
A COMPARATIVE STUDY ON CENTRAL AND STATE LEGISLATION ON THE ONLINE GAMING INDUSTRY: EXAMINED THROUGH THE LENS OF TAMIL NADU

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ABSTRACT:

This paper presents a comparative study of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 and The Promotion and Regulation of Online Gaming Act, 2025 to determine their actual objective, scope and features. The legal research stems from the conflict over Centre-State legislative relations under Article 246 of the Constitution of India. In a federal structure, powers are divided between the Central and State governments for legislating within defined fields. This division is largely conditioned by the interaction of two contending forces – those favouring centralisation, resulting in a federal union, and those supporting decentralisation, influenced by factors such as ethnic, religious, cultural, linguistic, political and economic, as manifested in the powers given to State governments. The State Legislature of Tamil Nadu, deriving its power from Article 246(3) and Entry 34 of List II, has enacted the Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022, after many legal challenges and constitutional validity tests by the High Court and the Supreme Court. Parallel to this, the Central Government has enacted the Promotion and Regulation of Online Gambling Act, 2025, deriving its power from Article 246(1) read with Entries 31, 52, and 97 of List I. While the Centre sought to regulate the online gaming sector, the State alleges encroachment into the State List in the field of “Betting and Gambling”. This paper analyses the legal implications when laws made by both legislatures in their respective fields overlap - whether federal supremacy prevails, or will State autonomy be retained? To aid the research, this paper explores constitutional doctrines, precedents and interpretations to arrive at a valid and rational conclusion.

Keywords: Federal Supremacy, State Autonomy, Betting and Gambling, Online games, Article 246.

OBJECTIVE

1. To comparatively analyse the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 and the Promotion and Regulation of Online Gaming Act, 2025.
2. To study the Centre-State legislative relations over the online gaming industry.
3. To examine legal implications when the law made by the Parliament under List I and the law made by the State legislature under List II overlap.
4. To establish the difference between a game of skill and a game of chance.
5. To prove that federal diversity is a constitutional design, not a defect.

RESEARCH METHODOLOGY

There is a dearth of publicly available primary data for the analysis of the research study. Hence, this study focuses on Doctrinal research. Doctrinal research means research that involves a significant amount of reading and referring to textbooks, articles, journals, dictionaries, encyclopaedias, etc. It involves systematic analysis of statutory provisions, logical and legal reasoning of principles and legal propositions.

LITERATURE REVIEW

Sudhanshu Kumar and others in *Skill or Chance: Will the Supreme Court strike down the real money gaming ban?*¹ made a distinction between the game of skill and the game of chance, the Union Legislature's competence to enact matters in the state subject, and the proportionality test of the Promotion and Regulation of Online Gaming Act, 2025. The author advocates for state-level regulation and concern over creeping centralisation.

The distinction among the online gaming sector can be well understood in *the Promotion and Regulation of Online Gaming Act, 2025: A constitutional and economic crossroad* by Himesh

¹ Sudhanshu Kumar, Aditi Pangotra & Harsha N, *Skill or Chance: Will the Supreme Court strike down the real money gaming ban?* Supreme Court Observer, (Oct. 25, 2025) available at <https://www.scobserver.in/journal/skill-or-chance-will-the-supreme-court-strike-down-the-real-money-gaming-ban/>.

Thakur and Vaibhav Mishra,² who examine the stance of the government on the grounds of public health, unification of fragmented state laws and preventing fraud, while online gaming industries object that a blanket ban is unconstitutional and disrupts already existing state-level regulation.

New era of online gaming governance (PIB),³ analyses the Online Gaming Regulation 2026 notified under the Act, 2025, which covers registration of online gaming service providers, setting up grievance redressal and penalty enforcement mechanisms, establishing a parallel regime to that of the Tamil Nadu Online Gaming Authority and Regulation of Online Gaming Rules, 2023.

As pointed out in *Challenges to Promotion and Regulation of Online Gaming Act, 2025*,⁴ (SCO), currently, the Head Digital Works vs. Union of India⁵ case is sub judice before the Supreme Court dealing with blanket prohibition, constitutionality of the central act, scrutiny under Article 19(1)(g) and its encroachment into the State List.

INTRODUCTION

Online gambling means online wagering or betting and includes playing any online game of chance for money or other stakes, in any manner. It shall be deemed to comprise the collection or solicitation of bets, the receipt or distribution of winnings or prizes, in money or otherwise, in respect of any wager or bet, or any act intended to aid or facilitate wagering or betting, or such collection, solicitation, receipt, or distribution, as per Section (2)(i) of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 (hereinafter referred to as the State Act) online games were classified into online games of skill and online games of chance, and their types include online real money games, online social games, e-sports, etc. The parallel proliferation of online gaming with money or other stakes via mobile phones, computers and the internet, and the offering of monetary returns against user deposits,

² PSL Chambers, *the Promotion and Regulation of Online Gaming Act, 2025: A constitutional and economic crossroad*, February 2025, available at <https://www.pslchambers.com/article/the-promotion-and-regulation-of-online-gaming-act-2025-a-constitutional-and-economic-crossroad/>.

