

# Legal and Regulatory Challenges of Online Gaming in India

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## Abstract

The online gaming industry in India is currently running without proper regulatory oversight, which is a matter of concern that calls for urgent interest. Despite the existence of some regulations concerning the legality of online gaming, there is a lack of complete law, developing a gray area. Furthermore, distinctive states have their laws on playing and making a bet, with games primarily based on abilities commonly allowed in most components of the country, while games of threat are taken into consideration immoral and prohibited in most states, besides Goa, Sikkim, and the Union Territory of Daman. In addition, a few states, including Assam, Andhra Pradesh, Nagaland, Odisha, Tamil Nadu, and Telangana, have placed regulations on games of skill. The absence of proper regulatory oversight has resulted in the growth of online gaming dependency, a hassle that has excessive social and health implications. The COVID-19 pandemic has exacerbated the scenario, main to a sizeable increase in screen time and compulsive technology utilization. Parents throughout the US are suffering due to restrictions on their kids' use of generation and gaming, with many young boys and women becoming trapped in compulsive gaming, spending as a good deal as six to 8 hours according to day gambling online games. This dependence is harming college students' instructional performance, straining social relationships, and destructive circle of relatives dynamics. The fitness implications of this addiction are also growing and will have a profound impact on society. Furthermore, online games along with PUBG and the Blue Whale Challenge have been connected to incidents of violence and suicide. Moreover, **online gaming dependency can lead to the inadvertent sharing of private facts, which can result in instances of dishonesty, privacy violations, abuse, and bullying.** Therefore, regulatory authorities ought to take word of this difficulty and introduce comprehensive guidelines to manipulate the web gaming enterprise. The enterprise ought to be made responsible and required to function inside prison boundaries to save similar harm to people and society as an entire.

The Online Gaming (Regulation) Bill, 2022<sup>1</sup>, was introduced in the Lok Sabha on 1 April 2022. It aims at maintaining integrity in online gaming and introducing a regulatory regime for online

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<sup>1</sup> [The Online Gaming \(Regulation\) Bill, 2022](#)

gaming, as mentioned within the Statement of Objects and Reasons of the Bill. The proposed Bill targets to regulate all sorts of online gaming, no matter whether the sport is primarily based on skill or threat. **Its middle objective is to establish an Online Gaming Commission, to be constituted by the Central Government.**

- The Commission may have the power to oversee the functioning of online gaming websites and take measures to lower unlawful online gaming sports.
- The Bill envisages a licensing regime and empowers the Commission to supply, suspend, and revoke licenses for online gaming websites.
- Operating an online gaming server or an online gaming internet site without a license could be taken into consideration as a punishable offense.
- The Bill excludes folks presenting backend services in India for any international gaming internet site based outside India.
- The Commission could be empowered to formulate rules associated with licensing, bills, individuals, prices, notices, credit score facilities, and proxy participation.
- All offences under this bill will be cognizable and bailable.

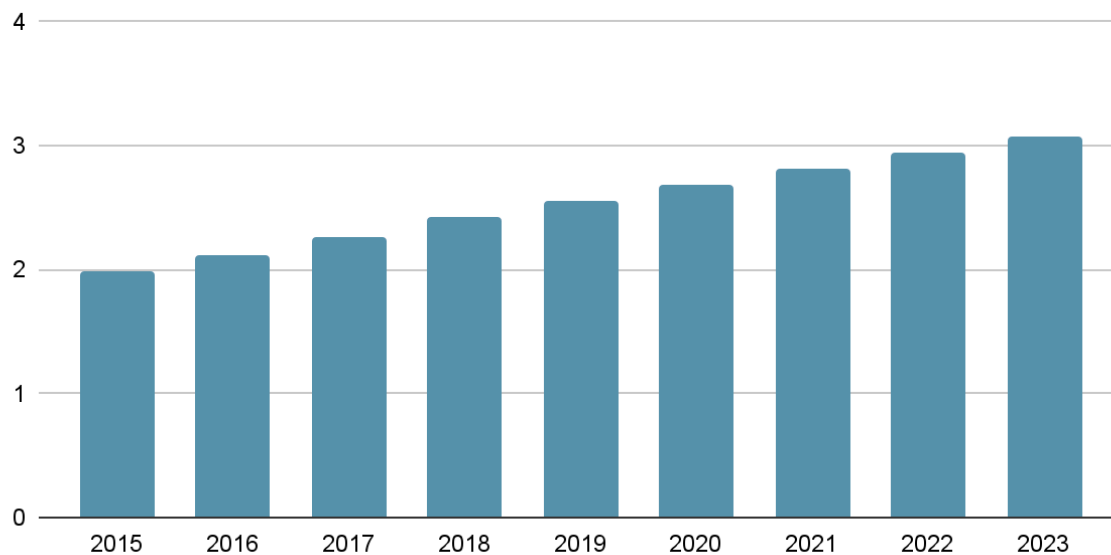
The Bill aims to fill the legislative void around online gaming inside the nation-particular law. Various courts in India have nudged State governments to recall the equal. Overall, the Bill seeks to put in the region various checks and balances via delegating regulatory powers to the Commission.

