P. Nos. 6784, 6794, 6799, 6970, 8832 and 13158 of 2025 (Madras High Court, June 3, 2025).

²⁵ Sally M. Gainsbury, "Online Gambling Addiction: The Relationship Between Internet Gambling and Disordered Gambling", 2 *Current Addiction Reports* 185 (2015).

²⁶ Mark D. Griffiths, Andrew Barnes, "Internet Gambling: An Online Empirical Study Among Student Gamblers", 6 *International Journal of Mental Health and Addiction* 194 (2008).

The Promotion and Regulation of Online Gaming Act, 2025, is an expression of national legislative choice on such concerns.²⁷ In the signpost and operative framing, this Act draws a regulatory line between what games may be advocated and regulated, such as e-sports, social games, and games for education, and what games are to be strictly prohibited - online monetary games. Online monetary games fall as a separate regulatory concern, the risks of which justify a prohibition notwithstanding the previous arguments about skill. This is, without a doubt, the most contemporary effort to decouple Indian legislation from the established judicial path.

The Central Government in India set up The Online Gaming Authority of India in May of 2026. They also instituted the Promotion and Regulation of Online Gaming Rules, 2026 with the same May 2026 start date.²⁸ The Rules include processes for determination, eligibility registration, and the withdrawal of approvals of games that are altered to fall into this prohibited category.²⁹ Therefore, prohibition has moved out of the rhetorical stage into the procedural stage.

Enforcement Logic and Its Practical Limits

The restrictions provide an express justification. The simpler the legal framework, the more straightforward it is to restrict advertising, disable operators, and block legal routes for payments. The government reports that from 2022 to June 2025, there were 1,524 restrictions on online betting, gambling, and gaming.³⁰ The government's new law, bill, the Bharatiya Nyaya Sanhita, 2023, places online gaming, gambling, and betting behind court barriers and makes digital betting systems a problem of enforcement.³¹

Strength of policy and enforcement are not synonymous. Laws that are too easy to enforce will inevitably collapse under the too big to fail businesses of mirror sites, offshore operators, payment layering, and user migration to informal options. The loss of fair and legally bounded businesses will not erase the consumer needs. Demand will simply migrate to businesses of murky interactions that make fulfilling the duties of supervision and consumer protection, tax

²⁷ *Supra* note 5.

²⁸ *Id.*, s. 8.

²⁹ The Promotion and Regulation of Online Gaming Rules, 2026, rr. 8 to 11.

³⁰ Promotion and Regulation of Online Gaming Bill, 2025, *available at*: <https://www.pib.gov.in/PressNoteDetails.aspx?ModuleId=3&NoteId=155075> (last visited on April 29, 2026).

³¹ The Bharatiya Nyaya Sanhita, 2023 (Act 45 of 2023), s. 112.

collection, and dispute resolution far more strenuous.³²

The trade-offs of this policy are illustrated in Figure 1. The official industry reporting forecasted an untapped growth of the Indian online gaming market from INR 16,428 crore in FY 2023 to INR 33,243 crore in FY 2028.³³ The real money gaming segment would also widen to 75% as the rest of the gaming segment and electronic sport gaming would fill the void of the loss of real money gaming (and growth) by an equivalent 25%. The informal economy (gambling) enriched communities are far more easier to combat then the broad spectrum of businesses that deep and disparate marketplaces create.