³ Press Information Bureau, *New era of online gaming governance*, Government of India, (Apr.30, 2026) available at <https://www.pib.gov.in/PressReleasePage.aspx?PRID=2256973®=3&lang=2>.

⁴ *Challenges to Promotion and Regulation of Online Gaming Act, 2025*, Supreme Court Observer, (July 2, 2026) available at <https://www.scobserver.in/cases/challenge-to-the-promotion-and-regulation-of-online-gaming-act-2025/>.

⁵ Head Digital Works vs. Union of India, TC (Civil) No. 133/2025 (India).

has led to serious social, financial, psychological and public health harms, particularly among youth and economically vulnerable groups.

Further reports of the five-member committee headed by Rtd. Justice Thiru K Chandru, WHO in its International Classification of Diseases (11th Revision), survey conducted by the School Education Department, Government of Tamil Nadu have persistently highlighted the health hazards causing socio-economic harms at epidemic proportions.⁶ It is also necessary for trade and profession to be carried out under a regulated environment, especially when several reports are surfacing on the negative effects that the online real money games are inflicting. The State Government cannot remain a mute spectator when the population at large is exposed to serious physical, mental and financial risks, when, in essence, one is not playing with another human but a pre-programmed computer.⁷ On the other hand, there is a need to balance the fundamental rights under Article 21 and Article 19(1)(g). When there is a clash between two fundamental rights, the right which will advance public morality or public interest will be prioritised.⁸

The State Government have legislative competence to regulate online game of skill and to prohibit online game of chance involving Betting and Gambling (Entry 34 of List II) along with Public Order (Entry 1 of List II), Public Health (Entry 6 of List II), and Trade and Commerce (Entry 26 of List II).

1. WHEN THE LAW MADE BY THE PARLIAMENT UNDER LIST I AND LAW MADE BY THE STATE LEGISLATURE UNDER LIST II OVERLAPS, DOES REPUGNANCY ARISE?

The Promotion and Regulation of Online Gaming Act, 2025 (hereinafter referred as the Central Act) seeks to **recognise, register and regulate e-sports, online social games and prohibit online money games** of any form, including games of chance and games of skill. It sets up an Authority under section 8 of the Central Act for the above-said purpose. Further, imposes a blanket ban on online money games and criminalises contraventions under the Act. The Central Government might have derived their power under Entry 31(wireless, broadcasting

⁶ The Tamil Nadu Prohibition of Online Gambling and Promotion of Online Gaming Act, 2022, Act No. 9 of 2023, the Preamble.

⁷ Play Games 24x7 Private Limited and Ors vs. State of Tamil Nadu and Ors, WP No. 6784, 6794, 6799, 6970, 8832 and 13158 of 2025, Pg.53

⁸ X' vs. Hospital "Z" (1998) 8 SCC 296 (India).

and other forms of communication) for regulating internet-based activity throughout India, Entry 52 (Industries) and Entry 97 (Residual power)⁹. The Central Government, in the public interest, has assumed legislative competence to regulate the online gaming sector to ensure the creation of a secure, regulated, and innovation-friendly gaming environment while addressing the associated risks to public health, consumer safety, public morality and financial sovereignty; Further, the preamble part of the Central Act, 2025 states:

*“....AND WHEREAS the unchecked expansion of online money gaming services has been linked to unlawful activities including **financial fraud, money-laundering, tax evasion, and in some cases, the financing of terrorism**, thereby posing threats to national security, public order and the integrity of the State;*

AND WHEREAS it is necessary to clearly delineate and categorise the various forms of online games and to provide a tailored legal framework to govern each sub-sector of the industry appropriately....”¹⁰

It is pertinent to note that, before the introduction of The Promotion and Regulation of Online Gaming Act, 2025, the regulatory landscape for online gaming in India was evolving healthily at the state level through regulation of games of skill and betting, as well as licensing. Especially in the case of Tamil Nadu, it has enacted the Act of 2022 after a series of legal churns:-

- (1) The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021¹¹ which had sought to ban online games such as “rummy” and “poker” played with stakes or money. The said Amendment Act of 2021 was struck down in its entirety under the detailed judgment dated 03.08.2021 in the case of *Junglee Games India Private Limited vs. State of Tamil Nadu*,¹² with liberty to bring in appropriate legislation conforming to the constitutional sense of propriety in the field of betting and gambling by the State;

⁹ “Any other matter not enumerated in List II or List III, including any tax not mentioned in either of those Lists.”

¹⁰ The Promotion and Regulation of Online Gaming Act 2025, Act No. 32 of 2025, the Preamble.

¹¹ The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, Act No.1 of 2021, assented to Feb 25, 2021.

¹² *Junglee Games India Private Limited vs. State of Tamil Nadu*, 2026 INSC 594.