## **Introduction**

The world of online gaming has witnessed a splendid surge in popularity over the last few years. Thanks to the advancements in generation and the internet, people from every nook of the globe can join and take part in real-time gaming stories. The world of online gaming gives an incredibly unique experience that can be enjoyed by people of every age institution. It caters to a huge style of gaming alternatives, from casual players who experience recreation to aggressive gamers who take their gaming seriously. The range of video games available online is great, starting from speedy-paced first-person shooter games to immersive role-gambling games, making it a super suit for all gaming enthusiasts. Online gaming has revolutionized the gaming industry by way of

offering the ease of playing video games from anywhere and at any time, making it an extensive part of the cutting-edge-day entertainment enterprise. The term 'online game' spans everything from playing a simple game of Solitaire on your very own to **Massively Multiplayer Online Games (MMOGs)** with whole digital universes, wherein users interact with different gamers, and in which transactions, typically factors or game enhancements, however sometimes real cash, are concerned. Video games are performed on computer systems and laptops, handheld gadgets, and game consoles, and with growing frequency – on phones and drugs. Some games are bought and hooked up on devices, others are downloaded from the internet, and some are played solely online. Video games are popular at every age: Older women use easy single-player video games; younger men are the heaviest users of 'struggle games.' The hugely multiplayer games appeal to customers from eight-80 years. Some video games are instructional; others are horrifically violent and might include sexual snapshots. Yet many games are installed to be performed with buddies or circle of relatives within the identical room and a lot of those games are an exceptional manner for households to interact and spend time collectively.

Number of Active Online Gamers Worldwide - 2015 to 2023 (in billions)



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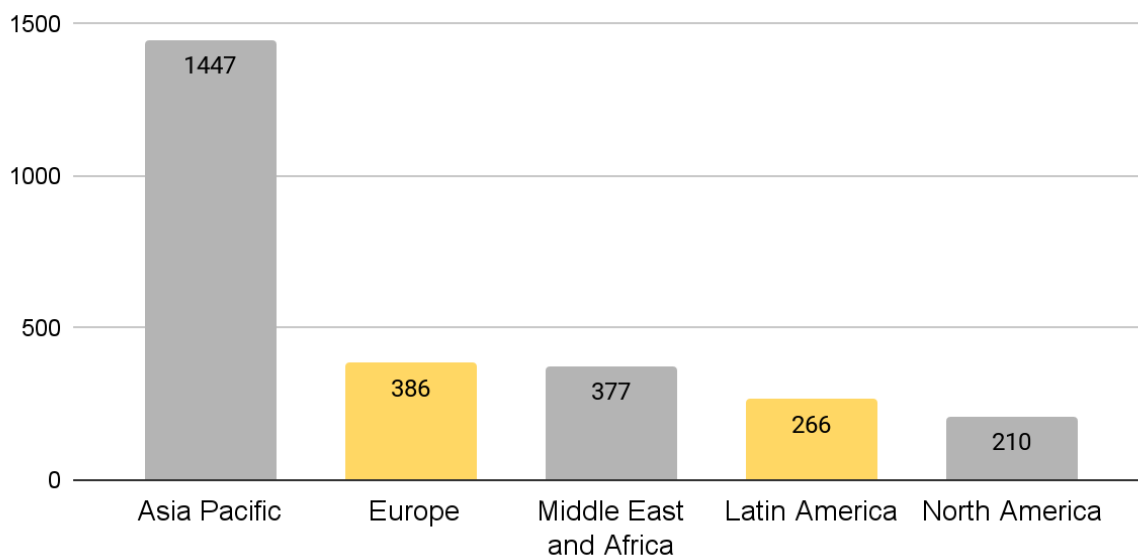
During lockdown, many gamers suggested that gaming has had a high-quality effect on their mental health. A survey performed among European gamers discovered that 16% of them felt this way. In specific, people who spent their time playing multiplayer games seemed to be especially fantastic. This helps the perception that gaming may be an effective manner to enhance mental well-being in hard instances. The upward thrust of online gaming in the world has been notably inspired by cellular telephones. **India, being a mobile-first market, has seen 85% of the total online gaming revenue coming from mobile gaming.** With the Prime Minister's vision to boost mobile production in the country, it is expected that revenue numbers could see a 2-3 fold rise in the next couple of years. The convenience, portability, and availability of affordable smartphones make a good case for mobile gaming and this has increased investors' interest in the sector. As per the **India Brand Equity Foundation**, gaming companies in India have raised funding worth \$2.8 billion from domestic and overseas investors in the last five years. All these factors have made the industry highly competitive, with gaming companies constantly innovating and launching new

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<sup>2</sup> [Number of Active Online Gamers Worldwide - 2015 to 2023 \(in billions\)](#)

games to attract users.<sup>3</sup> Though, part of the appeal of mobile gaming is that you can play anywhere. Convenience is one of the best things when you can carry those pocket-friendly devices instead of setting up the whole gaming console. Downloading a game from PlayStore or Apple Store is way more accessible and feasible than going to an actual store to buy it. But too much convenience has its consequences. Due to its 24\*7 availability, **mobile gaming can be very addictive and cause eye strain**. Some people are an easy target for obsession that can be hazardous. Even if the gamer has a healthy routine for playing, **one can be a victim of microtransactions**<sup>4</sup>. In-app purchases' biggest potential drawback is that they may harm the user experience. Customers could feel pressured to spend money to access specific features or material, which is unpleasant and detracts from how fun using the app is. It can also be conspicuous and ruin the user experience if not implemented properly.

Number of Video Gamers Worldwide per Region in 2020 (in millions)



5

<sup>3</sup> [Your Story - Tracing the Growth of the Online Gaming Sector](#)

<sup>4</sup> **Microtransactions**, sometimes abbreviated as mttx, are a business model where users can purchase virtual goods with micropayments within a game.

