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# Unveiling the Regulatory Framework for Online Gaming in India: What Gamers and Developers need to Know

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## ABSTRACT

*The explosive growth of gaming as an industry has now caught the attention of tight-fisted regulatory authorities who face an uncertain roadmap without an effective legal framework that can mitigate ambiguities and complexities of a sector with an immense business potential. The primary aim of this article seeks to provide an industry overview of the current regulatory regime as it stands in India, attempt to understand the efficacy of underlying laws and evaluate the sector from a legal standpoint. The regulatory regime of online gaming in India is characterised by the dichotomy between skill-based and chance-based games, which in one sweep allow the former to be licensed and permitted and the latter, given its random nature, to be severely restricted in the legal framework. There's a clear tilt in favour of certain classes of games without any persuasive 'public interest' other than the expectation of employment generation and revenue to the state treasury. The case law has over different periods of history relied upon old legal precedents as well as judicial pronouncements of recent times that have now crystallised the regulatory dispensation. An overview of the relevant legal recommendations that govern online games throws up inherent incoherencies and unreflective disparities between varied jurisdictions that are legally binding. There's a clear need for dedicated legislation that will also help harmonise the disparate State laws, and embrace technological solutions that have the potential to reinforce regulatory interventions. A complete overhaul of regulatory regime may be in order to put in pace consumer protections and enforceability of obligations between stakeholders of online gaming industry. The article concludes by providing roadmap of reform initiatives that may have to be undertaken to fill in the interpretative lacunae of online gaming industry in India.*

**Keywords:** Online gaming, India, regulatory framework, skill-based games, chance-based games, legal challenges, consumer protection, judiciary, legislation, technological solutions.

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## **I. INTRODUCTION**

India's thriving online gaming industry has come under unprecedented attention from the public and regulators. With millions of users playing casual games, real-money games like rummy and fantasy sports, it is important that games comply with a robust legal framework to address the serious regulatory questions that arise. Without a doubt, India's online gaming regulation is complex. Central and state laws prohibit, restrict or permit online gaming in some format under the broader legal regime that regulates all gambling activities. The purpose of this article is to understand the regulatory framework applicable to online gaming in India, examining the adequacy of existing laws and regulations to resolve the key legal questions that arise.

Online games moved from a niche hobby to mainstream activity in India due to the vast adoption of smartphones and the proliferation of accessible and cheap internet. The market for online games is segmented into several genres – casual games, eSports, and real-money games – with only the first two genres typically not triggering legal or regulatory concerns. The third genre – comprising real-money games such as rummy, poker, and fantasy sports – often invites legal scrutiny because of their perceived resemblance to gambling activities. Such games fall into the legal grey zone when it comes to distinguishing games of skill from games of chance. The extent to which online gaming is allowed in a country depends on these classifications. According to Indian case laws that spill over to the gaming industry, games of skill can be legally backed in the country while games of chance attract strict restrictions.

## **II. EVOLUTION OF ONLINE GAMING LAWS IN INDIA**

Indian regulation of gaming has its origins in colonial legislation, with the Public Gambling Act, 1867 being one of the earliest Acts regulating gaming. The focus of this Act was primarily on physical gambling establishments, making it unlawful to carry on or be in any public gambling-house. However, it stopped short of setting a regime for differentiating games of skill vis-à-vis games of chance, an omission that continues to populate Indian regulation of gambling to this day. Since the independence of India, almost every state in the country has enacted its own gambling laws, creating a mosaic of various levels of restrictiveness.

### **(A) Pre-Internet Era**

Prior to the widespread internet access, gaming laws in India were fairly simple and seemed to focus largely on physical, face-to-face forms of gambling. The Public Gambling Act, 1867 and the parallel laws in various other states made up the backbone of regulation, and little difference was made between different types of games. Prohibitions seemed to focus on penalizing

gambling dens and vulnerable customers, and seemed to accept the existence of so-called games of skill such as horse racing. So, essentially, every game was a game of chance, except for horse-racing, which was a game of skill. Importantly, this existing legal framework for determining the difference between games of skill and games of chance was already laid, eight decades before the world wide web, and it would become increasingly crucial in the internet era to classify games in India.