- (2) Following the case, a Five-Member Committee was set up by the Government of Tamil Nadu to render advice on enacting a fresh piece of legislation to regulate online real money gaming.
- (3) The State Government, based on the recommendations made by the Committee, promulgated the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022 on 01.10.2022. The Legislative Assembly of Tamil Nadu passed and got assent from the Governor on 07.04.2023; finally, the Act came into force on 21.04.2023.
- (4) This legislation, along with the 2025 Regulations promulgated under it, had been upheld by the Madras High Court in *Play Games 24×7 Private Limited v State of Tamil Nadu*¹³ in June 2025, passing the test of legislative competence and constitutionality.

While certain states, such as Uttar Pradesh, have amended the Public Gambling Act of 1867, others, namely Nagaland, Sikkim, and Meghalaya, have enacted new legislation to establish licensing regimes for online skill games. Chhattisgarh and Haryana offer exemptions for games of skill while prohibiting betting activities. Karnataka constituted a committee tasked with drafting a more sophisticated regulatory framework based on a 'whitelisting' model for legitimate operators. These developments indicate a trend of state-level experimentation and regulatory innovation.¹⁴

It is imperative to look into the features of the Act 2022 enacted by Tamil Nadu to prohibit online gambling and regulate online gaming. Unlike the Central Act, which deals comprehensively with E-sports, online social games and a blanket ban on online money games, the State Act doesn't impose a blanket ban on online money games; rather, it distinguishes between online games of chance and online games based on skill. It seeks to prohibit any kind of online game of chance involving wagering, betting or real stakes and regulates the online game of skill through the Tamil Nadu Online Gaming Authority constituted under Section 3 of the State Act. This Authority regulates online games, issues certificates of registration, oversees

¹³ *Play Games 24×7 Private Limited v State of Tamil Nadu*, Supra Note 2, pg. 2

¹⁴ Sudhanshu Kumar, Aditi Pangotra & Harsha N, Skill or Chance: Will the Supreme Court Strike Down the Real Money Gaming Ban?, Supreme Court Observer (Oct. 25, 2025), <https://www.scobserver.in/journal/skill-or-chance-will-the-supreme-court-strike-down-the-real-money-gaming-ban/>.

and monitors online game providers and identifies online games of chance. This Act also deals with regulating and registering local and non-local online game providers, safeguarding their fundamental right under Article 19(1)(g) while protecting the Right to Life and Health under Article 21. Further, suspension and revocation of the certificate, appeal to the Appellate Authority are also present. While the Central Act lacks these features and mechanisms.

1.1. Doctrine of Proportionality

The four-prong test can be applied to determine the proportionality behind Central Legislation on Online Gaming.

Purpose and Suitability – The doctrine of proportionality requires that the measures adopted by the legislature must bear a rational nexus to the object sought to be achieved. The Promotion and Regulation of Online Gaming Act, 2025 purports to prevent gambling-related harm, protect consumer welfare, and address addiction. However, the Act fails at the threshold of suitability, as it does not distinguish between games of chance and games of skill, despite this distinction being constitutionally and judicially well-recognised. By defining “online money games” to include games of skill merely based on involvement of real money, the Act results in the blanket prohibition of games such as rummy, fantasy sports and chess, which are predominantly skill-based. Such an indiscriminate ban bears no rational nexus to the stated objective of preventing gambling-related harm and addiction, and instead adopts an over-inclusive and arbitrary approach, rendering the measure unsuitable for achieving its intended purpose.

The scope of the Central Act is limited to recognition, categorisation and registration of online games providers, provision of policy frameworks through guidelines and standards, and institutional support through a Central Authority. While the object of the Act, as reflected in its Preamble, is to safeguard the public health, public order, financial integrity, and the security and sovereignty of the State. The Act, however, does not provide any substantive regulatory mechanisms addressing public health concerns, addiction mitigation, local law and order issues, or regulation of trade and commerce inter-states. Mere uniformity or centralisation, without effective regulatory tools, cannot resolve the complex and localised social harms associated with online gaming.

Recently, the State government notified Tamil Nadu Online Gaming Authority (Real

Money Games) Regulations, 2025,¹⁵ which contemplates individualised restrictions such as time limit, age limit and monetary limit for gaming. Most importantly, the State Act prohibits online gambling and has strict regulatory measures to monitor online game providers. The State Act, along with its rules and regulations, achieves the object of maintaining public health including safeguarding youth from addiction, health and financial risks, public order and regulating trade and commerce and prohibits betting and gambling in the State of Tamil Nadu, thereby achieving the rational nexus. This substantiates that law and order, public health and trade and commerce, betting and gambling at best can be achieved through a state-level legislative framework.

1.1.1. Necessity (Least Intrusive Measure): In *Modern Dental College Research Centre vs. State of Madhya Pradesh*,¹⁶ the Court requires the government to adopt a less intrusive method, but equally effective alternatives to achieve the stated objective. The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 furnishes a clear and workable alternative model rather than imposing an outright ban; The State legislation prohibits online gambling (games of chance) while regulating online games of skill through a licensing and supervisory framework.