<sup>5</sup> [Number of Video Gamers Worldwide per Region in 2020 \(in millions\)](#)

1. **China** - China has established itself as an impressive force within the international sphere of esports, with a massive quantity of gamers and an exquisite record of prevailing in a couple of tournaments. Despite being a country that operates behind closed doors, its prowess in esports is extensively recognized and revered throughout the globe. While the Chinese government was first of all skeptical of competitive gaming, it has steadily gained recognition and appreciation over time and has now turned out to be popular throughout the state. The esports surroundings in China are numerous and exciting, presenting, and allowing surroundings that encourage the growth and development of tens of thousands of competitors.
2. **USA** - From the United States, more esports players have surfaced and made it to the most professional stages than any other country. If we use EsportsEarnings.com's ranking as an example, we can see that – one record – 7,534 players have emerged from China, the second-most populous country when it comes to esports. From the USA, almost 25,000 players are listed as having earned enough to make the ranking. But with that being said, only twenty-one players have earned more than \$1 million, compared to the forty-four from China. Even with that fact existing, the USA is still a staple nation in the esports industry. There's vast investment across the country, and over time, colleges, broadcasting companies, sports organizations, and even the government itself are getting increasingly interested in the power of esports.
3. **South Korea** - South Korea is arguably one of the most dominant nations when it comes to discussing the best esports countries. South Korea has been at the forefront of the esports industry for over two decades, making it one of the 'founding father' nations of esports. Its legacy in the field has helped it secure a top spot in the esports country rankings. The nation has produced some of the greatest esports players in history, including top-performing League of Legends and StarCraft II competitors. Despite this, as of 2023, only three players from South Korea have earned more than \$1 million in esports. Nevertheless, South Korea's impact on the esports industry cannot be denied.

4. **Denmark** - Denmark may be a relatively small country, but it packs a big punch when it comes to esports. The nation's esports teams are some of the best in the world, and its players are renowned for their exceptional skills. The highest-earning esports player in history, **N0tail**, is Danish. Surprisingly, Denmark has more players who have earned over \$1 million than even South Korea, a country that is often regarded as a dominant force in esports. While Denmark has yet to make a significant impact on the esports industry, it is only a matter of time before the world takes notice of its impressive esports talent.
5. **Russia** - Russia is a rising star in the esports industry. It has seen a boom in recent years, with more than 40% of its esports earnings being generated from Dota 2. With ten esports players earning over \$1 million, Dota 2 remains the standout title for Russia in the esports industry.

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

In this age of social distancing and mental health strains, gamers have long had a tool that's now bringing some relief to those who have never picked up a controller before. The explosive growth of gaming during the pandemic has shown that many have found a new outlet for much-needed connection in isolation. Gaming has skyrocketed during the pandemic, reaching people who would play now and then, or even those who had previously snubbed it entirely. But did you know that when it comes to games, there are two distinct categories?

India's gaming industry can be divided into two categories: games of skill and games of chance. The game of skill encompasses games that require a certain level of expertise, such as chess, poker, or rummy and is subject to a GST tax rate of 18%. On the other hand, games of chance, such as roulette or slot machines, are taxed at a higher rate of 28%. The classification of fantasy games remains a subject of debate, with arguments for both skill and chance-based categorization. However, the Supreme Court has recognized that such games require a certain level of competence, which could suggest that skill-based categorization could apply. India's gaming market is expanding at a staggering pace, with the industry projected to grow to \$2 billion this year. Furthermore, the country boasts over 400 gaming start-ups, indicating this sector's immense potential for innovation



and growth. Given the industry's growth potential, policymakers must ensure that regulations and tax policies are conducive to sustainable growth and development. By promoting a thriving gaming industry, India can establish itself as a major player in the global gaming market.

	<b>Game of Skill</b>	<b>Game of Chance</b>
<b>Outcome</b>	Outcomes are determined by the player's expertise, knowledge, and strategic decisions.	Outcomes are primarily determined by luck and randomness.
<b>Success</b>	Success depends on skill level, practice, and decision-making.	Success relies on chance rather than the player's skill or expertise
<b>Players</b>	Players can deliberately bypass opponents to secure victory.	Players have limited control over the outcome.
<b>Scope</b>	Intellectual stimulation, challenge, and opportunity for self-improvement.	Element of escapism, the anticipation of luck, and the allure of instant fortune.
<b>Gameplay</b>	Requires continuous learning, calculated thinking, and adaptability	Offer social experiences and share excitement among players.
<b>Games</b>	Chess, poker, scrabble, basketball, etc.	Roulette, slot machines. Lottery, and bingo
<b>Skills</b>	Skillful decision-making can increase the chances of success.	Skilled players can employ strategies, analyze probabilities, and manage bets effectively.

## History and Origin of Gambling in India

The art of Gambling in India goes way back to the Vedic times when it was also known as Aksa or Devana. Lord Shiva and Parvati started Chausar, or the game of dice, as a friendly gambling match with nominal stakes. Several mentions of chausar, or the game of dice, are in ancient texts like the Rig Veda and the Atharva Veda, written in 1500 BC. It was also mentioned in Ramayana, which is believed to date from 7300 BC. However, the true negatives began in the Mahabharata, thought to be have written around 3200 BC. Shakuni, the Gandhara King, tricked Yudhishtira by enchanting the dice and robbed him of his wealth, kingdom, brothers, freedom, and even his wife, Draupadi. Later, he was forced into exile for 13 years, which included one year in anonymity. There have been mentions of gambling in RigVeda, Bhagavad Gita, Tirukullar by Tiruvalluvar, and many more ancient texts.