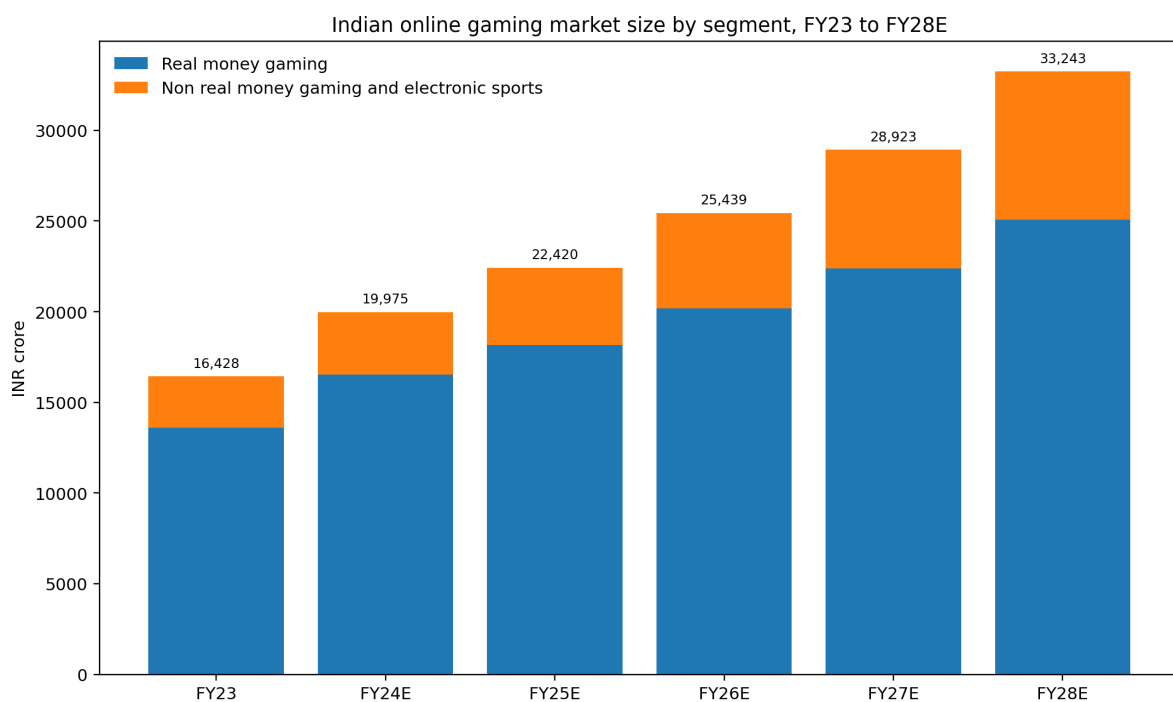


Figure 1. Market size by segment, Financial Year 2023 to Financial Year 2028 estimate.

Source: EY, New frontiers report.

Even though non-real money gaming and electronic sports are expected to grow faster, real money gaming will continue to dominate the larger revenue segment. Thus, the governance challenge is of a dynamic integrated digital market, not a fixed sector.³⁴

³² *Supra* note 6 at 198.

³³ "New Frontiers: Navigating the Evolving Landscape for Online Gaming in India" 8 (2024).

³⁴ NITI Aayog, "Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India" 6 (December, 2020).

Regulation as a Governance Model

From a different starting point, the regulatory model, in a sense, accepts that real money gaming could potentially constitute a danger. However, it could still be growth more than harmful. It could be structured along permitted and prohibited forms. With real money gaming, the focus should still be on legal gaming; a harmful gaming practice. Therefore, it is not a deregulatory law, but a permitted legal practice with a supervision focus.³⁵

Licensing, Verification, and Platform Accountability

The Union's 2023 amendments to the IT Rules operated under similar logic. Rather than stating all real money gaming is illegal, the guidelines included a provision to, amongst other things, place verification of legal online real money gaming in the hands of recognized self-regulatory organizations, in addition to, intermediary due diligence. The framework could be improved, but it demonstrated that the law in India could see legality, in a public law sense, based more on assessment followed by compliance, as opposed to a total ban. The self-regulatory framework of a reliable regulatory ecosystem would incorporate legal self-regulation, self-certification, and transparent criteria, balance of concern, rules and reward pathways, as well as independent technical audits.³⁶

The same logic applies to data governance. Self-regulatory framework legal compliance in order to prevent legal and enforcement issues of KYC, age, and geographic verification of participants, transactional verification of minors, to prevent multiple gaming accounts, fraud, and money laundering, as well as relaxation of KYC and other transactional data monitoring conflicts. Compliant data collection frameworks should not remain a self-serving mechanism to legalize framework lapses.³⁷ Compliance frameworks should not become normalized. Data should be incentivized not rationalized; compliance shoals a preference for data legislation frameworks over law frameworks.

State Regulatory Templates and User Protection Rules

Even those against the legislation's general constructs have found Tamil Nadu's 2025

³⁵ Robert Baldwin, Martin Cave, et.al., *Understanding Regulation: Theory, Strategy, and Practice* 52 (Oxford University Press, Oxford, 2nd edn., 2012).

³⁶ *Supra* note 4.

³⁷ The Digital Personal Data Protection Act, 2023 (Act 22 of 2023), ss. 4, 6, 8.

regulations to be an example of quality granular regulations.³⁸ Tamil Nadu prohibits participants in online real money games to be minors, mandates Know Your Customer verification, places addiction warning labels, places mandatory blank hours during the period between midnight and 5 a.m. Tamil Nadu regulations exemplify a layered approach of the law intervening on a user's journey by dictating the particulars of online gambling law within the legal constraints of the Tamil Nadu regulations on gambling.