1.1.2. Proportionality *Stricto Sensu*: balances the benefits of state action against its adverse effects on individual rights; the constitutional and economic costs imposed by the prohibitory regime under Central legislation are manifestly disproportionate. The Act results in serious infringements of Article 14 by treating game of skill and game of chance alike solely based on monetary involvement, which are fundamentally dissimilar activities. Resulting in a violation of Article 19(1)(g) by extinguishing legitimate skill-based online gaming businesses, and an infringement of Article 301 by imposing unreasonable restrictions on the freedom of trade and commerce across State boundaries. The arbitrariness, on the face of it, is revealed by treating online social games and e-sports as legitimate. Still, these games, too, involve prolonged screen time, competitive stress, aggressive behaviour, reliance on digital interfaces, competitive interaction among youth, and addictive tendencies. If the legislative concern were truly addiction or public health, the categorical exclusion of e-sports and social games is

¹⁵ Tamil Nadu Online Gaming Authority (Real Money Games) Regulations, No. SRO C-8/2025, ROC No. 133/Admin/TNOGA/2024, in exercise of the power conferred under § 5(1) of Tamil Nadu Prohibition of Online Gambling and Promotion of Online Gaming Act, 2022, published in Tamil Nadu Government Gazette, Part III, dated Feb. 12, 2025.

¹⁶ *Modern Dental College Research Centre vs. State of Madhya Pradesh*, (2016) 7 SCC 353, AIR 2016 SC 2601.

undermining the existence of the Central Act. This selective permissibility reveals that the legislation targets the monetary aspect of gaming rather than demonstrable social harm, rendering the balance struck by the Central Act constitutionally untenable.

2. WHAT IS THE NEED FOR A NEW CENTRAL LAW FOR PROMOTION AND REGULATION OF ONLINE GAMES WHILE THERE ALREADY EXIST LEGISLATIVE MEASURES REGARDING THE SAME?

Notably, the Central Government is already equipped with robust legislative frameworks to address the very concerns cited in the Preamble, including the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021¹⁷ for intermediary regulation and online harms, though it lacks distinction between online games of skill and games of chance, the Consumer Protection Act, 2019¹⁸ for unfair trade practices and misleading advertisements, and the Digital Personal Data Protection Act, 2023¹⁹ which provides for data protection and cyber security safeguards to mitigate risks posed by offshore or insecure platforms. The Central Act neither consolidates nor meaningfully supplements these existing frameworks, but instead adopts a prohibitory regime that intrudes into State legislative domains without satisfying the requirement of purpose and suitability.

The Promotion and Regulation of Online Gaming Act, 2025 does not serve as consolidating or harmonising legislation that integrates the existing Central regulatory framework governing online intermediaries, consumer protection, data security and financial crime. Instead, it introduces a parallel and overlapping regime that, under the guise of national uniformity, substantially intrudes into constitutionally reserved State fields such as betting and gambling, public health, public order and intra-State trade, thereby attracting the **Doctrine of Colourable Legislation**. The objectives professed by the Central legislation could have been effectively achieved through calibrated enforcement of existing Central statutes, without displacing State-level regulatory frameworks that are already proportionate, evidence-based and judicially upheld.

¹⁷ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Gazette of India, Extraordinary, Part II, Sec. 3(i), G.S.R. 139(E), Feb. 25, 2021(India).

¹⁸ Consumer Protection Act, No. 35 of 2019, Gazette of India, Extraordinary, Part II, Sec. 1, Aug. 9, 2019 (India).

¹⁹ Digital Personal Data Protection Act, No. 22 of 2023, Gazette of India, Extraordinary, Part II, Sec. 1, Aug. 11, 2023 (India).

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ('IT Rules'), were amended to include Rule 4A governing online gaming.²⁰ The said central framework provides for a self-sufficient regulation for online real money games, including the standards of due diligence (Rule 2), grievance redressal mechanisms (Rule 3), and Self-Regulatory Bodies ("SRBs") for enforcement (Rule 4A). SRBs have been given power to inquire and classify online real money games that do not involve wagering on any outcome and ensure compliance with Rule 3 and 4 of the IT Rules, 2021. SRBs are also empowered to monitor the registered online real money games and take measures to ensure online real money games are not against the interest of sovereignty, security and integrity of India, friendly relations with foreign nations and public order under Rule 4A(8) of the IT Rules, 2021. Further, the framework made by SRBs ensures safeguards against user harm, including self-harm and psychological harm, safety measures for children such as access control, age-rating mechanisms and measures to safeguard users against the risk of gaming addiction, financial loss and financial frauds.

Further, Rule 4C empowers the Central Government to give directions for intermediaries of online real money games to comply with the provisions of the IT Rules, 2021. The said rule is proportionate to achieve the objectives mentioned in the Statement of Objects and Reasons and Preamble of the Central Act, 2025. In *Play Games 24x7 Private Limited and Ors vs. State of Tamil Nadu and Ors.*,²¹ Madras High Court held that:-

“It is well established law that Article 246 of the Constitution of India confers exclusive power on Parliament and the State Legislature to legislate with respect to the matters provided for in the Union List and the State List in Schedule VII respectively. With respect to the matters provided for in List III, namely, the Concurrent List, both Parliament and the State Legislatures possess the competency to enact laws.