द्यूतं छलयतामस्मि तेजस्तेजस्विनामहम् ।

जयोऽस्मि व्यवसायोऽस्मि सत्त्वं सत्त्ववतामहम् ॥ 36॥<sup>6</sup>

Its literal translation is - I am the gambling of the cheats and the splendor of the splendid. I am the victory of the victorious, the resolve of the resolute, and the virtue of the virtuous. But if gambling is also God's glory, then is there no harm in it, and why is it forbidden? God grants his power to the soul, and along with it, he gives the freedom of choice. If we choose to forget him, he gives us the power to forget. A gambler possesses intellect and ability that are supplied by God. But if he decides to misuse these God-given gifts, then God is not responsible for the sinful deeds.

Even in medieval times, people started gambling on animals in games like ram fights and cockfights. Moving ahead, the Europeans also made a fair contribution to gambling in India. With the increasing popularity of Cricket and horse racing in the 1720s, Indians got so addicted to betting that the British Government had to impose the Public Gambling Act of 1867, making operating a gambling house illegal. The restriction, however, was only on paper; it did not last long and could

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<sup>6</sup> [Bhagavad Gita: Chapter 10, Verse 36](#)

not prevent people from engaging in gambling. It became increasingly user-centric, and they used it in alleys, streets, residential areas, and village gatherings.

### **Gambling Laws**

As mentioned above, the Public Gambling Act of 1867 (also known as the Gambling Act), which was enacted by the British is still followed as the general law that governs gambling in India. This law prohibits running or operating public gaming houses. Any violation of the law under this act could attract a fine of Rs.200 or imprisonment of up to 3 months. The main prohibitions under this Act include:

- Owning, keeping, occupying, or having care and management of a gaming house/common gaming house.
- Gambling in a common gaming house or being present for gambling in a common gaming house.
- Furnishing or advancing money for gambling to persons frequenting any such gaming house.

However, this legislation does not address online gambling, as it was enacted long before the advent of the internet. The Information Technology Act of 2000 governs cybercrime and provides for penalties for offenses such as hacking, identity theft, and the spread of viruses. The act also provides the regulation of online intermediaries such as internet service providers, online gaming platforms, and social media platforms.

**There is no unifying law in India that specifies whether gambling is acceptable.** Each state is granted the authority to enact its gaming regulations under Entry 34 of List II of the Seventh Schedule of the Indian Constitution. It implies that **there are many state-specific variations**. The states of Sikkim and Meghalaya in northeast India, the state of Goa, and the union territory of Daman and Diu in the west regulate casino games in land-based form. In Goa, Daman and Diu, casinos are regulated under the Goa, Daman and Diu Public Gambling Act, of 1976 (“Goa Act”). Casinos in Sikkim are managed under the Sikkim Casinos (Control and Tax) Act, 2002 (“Sikkim

Casino Act”). In Meghalaya, casino games are to be regulated under the Meghalaya Prevention of Gambling Act, of 1970. Some other state legislatures for gambling are -

- The Assam Game and Betting Act, 1970
- The West Bengal Gambling and Prize Competitions Act, 1957
- Sikkim Online Gaming (Regulation) Act, 2008 (only legislation governing online gaming)
- Orissa (Prevention of) Gambling Act, 1955
- Delhi Public Gambling Act, 1955
- Bombay Prevention of Gambling Act, 1887

Gambling laws in India seem to be unclear and confusing. Judiciary made an effort through case laws to provide transparency and clarity in the gambling laws, also considering recent technological changes in our society that enabled more people to participate in gaming activities.

#### **Court Cases Regarding the Skill-Chance Debate**

- **RMD Chamarbaugawala v. Union of India, 1957<sup>7</sup>**

The petitioner argued that the restrictions on their ‘prize competitions’ by the state are unreasonable and violate their fundamental rights. They were advertising and running prize tournaments in many states, which challenged the constitutionality of the Prize Competition Act (42 of 1955), Sections 4<sup>8</sup> and 5<sup>9</sup>, and Rules 11 and 12 framed under Section 20 of the Act. It was held that the question of violation of the fundamental rights would not stand valid as gambling is not covered under the trade and hence no violation of the fundamental right. The purpose of The Prize Competition Act, 1955 is to control and regulate prize competitions and even if some parts like sections 4 and 5 would be invalid it does not mean that the entire act is invalid. After considering all aspects it was held that the

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<sup>7</sup> [AIR 628, 1957 SCR 930](#)

<sup>8</sup> No person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month exceeds one thousand rupees; and in every prize competition, the number of entries shall not exceed two thousand.

<sup>9</sup> Subject to the provisions of section 4, no person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes (whether in cash or otherwise) to be offered in any month does not exceed one thousand rupees unless he has obtained in this behalf a licence granted in accordance with the provisions of this Act and the rules made thereunder.

doctrine of severability would apply here the invalid provisions would be excluded from the Act and the valid part would be enforceable. The bench, then, dismissed the petition.

- **State of Andhra Pradesh v. K. Satyanarayana**<sup>10</sup>

The State of Andhra Pradesh filed a writ petition demanding the suspension of a gambling house raided by the police, which was owned by K. Satyanarayana. The court dismissed the appeal by stating that “Rummy...requires a certain amount of skill because the fall of the cards has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards...therefore...the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill.”