### **(B) Emergence of Online Gaming**

The rise of the internet and the resulting increase in online gaming has added a new layer of complexity to the regulatory bones of online gaming. To begin with, if online gaming is not physical then a state-specific law for regulating these activities can only go so far. Second, the Information Technology Act, 2000 (for short, the IT Act, the first statute regulating the digital domain in India) did not lay down any special provisions that will deal with online gaming. It only saw it under the ambit of cyber-crimes and electronic commerce, thereby creating a regulatory vacuum.

To fill this void, many states amended existing gambling laws or enacted new laws that specifically focused on online gaming. The Indian state of Nagaland, for example, added the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016, declaring certain games as games of skill and providing a license structure for them. In 2008, the Indian state of Sikkim allowed online gaming by enacting the Sikkim Online Gaming (Regulation) Act.

The judiciary has also played a crucial role in interpreting these laws and in clarifying the legal character of different games of skill (for judicial pronouncements are binding on future courts) through cases relating to online gaming. In the landmark case *Dr K R Lakshmanan v. State of Tamil Nadu*, the Supreme Court of India held that betting on horse racing is a game of skill (requiring ‘the application of skill and judgement combined with some knowledge and experience of horses and their running durations’), and thus exempt from restrictions under the Gaming Act. The judgment recognized the distinction between games of skill and chance (albeit somewhat sketchily), a distinction that’s been applied in more recent judgments on online gaming.

A much more important precedent is *State of Andhra Pradesh v. K Satyanarayana*, which held that rummy is a game of skill under the narrow interpretation of the term that renders it free from the gambling prohibitions of the Public Gambling Act, 1867. It was this ruling that has helped many of the online rummy platforms to situate their operations as premised on gameplay

based on skill and not chance.

Courts are also increasingly scrutinizing fantasy sports platforms. In the case of Varun Gumber v. Union Territory of Chandigarh, the Punjab and Haryana High Court held that: ‘There is an exercise of considerable skill, knowledge, judgement and discretion involved in participation in paid fantasy sports, which does not convert such participation in a game of mere skill into a game of skill and chance.’ Decisions such as these have acted as a *carte blanche* for the operation of fantasy sports platforms in India, though the legal landscape is patchy, and state governments have adopted different approaches to regulation.

But as per these judicial clarifications, there still remain critical dilemmas in India when it comes to the regulation of online gaming. This is partly attributed to the fact that there is no uniform law governing gambling operations in India, which even affects gaming operators in different states due to their varied take on online gaming by each state. The need of the hour is a comprehensive legislation which hones in of the distinct challenges that online gaming poses, and clears the ambiguities surrounding the operation of such gaming platforms.

### **III. CURRENT LEGAL FRAMEWORK**

The regulatory context of the online gaming industry in India is rather complex due to the hierarchical constitutional structure of India’s legal system. This system affects the nature and scope of the laws and rules that are applicable. The legal discipline that regulates the online gaming industry in India includes central laws, state laws, and rules made by an expert committee or other autonomous body.

#### **(A) Constitution of India**

The supreme law of the land for the Constitution of India. A number of articles of the Constitution are of relevance to the regulation of online gaming. The preamble of the Constitution sets out the governing philosophy of the nation, in the following terms: WHEREAS it is expedient to provide for the establishment of a union of states on the basis of the sovereignty and integrity of India;

Article 19(1)(g): Everyone has the right to engage in any trade, profession, or occupation of his choice, provided there are no reasonable grounds whatsoever to believe that it is a profession forbidden by law or one that is inconsistent with the dignity or integrity of human beings or one that would adversely affect the national interest or offend public decency, or in violation of accepted medical ethics. The interpretation of this provision will be relevant to the question of whether and to what extent the state can impose restrictions on the conduct of online gaming,

one of which is the regulation of gambling activities.

Article 14: Article 14 of the Constitution provides the right to be equal before the law. All gambling laws and statutes, including gambling laws online, must be based on these principles of equality and non-discrimination.

### **(B) Public Gambling Act, 1867**

The Public Gambling Act, 1867, is the most ancient statute regulating gambling in India. The Act was enacted by the British, when India was still a part of their empire. It prohibits the running of a 'gambling house' and the visit to one by individuals. The Act, however, did not foresee the emergence of the internet and, therefore, does not mention, let alone provide an analysis of, online gaming. It does, however, contain provisions that deal with matters of relevance in the context of modern technologies. Some of these provisions are below:

1. Section 3: If any person shall keep or use any common gaming house or permitted place, he shall forfeit all his goods and chattels.
2. Section 4: Prohibits the act of gaming in any public place.