The IT Rules, 2021, through its amendments notified on 06.04.2023, provided a regulatory framework for intermediaries including online gaming platforms. The petitioners state that these IT Amendment Rules, 2023, which govern online gaming intermediaries, have been framed by the Union Government in exercise of its legislative

²⁰ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, Gazette of India, Extraordinary, Part II, Sec. 3(i), G.S.R. 273(E), Apr. 6, 2023(India).

²¹ *Play Games 24x7 Pvt. Ltd. Case*, supra note 2, Pg. 2.

power under Entry 31²² and Entry 42²³ of List I of the Seventh Schedule in the Constitution. Whereas the State's power to frame the impugned regulation stems from Entry 6²⁴ and Entry 26²⁵ of List II of the Seventh Schedule in the Constitution.

A bare perusal of these entries reveals that both the subject matters are not in conflict with each other. They thrive in their own separate domains. The Union and State Governments have the power to enact laws in their own respective subject matter apart from the common pool as enabled in List III (Concurrent List). This Court cannot hold that the State is barred from enacting laws regulating online real money games. It is covered under the subject matter of public health and sanitation, which comes under List II. It is a well-known fact that online real money games such as rummy and poker it has created public health risks in the State of Tamil Nadu. This is elaborated in the expert committee reports, whereby these games have posed serious mental and physical health risks to the citizens in the State. It is a case of public health and the State has full competence to pass legislation to govern matters affecting public health.”

In fact, the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 align with IT Rules, 2021, we could observe due diligence principles in section 14(2) of the Act and the Tamil Nadu Online Gaming Authority shall make a recommendation to the State Government to request the Central Government, or as the case may be, the officer specially authorized by the Central Government in this behalf, to exercise the power under section 69-A of the Information Technology Act, 2000 to block access to persons in this State to the service provided by the Non-local online games provider. This mechanism incentivises **cooperative federalism** when both the governments have legislative competence in their respective fields.

3. INTELLIGIBLE DIFFERENTIA BETWEEN GAME OF CHANCE AND GAME OF SKILL

The distinction between game of chance and game of skill has been repeatedly tested by the judiciary. The SC in the case of State of Bombay vs. R.M.D. Chamarbaugwala,²⁶ found

²² “Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication.”

²³ “Inter-State trade and commerce.”

²⁴ “Public health and sanitation; hospitals and dispensaries.”

²⁵ “Trade and commerce within the State subject to the provisions of Entry 33 of List III”.

²⁶ State of Bombay vs. R.M.D. Chamarbaugwala, AIR 1957 SC 699 (India).

that games in which skill predominates over chance cannot be treated as gambling. This came to be known as the “preponderance of skill” test in *K.R. Lakshmanan vs. State of Tamil Nadu*²⁷. Several verdicts have relied on this formulation to hold games like rummy²⁸ and horse-race wagering as games of skill. Taking the above precedents into account, in *All India Gaming Federation case*,²⁹ the High Court of Karnataka distinguished between an online game of skill and a game of chance; when users exercise their skills in knowledge, judgement and attention, such games cannot be classified as a game of chance and held the provisions of the Karnataka Police (Amendment) Act, 2021, to be ultra vires the Constitution and struck them down.. Furthermore, the Allahabad High Court reaffirmed the distinction in *DM Gaming (P) Ltd. vs. State of U.P.*,³⁰ and held that “Poker and Rummy are absolutely a game of skill and not gambling”.

The Madras High Court, in *All India Gaming Federation vs. State of Tamil Nadu* (2023),³¹ clarified that online rummy and online poker qualify as games of skill, and therefore fall within the right to trade and business under Article 19(1)(g) and Article 301 of the Constitution. However, the Central Act disregards this distinction by broadly defining “online games” and “online money games” under Section 2(f) and Section 2(g) respectively to include all games played for stakes, irrespective of their skill component. Central Act imposed a blanket ban without evaluating the nature of the game or the degree of skill involved, which effectively collapses the distinction and enforces an indiscriminate prohibition, thereby violating Article 14 and Article 19(1)(g) of the Constitution.

4. FEDERAL DIVERSITY IS A CONSTITUTIONAL DESIGN, NOT A DEFECT.

The Preamble of the Central Act states “undermined state-level regulations, significant enforcement challenges present in terms of extra-territorial jurisdiction and inter-State inconsistencies. It is expedient in the public interest for the Union Government to assume legislative competence over the online gaming sector”. The existence of diverse State legislative approaches to regulate online gaming cannot be characterised as regulatory failure. Federal diversity is a constitutional design, not a defect. Central government should come out

²⁷ *K.R. Lakshmanan vs. State of Tamil Nadu and Another*, (1996) 2 SCC 226 (India).

²⁸ *State of Andhra Pradesh vs. K. Satyanarayana*, 1968 AIR 825, 1968 SCR (2) 387 (India).

²⁹ *All India Gaming Federation vs. State of Karnataka* (2022), 2022 SCC OnLine Kar 435 (India).

³⁰ *DM Gaming (P) Ltd. vs. State of U.P.*, 2024 SCC OnLine All 5009

³¹ *All India Gaming Federation v State of Tamil Nadu* (2023), 2023 SCC OnLine Mad 6973.

of the mindset that uniformity can achieve regulation, instead vouch for unified regulation in coordination with State governments.