- **M.J. Sivani And Ors v. State Of Karnataka And Ors**<sup>11</sup>

In this case, M.J. Sivani’s video gaming plaza was challenged by the Mysore Police Act, 1963, and was called upon to obtain licenses under the Licensing and Controlling of Places of Public Amusements (Bangalore City) Order, 1989 (for short "Bangalore Order"). The appellant put an argument where he established that their video games were purely for public amusement, and therefore, were neither illegal nor unjustified. So apparently, they were not required to obtain any license from the licensing authority concerned. To which the court observed that the authorities are refusing to grant license en bloc and the action as according to them “unregulated video game operations<sup>11</sup> not only pose a danger to public peace and order and safety; but the public will fall prey to gaming where they always stand to lose in playing the games of chance. Unless one resorts to gaming regularly, one can hardly be reckoned to possess the skill to play the video game. Therefore, when it is a game of pure chance or manipulated by tampering with the machines to make it a game of chance, even acquired skills hardly assist a player in getting extra tokens. Therefore, even when it is a game of mixed skill and chance, it would be gaming prohibited under the statute except by regulation.” The petition was then dismissed.

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<sup>10</sup> [1968 AIR 825, 1968 SCR \(2\) 387](#)

<sup>11</sup> [4564 of 1995](#)

- **Dr. K.R. Lakshmanan v. State of Tamil Nadu**<sup>12</sup>

In this case, the court was considering whether horse racing was a game of skill or chance. It observed that the outcome in a horse race depends on several factors like form, fitness and inherent capacity of the animal, the ability of the jockey, the weight carried, and the distance of the race, which are all objective facts capable of being assessed by persons placing the bets. Thus, unlike the lottery, the prediction of the result of the race is an outcome of knowledge, study, and observation. The court declared that “horse racing is a game of mere skill within the meaning of Section 49 of the Police Act<sup>13</sup> and Section 11 of the Gaming Act<sup>14</sup>. Horse racing is neither "gaming" nor "gambling" as defined and envisaged under the two Acts read with the 1974 Act and the penal provisions of these Acts do not apply to horse racing which is a game of skill. The 1985 Act is ultra vires Article 14 of the Constitution<sup>15</sup> and as such is struck down.”

- **D. Krishna Kumar v. State of Andhra Pradesh**<sup>16</sup>

In this case, the prosecution attests that petitioners, who are in management of the affairs of the Elite Club, are making huge profits by allowing people to play the game of Rummy with 13 cards/Syndicate in the club premises, and so the premises of the club is a "Common gaming house" as defined under Section 2(1) of the A.P. Gaming Act, 1974 (the Act)<sup>17</sup> and so petitioners are liable for punishment under Section 3 of the Act<sup>18</sup>. The court then argued that “because of Section 15 of the Act<sup>19</sup>, the provisions of the Act do not apply to the game of rummy, which is to be treated as a game of skill only. Therefore, even if the petitioners,

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<sup>12</sup> [1996 AIR 1153, 1996 SCC \(2\) 226](#)

<sup>13</sup> Regulation of public processions, etc., and of carriages and persons and places of public resort. Regulation of use of music in street.

<sup>14</sup> Saving of games of skill. - Nothing in sections 5 to 10 of this Act shall be held to apply to games of mere skill wherever played.

<sup>15</sup> The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>16</sup> [2002 \(5\) ALT 806, 2003 CriLJ 143](#)

<sup>17</sup> Definition of “common gaming house”

<sup>18</sup> (a) for a second offence, imprisonment for not less than three months and fine of not less than one thousand rupees; (b) for a third or subsequent offence, imprisonment for not less than six months and fine of not less than one thousand rupees.

<sup>19</sup> Savings of games of skill-Nothing in this Act shall apply to games of skill only wherever played.

who are running the club that was raided by the police, were making profits by allowing persons to use the premises for playing the game of rummy with 13 cards/ syndicate, they cannot be said to be running a 'common gaming house' as defined in Section 3 of the Act, because Section 3 of the Act, given Section 15 of the Act, does not apply to a place where Rummy is being played.” The court demanded the authorities to hand over the premises back to their owners.

- **Manoranjithan Manamyil Mandram v. State of Tamil Nadu**<sup>20</sup>

In this case, the petitioner issued a writ of Mandamus to forbear the respondents from preventing the functioning of a society and also from preventing the members of the petitioner society from playing games of Rummy, Table Tennis, Chess, and Carrom Board. The Court dismissed the petition by stating, "The question of whether a particular game is a game of skill or chance is to be decided on the facts and circumstances of each case.”

- **M/s Gaussian Networks Private Limited v. Monica Lakhanpal and State of NCT**<sup>21</sup>

Here the Court observed that the online gaming industry in India is operating without any regulations, allowing many operators to conduct business without any accountability. Gambling and betting are being conducted by claiming that it is legal to bet on games of skill. The existing gambling acts of various states have not been amended to include online games of skill, and very few states have taken action to block illegal gambling sites. **With the younger generation being the primary target demographic, there is a little mechanism in place to check the transfer of money through international routes, leading to total evasion of taxes.** Despite being prohibited under the Gambling Act, due to lack of regulation, online gaming is replacing brick-and-mortar casinos and gaming houses. The due diligence rules in Information Technology prohibit attempts to transfer money involving online gambling, yet payment gateways of gambling sites are still blocked by the Reserve Bank of India.