Designed properly, regulation may be far more effective. It could bring about a centralised self-exclusion register, periodic affordability checks, cooling-off periods, deposit limits, loss limits, algorithmic audit trails, restrictions on misleading advertising, and escalation of complaints to an independent Ombudsman. The goal of regulation is to make informed participation more deliberate and to facilitate interruptions. The regulatory state does not have to accept the desired effects to Slow and Obscure offered by the platforms, especially when persuasive design is core to the business model.³⁹

Fiscal Design and Commercial Viability

The design of any given tax can be of great significance to the regulation of the online gaming industry. From 1 October 2023, the Goods and Services Tax (GST) on online money gaming is a flat 28% on total deposits rather than a tax on gross gaming revenue.⁴⁰ This is a substantive regulatory change, and shifts a burden of viability from the state to the gaming platforms, as this regulatory change may be negative for public revenue. Moreover, a tax on total deposits treats pool prizes unfunded by the platform as revenue, placing an exceedingly large tax burden that the platform must absorb.

Figure 2 illustrates a comparative problem. According to the 2024 EY report, regarding India and some comparator countries, gross gaming revenue is taxed at lower rates than the 28 percent gaming income tax levied at the time of deposit. If India were to follow the comparator point, it would contradict the first pillar principle; it would, however, illustrate that the legality vs. compliance framework would prove insufficient if the fiscal design considers gross income

³⁸ The Tamil Nadu Online Gaming Authority (Real Money Games) Regulations, 2025, regs. 3 to 8.

³⁹ Sally M. Gainsbury, *Internet Gambling: Current Research Findings and Implications* 96 (Springer, New York, 1st edn., 2012).

⁴⁰ "Impact of New GST Law on Skill-Based Online Games" 4 (June, 2024).

at the time of deposit without regard to the transaction's economics.⁴¹

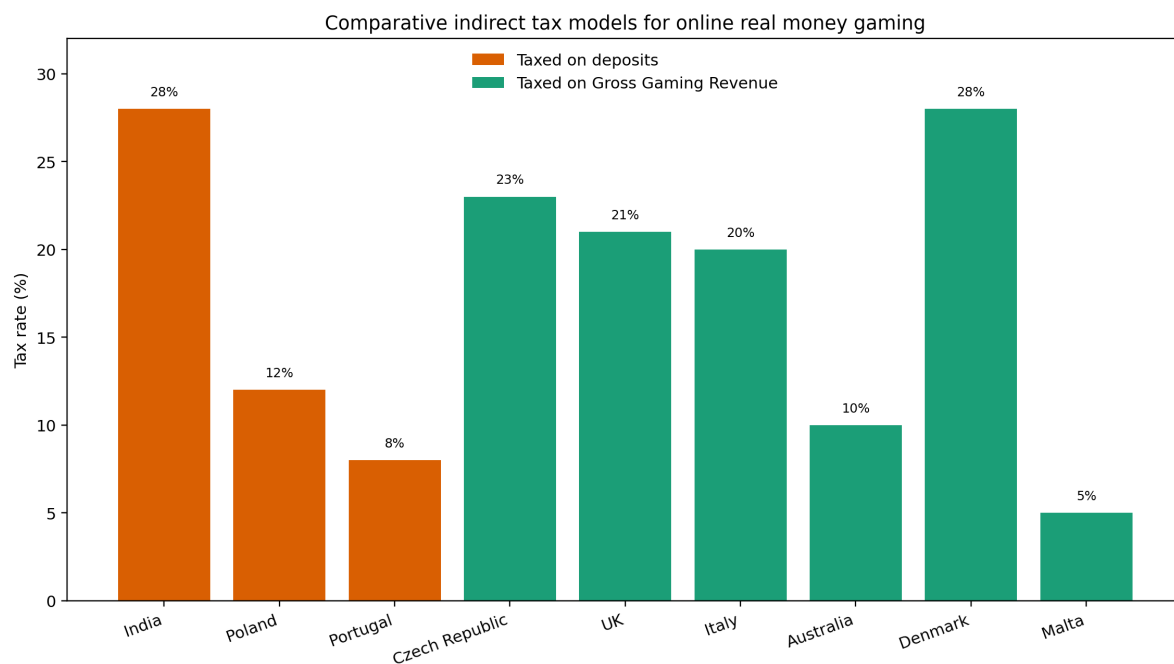


Figure 2. Comparative indirect tax models for online, real money gaming. Source: EY, GST report on skill-based online games.