4.1. Interpretation of Article 246 of the Constitution of India

Article 246(3) confers exclusive power on the State legislature to make laws in entries contained in List II. The entries under this List require local variations and, from an administrative point of view, can be best handled at the State level; therefore, the Union legislature is debarred from legislating with respect to these matters.³²

The use of the word “exclusive” in Clause (3) denotes that in the legislative field of the State List, the State legislature can exercise authority as plenary and ample as Parliament.³³ Unless or until the Constitution expressly prohibits the subject matter absolutely or conditionally, the power of the State legislature to enact laws in that subject matter. For example, Entry 13 of List II deals with communication subject to means of communication not specified in List I; Entry 17 of List II deals with water – supply, irrigation, canals, drainage ...subject to Entry 56 of List I. From the above interpretation, the Constitution does not expressly condition Entry 34 of List II nor subject it to List I, which denotes that the state legislature's power in the subject matter of Betting and Gambling is ample and plenary. The expressed words in Entry 34 of List II include incidental and ancillary matters so as to make the legislation effective.³⁴ Hence, betting and gambling in online mode is merely an incidental and ancillary matter that falls within the ambit of the State Legislature.

The structural framework of Article 246 places state legislative power subject to union and concurrent laws. The word “Notwithstanding” in Article 246(1) and “Subject to” in Article 246(3) showcase the principle of federal supremacy. Nevertheless, “Notwithstanding” and “Subject to” clauses cannot be construed to provide the Parliament with the power to override entries in List II with respect to which State Legislature can legislate.³⁵

Upon interpreting the non obstante clause in Article 246(1), it is the ultimate rule which is to be invoked as a last resort in case of inevitable, irreconcilable conflict between the entries

³² M.P. Jain, *Indian Constitutional Law with Constitutional Documents*, updated 6th edition, Volume 1, LexisNexis Publication, at page 707.

³³ ITC Ltd. vs. Agricultural Produce Market Committee, (2002) 9 SCC 232, 282: AIR 2002 SC 852(India).

³⁴ Hindustan Lever vs. State of Maharashtra, (2004) 9 SCC 438: AIR 2004 SC 326(India).

³⁵ Arvind P. Datar, *Commentary on the Constitution of India*, vol. 2, Wadhwa & Co. (Nagpur), 2d ed. 2007, at page 1475.

in List I and List II.³⁶ Once it is found that legislation under pith and substance falls within the ambit of the State List, the rigour of “subject to” employed in Article 246(3) is relaxed.³⁷

When there is a conflict of law made by the Parliament in List I and a law made by the State legislature under List II, the judiciary will interpret the entries together harmoniously and, where necessary, restrict the ambit of the broader entry in favour of the narrower entry so that the former will not eat up the latter. In *State of Bombay vs. Balsara*,³⁸ the Supreme Court gave a limited meaning to the word “import” in List I to give effect to the Entry in List II. Entry 41 of List I deals with imports and exports across customs frontiers; the central government sought to regulate not merely the import but also the possession of intoxicating liquor, as one is a necessary consequence of the other. The Supreme Court held that import by itself does not include possession or sale of the article in the country, irrespective of whether imported or exported; the State has to regulate production, manufacture, possession, transport, purchase, and sale of intoxicating liquors (Entry 8 of List II).

From the above precedent, it can be held that the “Betting and Gambling”, which squarely falls within the ambit of the State Legislature, can be regulated by the State irrespective of whether gambling or betting takes place online or offline. “Industries” and “Telecommunication” by itself cannot include the power of Parliament to regulate betting and gambling. Moreover, Entry 31 and Entry 52 of List I, which are broader and general, need to be narrowed to sustain Betting and Gambling under the State List. Even for that matter, residuary power cannot be invoked because the Parliament’s residuary power cannot destroy or belittle state autonomy.³⁹ Only when Parliament is not able to relate the statute with any of the entries among the three lists can residuary power be invoked, which is not the case in this matter.⁴⁰ The residuary power must give way to the principle of federalism.

4.2. Doctrine of Repugnancy: The issue of repugnancy arises only in a case where two inconsistent laws relate to a subject falling under the Concurrent List in the Seventh Schedule of the Constitution of India. It is only then that Article 254(2) will be invoked. There cannot be any repugnancy when the legislation in question relates to either the Union List or the State List as Parliament and the State Legislature have exclusive jurisdiction with regard to the

³⁶ *Hoechst Pharmaceuticals Ltd vs. State of Bihar*, AIR 1983 SC 1019: (1983) 4 SCC 45(India).

³⁷ *Sriram Industrial Enterprises Ltd., M/S vs. Union of India*, AIR 1996 All 135, 153 (FB)(India).

³⁸ *State of Bombay vs. Balsara*, AIR 1951 SC 318: 1951 SCR 682.

³⁹ *Jaora Sugar Mills vs. State of Madhya Pradesh* AIR 1966 SC 416, 421: (1966) 1 SCR 523(India).