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<sup>20</sup> [AIR 2005 Mad 261](#)

<sup>21</sup> [Suit No. 32/2012](#)

- **Shri Varun Gumber v. Union Territory of Chandigarh and Ors.**<sup>22</sup>

The plaintiff was a registered user of 'Dream 11', a fantasy game sport. He transferred an amount of INR 50,000 for participating in various leagues created on the platform, used up all his credits to create his own virtual cricket and football team, and participated in tournaments offered by Dream 11. He filed a petition before the Punjab and Haryana High Court alleging that fantasy sports games were not based on skill and that the activities of Dream 11 qualified as 'gambling' under the Public Gambling Act, of 1867. The Court dismissed the writ petition and held that the respondent company (Dream11) is exempted from the application of provisions, including the penal provisions, as their fantasy sports games require material and considerable skills by the user.

- **Humphrey v. Viacom, 2007**<sup>23</sup>

In the United States of America, a plaintiff claimed that the registration fees paid by fantasy sports league participants constitute "wager" or "bets" and that the winners are determined predominantly by chance (due to potential player injuries and other chance circumstances). In dismissing the plaintiff's complaint, the district court held that fantasy sports are games of skill, depending on the fantasy participant's skill in selecting players for his or her team, adding and dropping players during the season, and deciding who among his or her players will start and which players will be placed on the bench.

After observing these cases related to the debate on the game of skill vs the game of chance, it seems the judicial bodies are not ready to take a strong stance on this matter. They clearly budge their decisions as soon as a powerful and influential organization comes at fault. Dream 11, a pure fantasy game stated as a game of skill, is an example itself.

### **E-Sports and its Relevance**

**Esports (Electronic sports)** is a competitive sport where gamers use their physical and mental abilities to compete in certain genres of video games in a virtual, electronic environment. The esports video game titles can be played across electronic devices like PCs, Mobile, Consoles,

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<sup>22</sup> [CWP No. 7559 of 2017](#)

<sup>23</sup> [BL 38423 \(D.N.J. 2007\)](#)



unmanned vehicles, unmanned aerial vehicles, robots, simulation, etc., and are Multiplayer Games, where esports athletes compete against one another or form teams to compete. Esports events can be online or offline. Esports also extends to virtual reality and augmented reality video games.<sup>24</sup> In 2022, Esports was recognized as a sport by the Indian government, placing it on par with cricket and football. This move is expected to accelerate the growth of Esports in India and encourage more people to pursue it as a career, given its rising popularity and acceptance globally. In the same year, Esports debuted as an official medal sport at the Asian Games and a pilot event at the Commonwealth Games. **The Indian DOTA 2 (a multiplayer battle arena video game) team created history by winning bronze at the first Commonwealth Esports Championship held in Birmingham in 2022.**

According to a research survey by the **International Research Journal of Modernization in Engineering Technology and Science**, many people are willing to start opting for a career in esports and making it a primary goal in their profession.<sup>25</sup> **India is one of the biggest esports markets in Asia, with a market size of INR 3bn in FY2021, and a projected market value of INR 100bn by 2025, according to a report by EY India.**<sup>26</sup> Some of the esports games in India are-



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<sup>24</sup> [Esports Federation of India](#)

<sup>25</sup> [Growth and Effect of Esports in Indian Gaming Community and its Future Impact](#)

<sup>26</sup> [The Dawn of Esports in India - EY India](#)



Esports is undoubtedly a rapidly expanding industry in India, fueled by the widespread popularity of mobile gaming and the ever-increasing number of tournaments and leagues being organized across the country. **The government has not yet formed or recognized any federation for the Ministry of Sports and Youth Affairs.** The future of esports in India is indeed very promising, with the industry expected to continue its upward trajectory in the coming years. As the industry grows, it will open up many opportunities for gamers, sponsors, and investors, making esports a fascinating and potentially very lucrative industry to keep an eye on

### **Regulation of Advertisements and Promotions in Online Gaming**

The phenomenon of mobile gaming is gaining significant momentum in India, and the increasing engagement and attention of audiences to this medium has resulted in a notable surge in mobile gaming advertising by three in four brands over the past year. According to media reports, the majority of brands have been advertising on mobile game apps for more than a year, leading to a twofold increase in gaming ad spending since the onset of the pandemic. The InMobi report ['Mobile Game Advertising 2022'](#) indicates that **mobile gaming advertising has witnessed a 2 times jump in ad spending (on-year), with 97 percent of marketers expressing satisfaction with the outcomes.** The key drivers for Indian advertisers to adopt mobile gaming advertising include higher audience engagement and attention and better targeting and personalization. Given that over 430 million mobile gamers reside in India, and this number is expected to grow to 650

million by 2025, the Indian gaming market is poised to reach \$3.9 billion (in value) by 2025. Notably, **over 40 percent of hardcore mobile gamers pay for their games, with an average monthly spend of Rs 230.**

**Rishi Bedi, Managing Director, Asia Pacific at InMobi**, said, "Mobile game advertising is evolving into more than simply a trend as audience reach keeps growing, ad formats diversify, and ad budgets keep rising...Over time, more and more advertisers are including mobile game advertising in their media mix owing to the positive outcomes and impactful results." The top key drivers for Indian advertisers to adopt mobile gaming advertising are greater audience attention and engagement and better targeting and personalization.