This indicates India imposes a deposit tax, in contrast with a tax on GGR, and uses the highest margin in the tax base range. The implications become evident as the tax base encompasses amounts typically not held on the platform as revenue.⁴²

The case of *Gameskraft Technologies Private Limited v. Directorate General of Goods and Services Tax Intelligence*⁴³, moving this issue to the center of public law. The Karnataka High Court annulled a very large show cause notice, and in *Directorate General of Goods and Services Tax Intelligence (HQs) v. Gameskraft Technologies Private Limited*⁴⁴, the Supreme Court, in the interest of justice, suspended further proceedings in the connected matters until a final resolution. The uncertainty caused is a clear representation of the tax law and how it can disrupt the threshold of legalized skilled and unregulated banned gambling, even in the absence of a substantive criminal law.

⁴¹ *Ibid.*

⁴² The Central Goods and Services Tax Act, 2017 (Act 12 of 2017), s. 15.

⁴³ 2023 SCC OnLine Kar 18.

⁴⁴ SLP (C) Nos. 19366 to 19369 of 2023, order dated January 22, 2025.

Recent official reports from industry insiders state that tax and prohibitory shocks have real effects. According to EY's 2025 Media and Entertainment report, online gaming growth was 9% or less in 2024, and net earnings decreased by 6%.⁴⁵ Declines in the report for 2026 include 17% in the gaming segment, and 26% in money gaming.⁴⁶ These data provide little evidence that a regulatory framework is necessarily better. What they do provide evidence of is that policy changes that impact regulation, tax, and prohibitory shocks impact behavior, how the market looks, and how investments are distributed, and this impact is real.

A Principled Indian Settlement

The Indian debate is normally portrayed as a binary. Either we have choice and market liberalism or we have market liberalism and moral paternalism. That perspective is digestible, but sloppy. More difficult in this case is determining which harms are deemed the most serious and deserving of severe, mostly unlimited, prohibitive regulation, and which deserve finer distinctions and a more case-by-case regulatory framework. Which distinctions, doctrines, and which controls must the State honour in adjusting to a more modern digital world?⁴⁷

Why Total Prohibition Overreaches

An absolute ban on online money games overextends itself by claiming monetary play of all kinds is identical, an assumption that contradicts years of Indian case law. It's true public harm can authorize more severe restrictions, but it does not nullify distinctions in law. Where the law overlooks those distinctions, prohibition may be more of a convenience to the administration and less of a thoughtful constitutional response.⁴⁸

There exists another aspect of unreasonable categorization. Betting on things outside the control of people, expected value trading, and participating in a closed money contest are not the same things. While they all may utilize money, they are quite different in architecture, visibility, and the importance of user expertise. Law should definitely be able to make those distinctions. A law that can't articulate those distinctions will be a law that cannot separate illegitimate and permissible things.⁴⁹

⁴⁵ "Shape the Future: The Revolution in Indian Media and Entertainment Sector" 101 (2025).

⁴⁶ "India's Media and Entertainment Economy: Stories of Scale and Impact" 112 (2026).

⁴⁷ *Supra* note 37.

⁴⁸ *Supra* note 3 at 143.

⁴⁹ *Supra* note 6 at 300.

Why Minimal Regulation Is Equally Inadequate

Simultaneously, traditional jurisprudence is of limited value when dealing with modern regulations. Classic examples of jurisprudence were made in courts that had no targeted advertising, no behavioral analytics, no frictionless deposits, no micro-transactions, no bots, and no stitching of identities across different platforms. Skill cannot cancel all platform harms. A skill-dominant game can be marketed laxly, priced opaquely, packaged so as to provide a game-play experience that exploits users' behavioral weaknesses. Minimal regulation will keep doctrinal categories intact, but will ignore the features that make digital gaming socially and politically challenging.⁵⁰

The solution is multi-layered regulation. Chance-dominant skill games that are contingent on external outcomes for payment, games of skill with active betting on external outcomes, unlicensed offshore games of skill, games with payout architecture and games that are marketed towards minors should be banned. Skill-dominant games can be permitted, but only in a highly regulated manner. Access to games of skill within this corridor of legally permitted games should be subject to provisions for licensing, technical approval, secure payment mechanisms, affordability, and source of funds, self-exclusion, robust grievance redress, and ongoing assessment for product adjustment.⁵¹