### **(C) Information Technology Act, 2000**

Arguably the most important piece of legislation on electronic transactions and digital communication in India is the Information Technology Act, 2000. The Act did not have the express purpose of regulating online gaming but its literal provisions imply significant aspects. Relevant provisions of the Act include the following.

1. Section 65: Whoever dishonestly ... destroys, deletes, alters, defaces, conceals or renders garbled any computer source document which he knows or has reason to believe effects or is likely to affect prejudicially any computer, computer system or computer network, shall be punished with imprisonment of either description for a term which may extend to three years and shall also be liable to fine. 2. In the case of online gaming fraud or manipulation, Section 65 may come into play.
2. Section 66D: Offence of cheating by personation using computer resource This section might be useful in the context of online-gaming scams.

### **(D) Regulatory Bodies and Authorities**

As the online gaming scenario in India is more complex than in other jurisdictions, multiple regulatory bodies and authorities, at the center and the state, look into it, and play a pivotal role in pushing forward laws and regulations, keeping an eye on conformity and tackling emerging issues every day in the online gaming scenario.

### **Ministry of Electronics and Information Technology (MeitY)**

MeitY is described as the ‘nodal ministry for formulation and implementation of the Indian information technology policy and e-governance’ programmes. MeitY doesn’t have specific jurisdiction over online gaming activities, but to the extent that it is involved in the regulation of the digital sphere more generally, including in relation to important issues like cybersecurity and data protection, its policies can have an indirect bearing on the regulation of online gaming.

## **IV. LEGAL CLASSIFICATION OF ONLINE GAMING**

Whether it is regarded as a legal game in India or not depends on whether a particular form of online gaming involves a ‘game of skill’ or ‘a game of chance’. Even if we accept that it is a game of skill, there are further distinctions made between ‘fantasy sports and ‘gambling’ activities, such as rummy and poker.

### **(A) Skill-based Games vs. Chance-based Games**

Whether a particular online game is categorized as one of ‘skill’ or one of ‘chance’ has been crucial to the regulatory framework. Generally, games of skill are legal under Indian law, whereas games of chance are more strictly regulated and even prohibited. Often, the determination of whether a particular activity is one of skill or one of chance has revolved around where the emphasis lies in the activity: is it left primarily to the participant to be skillful or to chance that the participant would be able to achieve the intended result in the activity? This is a ‘true’ game of skill, while a (truly) game of chance is one in which the outcome isn’t determined by the skill of the participant but by ‘chance’ (also often referred to as ‘fortune’ or ‘luck’) or through some other means. Courts have elaborated on this from time to time through their judgments. For instance, as early as 1968, the Supreme Court was required to provide clarity on whether card game rummy constituted a game of ‘chance’ or if it constituted a game of ‘skill’. In *State of Andhra Pradesh v. K Satyanarayana*, thereby taking into consideration the judgment of the Madras High Court in *Ramanathan v. State of Kerala*, the apex court held that rummy was a game of skill within the meaning of section 12 of the Public Gambling Act, 1867, and was therefore excluded from its prohibitions. Most recently in *Varun Gumber v. Union Territory of Chandigarh*, counsel for the players argued that a game of skill requires a substantial degree of skill and judgment, distinguishing it from a mere game of chance. This argument relied on the definition of ‘gaming’ as provided in the 1867 Gambling Act. Again, another favorable judicial pronouncement for users and operators of online fantasy gaming.

### **(B) Fantasy Sports vs. Gambling**

The legal distinction between fantasy sports and gambling-related activities is another aspect of the regulatory regimes for online gaming in India. Fantasy sport involves the creation of virtual teams using real-life athletes as players (in football, cricket, kabaddi and many other sports). The performance of these players during the actual sporting event determines the outcome of a fantasy contest. It is undoubtedly a game of skill and strategy as far as the participant is concerned. They have to depend on applying skill, strategy and sporting knowledge in creating their fantasy team and competing against other participants to emerge victorious. The legal recognition of the skill principle came through in the case of *Varun Gumber v. Union Territory of Chandigarh*, where in the decision dated 12 October 2016, the Punjab and Haryana High Court had concluded that fantasy sports are not gambling but are games of skill. Fantasy gaming operators can now legally operate in India on this basis, provided it complies with other normative aspects of the fantasy sports regulatory regime.