The Indian government has taken a significant step to regulate digital content providers by transferring the responsibility of managing online content providers, including online gaming services and online advertising, to the Ministry of Information and Broadcasting (I&B). This move aims to better regulate and manage the rapidly evolving digital landscape. President Draupadi Murmu issued a gazette notification that stipulates that "films and Audio-Visual programs/content made available by online content providers/publishers" are now included in the Second Schedule of the Government of India (Allocation of Business) Rules, 1961<sup>27</sup>, and are therefore under the jurisdiction of the Ministry of I&B. As a result, the Ministry of I&B will now be responsible for content distribution in the digital domain.

The transfer of responsibility to the Ministry of I&B is a significant development that will undoubtedly have far-reaching consequences. As a result, the Ministry of I&B will be responsible for setting rules and regulations for gaming content platforms and online advertising, which were previously managed by the **Ministry of Electronics and Information Technology (MeitY)** under the Information Technology Act, 2000. The regulation of online media was first proposed by the then **Minister for Information and Broadcasting (I&B), Smriti Irani**, in March 2018. The aim was to regulate digital content providers, as online platforms gained more power, and the need to protect users from exploitative or harmful content grew.

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<sup>27</sup> indicates the distribution of subjects among the Ministries/Departments. This gives details of the items of business allotted to the individual Ministries and Departments.

In April 2021, the government introduced an amendment to the IT Rules 2021 to regulate online pay-to-play games. The Ministry of Information & Broadcasting also issued a notice to media houses, platforms, and online intermediaries, urging them not to run ads promoting pay-to-earn apps. The ministry objected to mainstream English and Hindi newspapers carrying such ads and emphasized the need for more stringent monitoring. These measures are aimed at ensuring that users are protected from harmful content and that the digital landscape is regulated effectively.

## **Taxation and Revenue**

The online gaming industry in India has experienced significant growth in recent years, with millions of users and thousands of jobs being created. The pandemic has further fueled this growth, attracting huge investments from venture capitalists and private equity firms. However, the sector is currently facing several challenges, including changes in taxation and liability valuation mechanisms. In addition, there is a looming threat of retrospective taxation, which has caused many gaming companies to be in jeopardy. Some companies have received notices of GST demands with penalties for late payment, which could amount to up to ₹1.5 trillion. This demand is more than the total market size of the industry, making the survival of many gaming companies uncertain.

The year 2022 saw the Prime Minister of India emphasizing the significance of online gaming and acknowledging its vast international market. He also expressed India's interest in increasing its presence in this sector. To ensure the responsible and sustainable growth of the online gaming industry, the government has been working on creating regulatory mechanisms that align with our socio-economic and cultural ethos. These regulations aim to address the problem of addiction, protect consumer interests, and prevent the proliferation of illegal offshore gambling sites. **Union Minister Rajeev Chandrasekhar** has also highlighted the importance of this rapidly growing sector and stressed the need for regulations to ensure its long-term sustainability and growth. The implementation of the Goods and Services Tax (GST) in 2017 was a significant milestone, aimed at integrating and streamlining indirect taxation in India. Since then, corporations have enhanced their compliance efforts and budgets to ensure strict adherence to GST regulations. The impressive

growth in GST collections, month after month, is a reflection of the commendable efforts of the tax department and Indian businesses.

However, the stakeholders of the gaming industry have raised concerns about the retrospective application of tax rules. They contend that the tax authorities did not raise any objections or concerns when they filed returns with GST at a rate of 18%. On the other hand, taxation authorities hold that they have an actionable claim as the activity is covered under gambling, which would legally attract GST at 28%, and so their demand for arrears is legitimate. This demand, however, places an unjust burden on operators and establishes a troubling precedent for other sectors. It introduces ambiguity into the business environment, which ultimately hurts entrepreneurial spirits. From a pragmatic perspective, the retrospective application of tax rules, even if based on a clarificatory interpretation, appears enmeshed in a legal and financial tangle. It has been argued that since the matter necessitated an amendment to the GST law by Parliament, it was more of a rule change than a clarification. Such retrospective application of tax rules can impact investor sentiment and even revive memories of the retrospective amendment brought in to overturn the Vodafone judgment of the Supreme Court. **The Vodafone-Hutchison case** is a well-known incident in India involving retrospective taxation. In 2007, Vodafone acquired Hutchison for \$11 billion through an overseas holding company. India then sent a tax notice to the UK telecom company. Vodafone challenged the notice in the Supreme Court, which ruled in their favor. However, the Union government later amended the Finance Act and introduced retrospective taxation. Vodafone challenged this move in a tribunal in The Hague, which ruled that India's retrospective tax bill on Vodafone breached an investment treaty between India and the Netherlands. To resolve the matter, the government eventually reversed the taxation.

The recent demands by Indian tax authorities on the online gaming industry have created a precarious situation for the sector. The demands, based on a current interpretation of GST applicability, could result in significant economic impact, legal uncertainties, and business closures. The industry is currently developing survival plans to deal with the potential application of GST on the full face value of deposits, which would be a significant burden. However, the barrage of

notices sent to companies that claim to have operated by the book could lead to a loss of revenue and promise. Failure to meet the demands of arrears could result in shutdowns or shift-outs, allowing offshore sites to fill the market vacuum, some of which are illegal and pose security concerns. It is crucial for the government to take a bold and pragmatic stance to ensure the continued growth and success of this burgeoning industry in India. Striking a balance between what is legally sound and economically feasible would be key. Therefore, it is essential to consider the implications of retrospective application of tax rules on businesses. A pragmatic approach is needed to ensure that the GST regulations are unambiguous and that the retrospective application of tax rules is avoided. This will prevent any confusion and chaos and will support Indian businesses' entrepreneurial spirit.