Elements of a Coherent Indian Model

From an organizational perspective, the baseline for digital governance begins at the national level, and enforcement and additional public health measures should allow for state level engagement. The Union would be in the best position to manage the regulation of obligations for cross-border platforms, payment systems, and intermediaries, as well as the governance of data and the architecture of registration. States are in a better position to tailor enforcement based on local circumstances, as well as manage services to respond to public health addiction. Accordingly, a cooperative model would place regulation of digital governance infrastructure at the level of the center, while state digital governance enforcement would be preserved.⁵²

⁵⁰ Nerilee Hing, Alex M. T. Russell, et.al., "Risk Factors for Gambling Problems on Online Electronic Gaming Machines, Race Betting and Sports Betting", 8 *Frontiers in Psychology* 779 (2017).

⁵¹ *Supra* note 36 at 273.

⁵² *Supra* note 7 at 264.

The need for a graduated approach is illustrated in Figure 3. The online gaming industry has reported that in the fiscal year 2023, India had 425 million online gamers, and by the fiscal year 2028, it is likely to increase to 538 million gamers, along with a growing number of gamers participating in online gaming for a fee. An online gaming consumer base of this size is far too significant for any laws to be seen as merely symbolic. In the context of demand that is as strong and persistent as this, gaming regulation is not a binary choice of whether or not gaming should be permitted. It is a choice between provision of clear, accountable gaming regulation services and provision of unclear, evasive gaming regulation services.⁵³

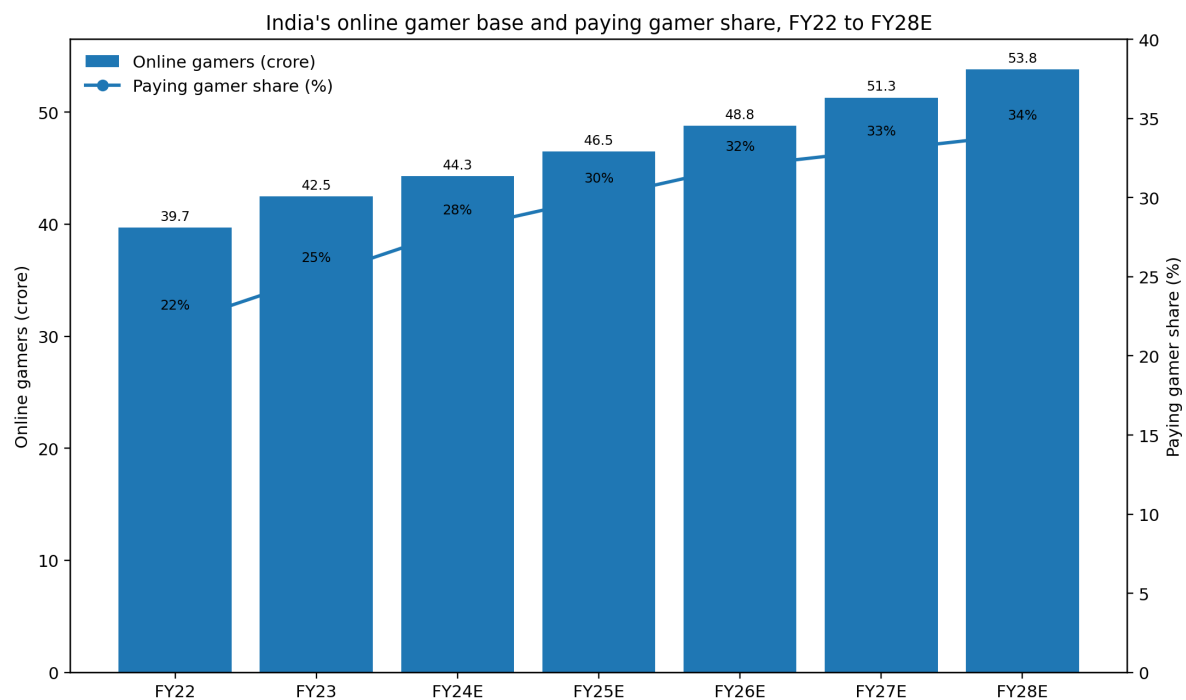


Figure 3. Online gamer base and paying gamer share in India, Financial Year 2022 to Financial Year 2028 estimate. Source: EY, New frontiers report.