### **(C) Rummy and Poker: Skill or Chance?**

The legal status of games such as poker and rummy in India has been much debated and judicially scrutinized. These games involve chance but they also depend predominantly on the player's skill. In *State of Andhra Pradesh v. K Satyanarayana*, the Supreme Court decided that rummy has to be classified as a game of predominantly skill and not gamble, as winning or losing depended 'largely' on 'skill or superior agility of the mind', further defined as the player's ability to make correct assessments and to decide upon these in the shortest period of time while playing. More recently, in *Dominance Games Pvt Ltd v. State of Tamil Nadu*, the Madras High Court decided that poker involved 'a significant amount of skill and acumen'. Poker did not involve simply placing bets and was not therefore a pure game of chance. But despite these judicial pronouncements, the law on the legal status of poker and rummy remains unsettled. The issue is controversial and the courts often take a dim view of gambling. As the courts and legislators keep toying with the regulations on online gambling, operators have to keep their eye on the ball and adjust their game accordingly.

## **V. INTERPRETATION OF LAWS BY JUDICIARY**

The question of how to interpret the law by the judiciary will thus become of paramount importance in arriving at appropriate regulatory outcomes for online gaming in India. Over the years, one can identify several important court rulings and judicial pronouncements that clarify the law on various aspects of online gaming – in particular, providing clarity on the distinction between games of skill and games of chance; as well as on whether or not fantasy sports can be

said to constitute gambling.

### **(A) Landmark Court Cases**

The seminal judgment in relation to horse racing in India came way back in 1996 in *Dr K R Lakshmanan v. State of Tamil Nadu*. It is a judgment that nobody in gaming or law would dare still to approach. In it, the Supreme Court laid down that betting on horses in races constitutes a game of skill rather than a game of chance. The court said it was a betting where the competition is with the other participants involved and ‘in terms of observing the horses from the time-to-time and of anticipation of the qualities of the horse, such as speed, stamina, agility, etc. ..., and of judging their capabilities based upon past records ..., skill has a vital bearing on the result of the event and ... it is a game of skill’. From that, the law established how other forms of games are treated as games of skill, separating them legally from games of chance.

The distinction between games of skill and games of chance came up for consideration before the Supreme Court of India, in *State of Andhra Pradesh v. K. Satyanarayana Singha* – a judgment concerning the question of whether rummy, playing of which is punishable under the Public Gambling Act, 1867, is a game purely of chance or primarily a game of skill. The court observed: Success in ‘Rummy’ depends principally upon the exercise of skill because in playing ‘Rummy’ complete chance is not an inherent factor as success in ‘Rummy’ depends upon the fall of the cards and skill lies in laying the cards in proper sequence. This judicial pronouncement not only brought legal certainty on the position of law and incorporated the skill-chance dichotomy into Indian law, but also laid down a precedent.

In *Varun Gumber v. Union Territory of Chandigarh*, the Punjab and Haryana High Court finally ruled, in 2017, on the legality of fantasy sports in India. The court declared: In our view, skill of some sort is required for playing a game of cricket; however, the same can also be said in relation to casinos and other forms of gambling, so such a distinction cannot take this case any further ... Any activity that requires substantial degree of skill, judgment and discretion and which primarily relies on skill, would be classified as a ‘game of skill’. These factors indicate that the very manner of playing and participating in the game of fantasy sports requires application of skills. Thus, fantasy sports qualify as a game of skill and it is lawful. This judgement provided them a firm legal ground on which to operate, and to be regulated.

### **(B) Judicial Pronouncements and Their Impact**

#### ***Clarification on Skill vs. Chance***

In judgments such as those in *Dr KR Lakshmanan v. State of Tamil Nadu* and *State of Andhra Pradesh v. K Satyanarayana*, the courts laid down precedents on how skill-based and chance or

game of pure luck-based games should be distinguished. Armed with clarity of thought on how the law sees the role played by skill and expertise in drawing the line between games of skill and games of chance, the online gaming operators were in a better position to determine the legality of their businesses from the point of law.