⁴⁰ *Attorney General for India vs. Amratlal Prajivandas*, AIR 1994 SC 2179: (1994) 5 SCC 54(India).

subjects falling under the Union List and the State List, respectively. In such a case, the only issue that may arise is about legislative competence and one of two laws must be void on grounds of legislative incompetency. From the above discussion, the state government is well within its exclusive powers to legislate on online gaming and online gambling.

Similar to the Central Act, 2025, the IT Rules, 2021 were also framed under Entry 31 and Entry 42 of List I. The judiciary has struck down the notion that the State cannot frame subordinate legislation regarding online real money games due to the presence of central legislation being unacceptable.

“This Court views that the State Government is fully within its competence to enact laws of online real money games. This Court, on perusal of the provisions of the Act, 2022, finds no contradictions or provisions that run contrary to the Central Rules in force.”⁴¹

4.3. Doctrine of Pith and Substance: When two laws enacted in their own sphere of legislative power stand overlapping with each other, what needs to be ascertained is the true nature and character of the legislation. To do that, one must read the enactment as a whole, to its object, scope and effect of the legislation.⁴² The TN Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 falls within the legislative competence of the state, incidental encroachments upon subjects of the Union List do not render it invalid.

The state legislation, though it might have incidental overlap in the field of Information Technology, is primarily concerned with public health, public order and betting and gambling, which fall within the state list. Online gaming becomes subject to state regulation when it threatens public health. Applying the determinative test, whether adverse effects of such online gaming activity are directly linked with public health and whether such effects may lead to serious repercussions if left unregulated. In such a case, relying on substantiating reports collected, online gaming involving real money stakes and associated trade and commerce must necessarily be brought within regulatory oversight. The state government cannot be a passive observer when its citizen is exposed to physical, mental and financial risks. Where total prohibition or blanket ban is constitutionally impermissible, the state's intervention is not

⁴¹ Play Games 24x7 Private Limited v State of Tamil Nadu, supra note 2, Pg. 2.

⁴² A.S. Krishna vs. State of Madras, 1957 AIR 297, 1957 SCR 399(India), Pg.410.

merely protective but essential to ensure public health and public order; such intervention cannot be termed as Paternalism.

Further, 'betting and gambling' is explicitly a state subject under Entry 34 of the State List. While it is settled law that the powers of Parliament as well as the State Legislature are expressed in precise and definite terms such entries in the Seventh Schedule must be given the widest possible amplitude and must be read harmoniously. Such interpretation cannot be carried to the extent that conferring a broad meaning upon Union List entries renders express State List entries meaningless or redundant.⁴³ The Central government cannot justify regulating the online gaming industry in the public interest by encroaching directly on Public Health, Public Order and Trade and commerce within States that fall squarely under the State List by invoking a **broader interpretation of Union List entries**. This raises concerns of over-centralisation in other domains where the Constitution explicitly grants the State exclusive legislative power.

If digital connectivity and the internet are used as a justification for Union intervention, it could open the floodgates for laws being enacted across multiple sectors such as healthcare, education, and entertainment, merely because these sectors operate through online platforms. Such a precedent would undermine the federal spirit of the Constitution by eroding the autonomy of states.

The State government have ample power to protect the public health as enunciated in Article 39 of Part IV of the Constitution of India, to ensure the health and strength of men, women and children of tender age, they are not exploited for economic necessity to enter an avocation unsuited to their age or strength.

The TN Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022, passed by the State Legislature, appears that, by and large, the law falls within the four corners of the State List and entrenchment, if any, is purely incidental or inconsequential whether enacted before or after central legislation.⁴⁴ The constitutionality of the law is upheld by invoking the doctrine of pith and substance. Therefore, the State reserves the right to legislate on matters related to public health and, more specifically, the State Government's competence to legislate on online real money games remains undeterred by virtue of Entry 6, 26 and 34 of

⁴³ Union of India vs. Shah Goverdhan L. Kabra Teachers' College, Appeal (Civil) 7404 of 2000.

⁴⁴ M. Karunanidhi vs. Union of India, (1979) 3 SCC 431(India).

the List II of VII Schedule to the Constitution. Moreover, State Legislation gives way for e-sports and online social games to be regulated at large by the Central Government as falls under Entry 31 of the Union List for providing policy and institutional support in cyberspace.

5. REGULATION ON LOCAL AND NON-LOCAL ONLINE GAME PROVIDERS.

Unlike Central Legislation, the State Act only prohibits online gambling and games of chance explicitly, bans advertisement and transfer of funds under Chapter III titled General Prohibition. All India Gaming Federation vs The State of Tamil Nadu,⁴⁵ the High Court of Madras has upheld the constitutionality.

It will be necessary for the State to know about the local online game providers operating within its territory and that they are not indulging in any game of chance. If state detects usage of bots or any dubious methods in the online games, it can take action, and for that purpose, Section 10 of the Act stands valid.