Continuous expansion in the total number of gamers alongside the growing proportion of paying gamers suggests consumer preference will persist despite legal changes. As a result, regulation ought to focus on channel migration and consumer safety, rather than believe that participation will end simply through prohibition.⁵⁴

India must maintain the doctrinal difference between skill and chance, not consider all digital

⁵³ *Supra* note 35 at 111.

⁵⁴ *Supra* note 6 at 215.

stakes to be gambling, and more stringently regulate monetised skill games beyond what pre-digital era case law considered. It persists with public harm concerns but does not let harm rhetoric overwhelm its legal reasoning. It preserves the balance between doctrinal continuity and the need for constitutional evolution in the face of technology.⁵⁵

Conclusion

The Indian law that exists today stands at an imperfect equilibrium. There is a tendency to both judge new digital products according to old classes of products, and to prohibit a practice-jurisprudence monolithic restriction by letting the proverbial market take its course. A flexible equilibrium needs to be reached for the oversight of online monetary games in a constitutional democracy.⁵⁶

It is believed that a ban should be placed on high chance games, games that are carried out by Indian citizens, and external and illegal games that circumvent Indian laws by taking place in an offshore jurisdiction. More or less, all skill-based games should be allowed, but in framework-based legislation of market, user and state. Based on the Indian socio-Judicial standards and the current market-place, it's rational to mandate stricter market regulation.⁵⁷

The Promotion and Regulation of Online Gaming Act, 2025 has been termed a 'landmark' Act, but should not be seen as the last word in constitutionalism. Courts will continue to decide whether, from a constitutional perspective, the State is permitted to relocate from a regulatory approach with respect to harm to declarative voidance of a doctrinal category which has previously been treated as substantive by earlier decisions. The Indian gaming legislation is likely to be more mature when debates are focused on exclusionary policies and 'controlled' legality, instead of slogans of either regulation or prohibition.⁵⁸

Suggestions

The subject is substantive and inherent changes are necessary, which are not only holistic and comprehensive enough to legally address digital risks, but also constitutionally defensible and

⁵⁵ *Supra* note 14 at 134.

⁵⁶ *Supra* note 3 at 172.

⁵⁷ *Supra* note 6 at 219.

⁵⁸ *Supra* note 29.

administratively feasible.

1. **Adopt Category-Based Licensing:** Instead of using a single money-play label, Parliament could classify digital gaming products by legal risk. Chance-dominant games, skill-dominant games, betting on external events, and simulated gaming products should be classified separately to minimize errors.
2. **Create an Independent Technical Certification Process:** Determining if skill predominates should be done by a technical panel, not by the industry. This panel should analyze the rules, the payout structure, the features for randomization, and the product design the panel.
3. **Mandate Stronger Spending Controls:** Deposit limits, loss limits, cooling-off periods, and ascending affordability checks should be implemented by licensed operators. These should be almost impossible to be circumvented, while easy to be audited by regulators.
4. **Build a National Self-Exclusion System:** India ought to create a cross-platform self-exclusion register where all licensed operators' platforms are integrated. If a user opts out via one platform, they should not be able to re-access the platform through another during the exclusion period.
5. **Tie KYC to Data Minimisation:** The information kept for money-based participation verification should only include age and fraud-related data. Verification should still be mandatory, and age, identity, and fraud controls should still be maintained. Data retention and sharing timeframes should be managed in accordance with the Digital Personal Data Protection Act, 2023, once passed.
6. **Reform Gaming Taxation:** The Goods and Services Tax (GST) structure should differentiate between revenue collected by the operator and prize money redistributed to participant winners. Any tax structure that overlooks the transactional nature of the market will foster offshore tax migration and withdrawal from the case.
7. **Regulate Advertising by Product Risk:** Advertising should be restricted to licensed products only and it should be strictly regulated. Penalties should be enforced for testimonials, easy-winnings claims, and marketing targeting underage and at risk consumers.

8. Create a Union-State Coordination Mechanism: A coordination body should be established to integrate primary digital regulation and stratified enforcement powers. We would minimize fragmentation for blocking, complaint referral, preservation of evidences, and public-health response.
9. Require Algorithmic and Game-Rule Audits: Regulators should have the ability to examine systems of fairness, randomisation logic, and bot detection and matchmaking processes. Regulators should also be informed by the platforms of substantial alterations to rule, reward, and monetisation system changes in advance.
10. Link Enforcement to Consumer Redress: Blocking powers and criminal sanctions should be accompanied by rapid remedies to correct wrongful debits, winnings, misleading interfaces, and identity abuse. Trust in the system is enhanced when the enforcement regime is seen to directly safeguard users.

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