### ***Legality of Fantasy Sports Platforms***

The judgment in the case of *Varun Gumber v. Union Territory of Chandigarh Or's*, passed by the Punjab and Haryana High Court, has emerged as a significant judgment governing the legality of the fantasy sports platforms in India. Based on the finding that playing fantasy sports involves a substantial element of skill, the High Court recognized these platforms as a legal form of gaming, thereby providing a precedent for such gaming platforms operating in India. The judgment not only empowered several fantasy sports operators to come up with creative and attractive gaming experiences for its users but also helped them to comply with legal frameworks.

## **VI. CHALLENGES IN REGULATORY ENFORCEMENT**

For instance, multiple disadvantages surround regulatory enforcement mean that various issues can be considered for addressing – for instance that there is no consistency in state laws and jurisdictional issues are prevalent. To fight against these challenges and effectively enforce online gaming regulation, consumer interests need to be prioritized by considering the dynamic changes in the online gaming industry.

### **(A) Jurisdictional Issues**

Jurisdiction is one of the main regulatory difficulties faced by online gaming in India. The internet does not respect state boundaries. It is difficult to determine which law or regulation may apply to online gaming platforms with operations straddling across multiple states or jurisdictions. Even though certain centralized laws, for example, the Information Technology Act, 2000, may apply across India, the states have concurrent powers to legislate on online gaming within the limits imposed by the central laws. Not knowing where interstate online gaming may be located, the jurisdictional overlap makes it difficult for online gaming operators and regulators to determine the patchwork of laws and regulations that may apply to their operations, which may vary significantly from one state to another. In addition to complicating the enforcement of regulation, the jurisdictional ambiguity makes it more difficult to enforce compliance with law and secure compliance with legal obligations.

**(B) Lack of Uniformity in State Laws**

Another important challenge in regulatory enforcement is the lack of uniformity in state laws relating to online gaming regulations. In India, while certain states have taken the step to pass online gaming specific laws (although some laws have not yet been implemented), majority of states are still in the process of identifying the applicable law to regulate online gaming activities. A majority of states still fall under the remit of outdated legislation that was enacted more than a century ago, such as the Public Gambling Act, 1867, whose applicability to online gaming is highly questionable. Lack of clear regulatory uniformity results in regulatory arbitrage. This has led to regulatory inconsistency and lapse in enforcement from state to state, which confuses online Gaming operators and consumers. More importantly, the lack of regulatory uniformity affected the scale and scope of success of India's online Gaming growth. It also undermines the willingness to level the playing field in a meritocratic, transparent manner for all stakeholders. A valiant step towards bridging the chasm in the uniformity of state enactments will be an industrywide, all-stakeholder initiative advocating with policymakers and regulators for the adoption of a set of core global regulatory standards common to all the states.

**(C) Enforcement Mechanisms and Challenges**

The primary challenge arises from the virtual nature of the medium and the high level of anonymity that online gaming websites use. Unlike traditional brick-and-mortar casinos and gaming rooms, where regulatory measures can be enforced on the ground because of a consumer's identity, it is difficult to enforce regulations on online gaming platforms because most of the gambling happens in cyberspace. Offshore gaming websites, digitized currencies and apps (that allow citizens to bypass India's restrictive gambling rules) further obstruct efforts to enforce gambling regulations. The absence of effective enforcement mechanisms because of limited resources and muscle power of agencies further exacerbates these challenges. There is a need for increased investment in technology, building capacity and creating inter-country coordination to crack down on illegal gaming activities and ensure that citizens do not fall victim to fraudulent or abusive gambling practices.

**(D) Grey Areas and Regulatory Loopholes**

Despite regulatory efforts to control the space, there are existing grey areas and regulatory lacunae that vitiate current laws and regulations even today. For instance: You will find games classified as games of mere skill and games of chance. To begin with, what is a game of mere skill and what is a game of chance may be a matter for expert opinion and for judicial determination. A clear and unequivocal expression of the legal position will take care of the