“The power to regulate games of skill lies with the State Legislature under Entry 26, List II of the Indian Constitution, viz., “Trade and Commerce”. If that is the case, then the State certainly will have the right to regulate games, as is contemplated in Chapters IV and V of the impugned Act. Though the aspect of public welfare ought to be considered while legislating a particular subject matter, it is necessary to carve out the pragmatic regulatory measures, rather than imposing a blanket ban.”

Under the State Act, provisions for registration, suspension of certificate of registration and appeal procedures are prescribed with due regard to the principles of natural justice. It is pivotal for the regulatory framework to include non-local online game providers whose central management and control is outside the State but whose service is available in the State.⁴⁶ The non-local online game providers are regulated as a matter of fact that such an entity reaches out to the persons present within the State thus establishing sufficient territorial nexus. Given that the object and purpose of the Act is to protect persons within the State of Tamil Nadu from harms associated with online gambling and online gaming addiction, it stands to reason that the Act, 2022 only applies to non-local online game providers, whose activities are likely to

⁴⁵ Supra Note 25, Pg. 10

⁴⁶ The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022, Act No. 9 of 2023, §§ 2(f), 2(g) (India).

lead to such harm on account of their failure to exercise due diligence and to provide geo-blocking within the territory of the state. Hence, the TN Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 has NO EXTRA-TERRITORIAL EFFECT. The online gaming sector poses a risk of serious mental health illnesses and financial risks to youth.⁴⁷ The comprehensive legislation like the Prohibition and Regulation of Online Gaming Act, 2025 does not have any regulatory mechanism for local online game and non-local online game providers. Mere registration will not solve the issue; ground-level monitoring is required, which can be aptly done by the State government. This is the reason why regulation of betting and gambling was placed under List II, having an impact on public health, public order and associated with trade and commerce within the State. Central government cannot subsume this under “Inter-State trade and commerce” or “Industries”.

6. CONCLUSION AND WAY FORWARD

According to Paul Brass (American Political Scientist), India’s Constitution was not framed in an atmosphere of optimism but amidst fear and trepidation. This was primarily driven by the violent aftermath of partition and significant secessionist tendencies across the country; due to these, the framers of the Indian Constitution felt the need for a stronger central government. Now it is time to repent on reconsidering the true spirit of federalism. In *S.R. Bommai vs. Union of India*,⁴⁸ Federalism was held to be the basic structure of the Constitution; therefore, Article 246 shall be construed in the same line. Upon comparative analysis, we could find that the Promotion and Regulation of Online Gaming Act, 2025 does not provide any substantive regulatory mechanisms for addressing the objectives stated in its preamble; on the other hand, the state-level legislative frameworks are effectively addressing the concerns of both levels of government. Merely uniformity and centralisation without effective ground-level regulatory mechanisms cannot resolve the issue of public health, public order and welfare of youth. State-level regulation will tend to have diversity, but it is in line with already existing central government frameworks such as IT Rules, 2021, the Consumer Protection Act, 2019 and Digital Personal Data Protection Act, 2023. Hence, the Central government needs to explore the venue of cooperative federalism.

It is pivotal to note that the Central Act imposes a blanket ban on the online gaming

⁴⁷ World Health Organisation (WHO), International Classification of Diseases (11th Revision).

⁴⁸ *S.R. Bommai vs. Union of India* (1994) 3 SCC 1, AIR 1994 SC 1918.

sector involving money stakes without an intelligible differentia between a game of skill and a game of chance, as upheld by the judiciary time and again. In the case of *R.M.D. Chamarbaugwala vs. Union of India*,⁴⁹ the Apex Court had observed that while controlling and regulating would be requisite in the case of gambling, mere regulation would have been sufficient as regards competitions involving skill. The Preamble of the State Act is also suggestive of the same. The Preamble of the Act states that “the Act to prohibit online gambling and to regulate online games in the State of Tamil Nadu”. Certainly, online gambling can be prohibited by the State. The State has ample power to enact legislation to prohibit online gambling, and it also has the power to regulate online games of skill in the State of Tamil Nadu. The State Act has exercised intelligible differentia between game of chance and game of skill, a legal framework to regulate local and non-local online game providers and prohibit online gambling of any form. The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Gaming Act, 2022 has also passed the test of proportionality and constitutionality upon judicial review.

Finally, upon pursuing the constitutional doctrines and judicial precedents, federal diversity needs to be encouraged instead of seeing it as a defect. The pith and substance doctrine clarified that regulating and prohibiting gambling purely under the State’s ambit relaxes the “subject to” clause under Article 246, making the State Legislature’s power plenary and ample. If Central government intervention is justified on grounds of digital connectivity and the internet, it would provide a free pass for colourable legislation and render the List II redundant.

Nevertheless, Section 15 of the State Act, 2022 addresses concerns relating to legislative competence over internet communications. *The State does not assume powers reserved to the Union*; instead, the Online Gaming Authority may recommend action, upon which the State Government merely requests the Central Government to invoke its powers under Section 69-A of the Information Technology Act, 2000. This cooperative mechanism preserves the federal balance. In any event, by virtue of Article 246(3), the Tamil Nadu Legislature enjoys exclusive competence over “betting and gambling” under Entry 34 of the State List.

⁴⁹ supra note 20, at Pg. 10