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TOPIC: LEGAL ASPECTS OF ONLINE GAMING IN INDIA

SUB-TOPIC: WHEN GAMING BECOMES GAMBLING: INDIA'S LEGAL DILEMMA

~ *ROUBLE SRIVASTAVA*

INTRODUCTION:

A few years ago, online gaming in India was largely associated with recreational games such as social mobile games played to pass the time. Today, it has transformed into the fastest growing digital economy. With the gradual emergence of smartphones and easily accessible internet across the country, online gaming has evolved into a multi-billion-dollar industry that generates employment, attracts investment and, drives technological innovation.

However, this rapid growth has enacted a legal debate: whether online gaming is legal in India? The answer to this question is not as straightforward as a YES or NO.

India's legal framework has predominantly distinguished between games of skill which requires strategic decision making and games of chance which completely rely on the luck of the player. There have been instances where different states regulate these activities in different ways, what may be jurisdictional for one state might be restricted for another.

This blog examines the legal framework governing online games in India, constitutional principles which frames its regulations, role of judicial interpretation, and most importantly, WHEN ONLINE GAMING BECOMES GAMBLING?

UNDERSTANDING ONLINE GAMING:

Given a basic understanding, Online gaming refers to games played over the internet through computers, laptops, smartphones, or gaming consoles. It covers a wide variety of activities,

ranging from casual entertainment and multiplayer games to fantasy sports and real money gaming platforms. There are varieties of online games such as social games, e-sports, online real money games, et-cetra.

THE CONSTITUTIONAL FRAMEWORK:

The Constitution of India distributes legislative powers between the Union and the States through the Seventh Schedule. **Entry 34 of List II**¹ grants State Legislature the power to make laws relating to "betting and gambling." Consequently, there is no single nationwide legislation exclusively governing online gaming. This constitutional arrangement has resulted in different states adopting different regulatory approaches to settle down this debate (SKILL v. CHANCE). The constitutional debate has therefore shifted beyond the simple question of legality to a broader issue of legislative competence and regulatory consistency in the digital age.

THE SKILL VERSUS CHANCE DEBATE: CENTRAL THEME

Perhaps the most significant legal issue surrounding online gaming is the distinction between games of skill and games of chance. Indian courts have consistently held that those gaming competitions where success depends predominantly upon the player's superior knowledge, judgment, strategic decision making or experience are termed as games of skill. Such games have traditionally been treated differently from gambling activities. On the other hand, the games in which the outcome depends primarily upon luck of the player are generally considered gambling and are prohibited under state laws.

While this distinction appears straightforward in theory, its application becomes considerably more complex in the online environment. Many modern gaming platforms incorporate both skill and chance, making legal classification increasingly difficult.

JUDICIAL INTERPRETATION:

The Indian judiciary has played a crucial role in shaping the legal framework governing online gaming.

In *State of Bombay v. R.M.D. Chamarbaugwala (1957)*², the Supreme Court recognised that competitions involving substantial skill do not fall within the ordinary meaning of gambling.

¹Seventh Schedule, List II, Entry 34.

² *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699(India)

This judgment laid the constitutional foundation for distinguishing skill-based activities from betting and gambling. Further, in *K.R. Lakshmanan v. State of Tamil Nadu* (1996)³, the Court reaffirmed that horse racing is games of skill, not mere chance.

More recently, several cases such as *Jungle games*⁴, *AIGF*⁵, *Varun Gumber*⁶ have examined restrictions imposed by various state governments on online skill-based games. These decisions reflect the continuing effort of the judiciary to balance public interest, individual liberty, and commercial innovation while ensuring that regulatory measures remain constitutionally valid.

Collectively, these judicial pronouncements have significantly influenced the legal treatment of online gaming in India.

WHEN DOES GAMING BECOME GAMBLING?

The difference between gaming and gambling has long occupied a central position in Indian jurisprudence. Traditionally, the Indian courts have applied the “predominance of skill” test that bridges a line between games of skill and games of chance. As where a game of skill is concerned, the player has to apply his analytical reasoning for success, whereas in the game of chance, success depends upon the luck of the player. Consequently, several games such as rummy, horse racing have been succeeded as the games of skill through judicial interpretations.

However, the rapid growth of online real money games in the few years have blurred this distinction. Digital platforms often promote gaming where skill is underlined by monetary benefits, stakes, money pools, thereby, increasing the gap. As a result, the legal inquiry has gradually shifted from *WHAT THE GAME IS* to *HOW THE GAME IS PLAYED*.

The Hon’ble Supreme Court in the landmark decision of *Directorate General of GST Intelligence v. Gameskraft Technologies Pvt. Ltd.* (2026)⁷ have illustrated this shift. While deciding a number of appeals concerning the levy of GST⁸ on online gaming platforms, the Court held that, for the purposes of the GST framework, the decisive consideration is not

³ *K.R. Lakshmanan v. State of Tamil Nadu*, (1996) 2 S.C.C. 226(India).

⁴ *Jungle Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2763(India).

⁵ *All India Gaming Fed’n v. State of Karnataka*, 2022 SCC OnLine Kar 435(India).

⁶ *Varun Gumber v. Union Territory of Chandigarh*, CWP No. 7559 of 2017, 2017 SCC OnLine P&H 5372 (India).

⁷ *Directorate General of Goods & Services Tax Intelligence (Hqs.) v. Gameskraft Technologies Pvt. Ltd.*, Civil Appeal Nos. 8241–8244 of 2026, 2026 INSC 595 (S.C., May 27, 2026).

⁸ Art.246A

whether the underlying game is one of skill or chance, but whether participants stake money on an uncertain future outcome⁹. Where players deposit money with the expectation of winning a prize based on an uncertain event, such transactions may be treated as betting and gambling for taxation purposes, irrespective of the intrinsic nature of the game.

Accordingly, the Court upheld the constitutional validity of the levy of 28% GST on the full face value of the amount staked, rather than merely on the platform's service fee or commission. It also affirmed the validity of the 2023 amendments to the GST framework and the valuation rules governing online money gaming.

The decision does not hold that every skill-based online game is illegal or that all such games become gambling under every branch of law. Rather, it clarifies that once a player applies money on the outcome of a game based on an uncertain event, then such an activity amounts to gambling, which is banned in India.

CONCLUSION:

Ultimately, the history of India's gaming industry has been a roller coaster, high at some stage and low at the other. But through ups and downs, the judicial interpretation has put up a great work in finalising the legal framework of online real money games. The recent judgment, i.e. Gameskraft Technologies is a leading authority to understand the distinction between games of skill and games of chance. To sum up, I would like to conclude by stating a quotation

“Every gamble may look a like a game, but not every game should become a gamble.”

⁹ Dr. Sanjiv Agarwal, **SC Upholds Levy of 28% GST on Online Gaming**, TaxGuru (June 1, 2026, 2 :28 pm), <https://taxguru.in/goods-and-service-tax/supreme-court-upholds-levy-28-percent-gst-online-gaming.html>.