mischief. Judicial pronouncements continue to evolve over time, leading to inconsistencies in judicial rulings and regulatory decisions. Similar questions arise with the emergence of new gaming formats aimed at creating immersive and sensory experiences, e.g., virtual reality gaming in India, and blockchain economics-based games globally. These innovative forms of gaming introduce novel regulatory questions, ones that may not be adequately contoured under existing laws and regulations. Taxation, licensing and advertising can be similarly perplexing. Where players and bookmakers are located across the world, what currency should be applicable? How should regulatory responsibilities be assigned? Who should be licensed and granted approvals? Who can regulate? What can regulators do? The answers are hazy. The law on online gaming continues to evolve today. In fact, regulatory uncertainties have encouraged regulatory arbitrage (exploiting ambiguities or inconsistencies in regulations), loopholes and patchwork efforts in the legislative and regulatory domain. This runs the risk of conflicting or overlapping legal obligations and, in turn, encourages regulatory non-compliance. Continuous regulatory monitoring, particularly of industry trends, stakeholder engagement, and reviewing and updating laws and regulations periodically, will go a long way in avoiding regulatory loopholes, uncertain statutory interpretation, and jurisdictional and constitutional controversies over regulating online gaming.

## **VII. EFFECTIVENESS OF CURRENT REGULATORY FRAMEWORK**

Public discourse in India regarding the regulating the current regime of online gaming is a topic of vigorous debate and evaluation. There are certain aspects to consider when discussing the efficiency of the current regime which regulates online gaming activities. The efficiency of the regime is dependent upon factors such as the effect of the regime on players, the gambling industry players, the protection of the interest of consumers and the measures taken towards dealing with social concerns because of the use of online gaming activities.

### **(A) Analysis of Regulatory Impact**

Relying on a model-based analysis, examine the impact of the regulatory framework on regulatory objectives, including but not limited to responsible gaming, prevention of illegal activities, and a transparent gambling environment. While the regulatory framework set up in this Bills a legal environment for licensed and regulated online gaming to flourish, it is highly controversial that the regulations and other requirements imposed by the regulatory framework have negatively affected the growth and development of the online gaming industry. Some opponents point out that the regulatory framework has brought too much burdens to the online gaming operators and created too much challenges to their innovation and competition, leading

to the rise of unregulated and illegal online gaming activities. Moreover, the lack of clear and consistent regulatory requirements has created many uncertainties for industry players who are unable to run their businesses within the framework of applicable laws and regulations. The overall regulatory impact assessment examines both the aggregate costs and benefits of regulatory framework in achieving the regulatory objectives and its facilitation in the growth and development of the online gaming industry, compared with possible alternative regulatory models.

### **(B) Compliance by Industry Players**

Among other things, the extent to which industry participants comply with regulatory requirements is an important factor in determining the success of the regulatory framework for online gaming in India. Some of the important areas of compliance for industry participants in this sector would include obtaining requisite licenses and permits, compliance with regulatory requirements, responsible gaming measures, consumer redress and grievance redressal. While many industry participants would claim to follow regulatory requirements, compliance may be a challenge due to regulatory ambiguity, jurisdictional issues and resource constraints. Additionally, unlicensed and unregulated operators in the market may complicate matters for regulatory enforcers and erode attempts to find a representative level-playing field for all participants in the industry. Improving compliance may require a combined approach of regulatory clarity, regulatory enforcement, stakeholder engagement and self-regulation by the industry players resulting in increased compliance and responsible gaming by industry participants.

### **(C) Protection of Consumer Interests**

A key objective of the regulatory scheme for online gaming in India is the protection of consumer interests. Online gaming consumers are susceptible to the risks of financial fraud, gambling addiction, social isolation and exploitation, and privacy violations among others. The regulatory scheme seeks to address these risks through provisions binding online gaming operators to compulsory obligations for safeguards and protections for gaming-consumers. These may include age-verification mechanisms, RG tools, data protection measures, fair gaming practices, and channels to escalate consumer complaints and disputes towards adjudication or recourse. The effectiveness of safeguards and protections for gaming-consumers depends significantly on their enforcement by the regulator, which in turn, warrants adequate enforcement powers to regulate industry compliance and penalty mechanisms for non-compliance by licensees. It also depends on the degree of consumer empowerment to inform,

educate and enable them to appreciate, assert and claim their rights in scenario of harm or misconduct. The urgency to reform and strengthen consumer protections for online gamers in India is now. Regulatory interventions require broad-based awareness, consumer education and media campaigns, industry self-regulation and voluntary adoption of standards, collaboration with law enforcement agencies, and engagement with consumers, civil society, NGOs, consumer commissions and rights activists.

#### **(D) Addressing Social Concerns**

Social concerns about online gaming are not unique to the perspective of the individual consumer but target larger societal impacts, including increased gambling addiction, harmful effects on mental health and wellbeing and family relationships, and societal commitment to social welfare. Regulation is necessary to foster social and ethical responsibilities of gaming companies and to ensure the provision of essential information that enables consumers to make free, informed choices when gaming. Monitoring and assessment of online game advertising and promotion may help ward off the risk of normalizing and glamorizing gambling and its associated negative effects on young people, the vulnerable and those with gambling disorders. The combined regulatory measures – aimed at facilitating the growth of the online gaming industry, while also safeguarding societal interests – are challenging to balance, as there are many competing objectives and unavoidable trade-offs over time. The social impact of online gaming needs to be continually monitored and evaluated as the online gaming sector evolves.

### **VIII. SUGGESTIONS**

Improving the online gaming regulatory regime in India requires reforming the entire regulatory structure by addressing current gaps and issues. For regulatory reform, there should be comprehensive legislation, unified state laws, incorporation of tech-enabled solutions, and strengthening consumer protections.

#### **(A) Need for Comprehensive Legislation**

The specific recommendation is the need for a dedicated legislation to address the nuances of the online gaming industry in India. While there indeed are laws in India that provide a basis for the regulation of gaming activities, namely, the Public Gambling Act, 1867 and the Information Technology Act, 2000, these laws are either outdated or do not have a comprehensive scope and focus to provide a proper legislative framework for regulating online gaming in India. We recommend a comprehensive law that would provide for clarity on the legality of different forms of online gaming, outline licensing and regulatory parameters for operators, provide for consumer protection, and lay down enforcement systems and penalties

for infringements. Such an elaborate legislation would be developed in light of the best practices of other jurisdictions and would necessarily involve stakeholder consultations, including industry bodies in order to build a regulation that balances the interests of firms, consumers, and society at large.

### **(B) Harmonization of State Laws**

Harmonizing state laws governing online gaming would also be a critical recommendation for creating federal barriers to entry and enhancing consumer protection, given the current fragmentation of state gaming laws in the United States. In fact, state laws provide varying degrees of legal clarity and consistency on the subject of gaming. The enforcement of these laws is more complicated because of some degree of overlay with the even more Byzantine federal gaming law, which ostensibly prohibits online gambling to varying degrees in US states. A unilateral decision by a federal Regulatory Gaming Authority under majority rule would also protect industry outsiders from entering the market based on non-existent or inadequate federal barriers to entry. Some form of mandatory cooperation between states regulating online gaming would be necessary to address these inter-state issues and establish viable and effective national regulatory standards for online gaming.

### **(C) Incorporation of Technological Solutions**

Alongside it should enable regulatory oversight and monitoring frameworks to lever technological developments in enhancing regulations of online gaming. Technology comes to the fore for regulators with the capability to monitor the online gaming platforms, breach-detection systems to flag-off cheating and better policing of the regulatory framework in place. With advancements in analytics, artificial intelligence and blockchain technologies, it becomes possible to use these technologies not only to understand the underlying trends in the gaming data but also to identify patterns of fraudulent gaming behaviour. Age-verification and responsible-gaming environment tools can be leveraged to prevent underage and pathological gaming. The regulators need to work closely with the technology providers, industry experts and research institutions to build and deploy technological solutions that induce transparency, control and restore consumers' trust on the online gaming industry.

### **(D) Strengthening Consumer Protection Measures**

Alongside the expansion of both the scale and scope of the opportunities for online gaming, there is a strong need for robust consumer protection so that we can cater responsibly to the interests of participants, and safeguard the integrity of the same as a form of healthy, non-problematic recreation. 'Regulatory reforms must mandate a strict and stringent consumer data

protection and cyber-security standards so as to safeguard the personal and financial data of consumers from unauthorised access or misuse by a particular person or any source' Alongside financial controls over licence-holders and entry barriers for operators and service providers, the following consumer protection measures could be mandated by regulators both ex-ante and in-situ ie, at the time of regulatory applications for licences, consumer rights and entitlements relating to online gaming must be included: Strict and stringent consumer data protection and cyber-security standards, so as to safeguard the personal and financial data of consumers from unauthorised access or misuse by a particular person or any source, including obligatory robust consumer data protection regime; All online-game operators must be mandated to heed to robust responsible gaming requirements, including provision of compulsory self-exclusion programmes, spending controls and consolidated access for persons with gaming problems to support services; Robust consumer complaints and redressal mechanisms: 'robust consumer complaints and redressal mechanisms can be devised by regulators ... determining any abuses pertaining to advertising, collusion by win-manipulation, physical and mental harassment, gaming frauds and scams, illegal gambling over platforms are important institutions.' Public education programmes informing citizens about the potential dangers of online gaming, the questions and issues of playing it, and the corresponding rights and responsibilities of citizens vis-à-vis a regulators' office or officials trying to impose redressal from the state: 'Institutionalising robust consumer protection standards help to create a safer gaming environment ... This in turn will enhance confidence and trust among consumers as well as the long-term viability of online gaming.'

## **IX. CONCLUSION**

With the rapid developments in technology and the prosperous growth of digital infrastructure, it is no surprise that the online gaming sector is booming in India. This growth, however, comes with its own set of regulatory issues. A responsive and integrated legal landscape is of utmost necessity for regulation of online gaming in India. In this article, I highlight the key regulatory aspects underpinning the online gaming sector in India. In India, the terms 'online gaming' and 'online gambling' are usually used interchangeably, but usually what we refer to as 'online gaming' refers to games of skill whereas games of chance are referred to as 'online gambling'. This distinction is important because games of skill and games of chance trigger separate legal and regulatory issues in India. This in turn makes the regulation of online games a matter for both the central government and the state governments in India.

Regulation of gaming goes back to the colonial period when the Public Gambling Act of 1867

was focused mainly on regulating establishments where one could gather to gamble. Subsequent state legislation put us in a half-baked regulatory regime. The judiciary has also kept up its engagement with the legislation by interpreting various laws vis-à-vis differentiating games of skill – such as games like rummy or fantasy sports – from games of chance. In the past couple of years, two high-profile cases have provided legal clarity to this long-standing question of what qualifies as gambling and what doesn't. *Dr K R Lakshmanan v. State of Tamil Nadu*; and *Varun Guber v. Union Territory of Chandigarh* have consistently ruled that games with some skill and judgment involved in their outcomes are not considered gambling according to Indian law.

The current legislative regime with respect to online gaming is an amalgam of several pieces. There are central statutes like the Information Technology Act 2000 and there are ancillary gaming statutes enacted at the state level for offline gaming which are applicable to offline activities. With no commonality in the regulatory ecosystem across the participating states, it is not possible to understand the thinking of regulators and the enforcers. This is problematic for an online gaming operation which is live and licensed in one state to traverse across the states. Not just because it's a difficult proposition but also because a gaming company licensed by one state cannot be sure that it comes across as duly registering itself in a different state. There could be more problems, even, as the aforesaid legislative arrangement does not cover online gaming activities explicitly. In fact, the conspicuous absence of an extent legislative arrangement on online gaming introduces a lot of regulatory darkness.

It seems especially worthwhile to maintain due emphasis on protecting the interests of consumers, given that many of the risks associated with online gaming are social in nature – for example, there is fraud, addiction and data protection issues, which might sometimes lead to exposures that lead to the exposure of young players to violence, child abuse and other potentially dangerous situations. These require age-verification processes, user-healthy limits to their gaming activities, and the protection of personal data. The social concerns can be addressed from the angle of responsible gaming, although it is also essential to address and, ideally, cure the deleterious consequences of gaming addiction on mental health and social wellbeing.

India needs a new paradigm to regulate play on its virtual land. No single statute dominates the regulatory regime of online gaming in India. Since the powers to legislate on matters of gaming prima facie vests with the Indian Parliament, enactment of a central gaming law would be a lost opportunity unless state legislations are also harmonised to cover the borders of gaming. Any model of pre-emption or post-hoc regulation are equally ineffective. Emerging regulatory

contours for online gaming in India should strive to have laws that could contain the key rules of legality, legitimacy, transparency, safety, responsible behaviour, integrity and social acceptance. In the end, the games stay on but better regulation to run the show is the need of the hour. After all, what India needs for online gaming is not simply the governance of gaming but, instead, 'good' governance of online gaming!

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