### **Role of Cryptocurrency**

The future of crypto and gaming is likely to be characterized by innovation, experimentation, and collaboration between two rapidly evolving industries. A cryptocurrency is a digital currency, which is an alternative form of payment created using encryption algorithms. The use of encrypted technologies means that cryptocurrencies will function both as a currency and as a virtual accounting system. To use cryptocurrencies, one needs a cryptocurrency wallet. It has become a global phenomenon in recent years. Various industries are benefiting from the convenience of cryptocurrency, and one of those industries is online gaming. A strong regulatory framework will be put in place to deal with cryptocurrencies in India. In 2021, the Indian government announced that it would introduce a bill to create a sovereign digital currency and subsequently ban private cryptocurrencies completely.

The implementation of blockchain technology has made online payments significantly more secure, reducing the chance of fraud and making payments untrackable. With cryptocurrencies, every transaction is documented on a public ledger, making it much more difficult for scammers to exploit online players. The intersection of crypto and gaming has opened up a range of possibilities for monetization, creating immersive experiences, and fostering online communities. Cryptocurrencies hold immense potential to change the game for the Indian online gaming

industry, but this potential can only be realized if the challenges are addressed head-on. It is of utmost importance that all stakeholders, including gamers, platform operators, and regulatory bodies, come together to create a safe and thriving gaming ecosystem. The key to unlocking the full potential of cryptocurrencies in the Indian gaming industry lies in striking the right balance between innovation and regulation. As the regulatory landscape evolves, all stakeholders must collaborate and find solutions that enable the industry to grow and flourish. The time to act is now, and we must work together to ensure the future success of the Indian gaming industry.

### **Drawbacks of Online Gaming**

Cybercrime refers to criminal activities that involve the use of computers or computer networks as a tool, target, or location. It can range from electronic cracking to denial of service attacks, as well as traditional crimes that involve the use of computers or networks for illicit activities. The outcomes of cybercrime can be disastrous, including disruption of railway systems, misguiding planes, compromising important data, and causing e-media to collapse in seconds. Online games pose unique challenges when it comes to cybercrime, particularly in terms of security approaches and privacy issues in cyberspace. To address malpractices and crimes in the virtual world, legislators must take a strict approach. However, **the existing legislative framework in India is considered non-comprehensive and ill-suited for the digital age, highlighting the need for a more comprehensive approach to regulating online platforms.** The infamous **Blue Whale game** made its debut in Russia in 2013 and is believed to have killed more than 100 teens so far. Its creator was sentenced to three years of imprisonment for seeking out and instigating teenagers on the Internet to take the challenge which ended up in the participant committing suicide. Reportedly, the game had challenges ranging from cutting one's wrist to watching horror movies in the middle of the night. A lot of young minds succumbed to this sort of online manipulation. **Pokémon Go** is an example of a phone user being so focused on their screen that they are not aware of their surroundings. This raises the risk of putting themselves in harm's way while walking across roads or going into unsafe areas in hopes of finding a Pokémon there. It caused traffic accidents, injuries,

and even deaths. At the peak of its popularity in 2016, it was linked to 150,000 car accidents and 256 deaths in just 148 days.<sup>28</sup>

### 1. **Terror-planning**

The popularity of video games makes them attractive targets for extremists to exploit. **Games with an online component may facilitate an exchange of extremist viewpoints and content, and indeed, the misuse of video games by malignant actors has been well-documented.** Terrorists use video games and gaming platforms to plan attacks and post manifestos, or draw inspiration from video game aesthetics while conducting attacks. Reports also indicate that **extremists are using games and gaming platforms to recruit and radicalize (i.e., ‘groom’) vulnerable individuals.** Devices like PS4 use peer-to-peer communication, which makes it virtually impossible for cyber security forces to monitor. Communicating through mobile phones, emails, or chat, and even WhatsApp is relatively easier to monitor since they use a client-to-server model. According to a report in Gawker<sup>29</sup>, in 2015, a 14-year-old Australian boy used a PS4 to reach out to ISIS and downloaded a blueprint of a bomb. He was later apprehended and sentenced to a two-year jail term. It is astounding how easily a 14-year-old could communicate with the most-wanted terrorist group in the world despite the fact that multiple international security agencies have been monitoring its movements. On the recommendation of the Ministry of Home Affairs, 14 apps (namely Wickrme, Mediafire, Briar, BChat, Nandbox, Conion, IMO, Element, Second line, Zangi, Threema, Crypviser, Enigma, and Safeswiss) have been blocked under Section 69A of the Information Technology Act, 2000<sup>30</sup>. According to a CBI Officer, these apps were being used by terrorists and their supporters to communicate with their on-ground workers (OGW) in J&K. These apps did not have any representatives in India and could not be contacted for seeking information as mandated by the Indian laws.<sup>31</sup>

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<sup>28</sup> [Gabb - July 03, 2023](#)

<sup>29</sup> [Gawker - 05/26/15](#)

<sup>30</sup> empowers Government to block information from public access under specific conditions of : (i) interest of sovereignty and integrity of India, (ii) defence of India, (iii) security of the State, (iv) friendly relations with foreign States or (v) public order or (vi) for preventing incitement to the commission of any cognizable offense relating to above.

<sup>31</sup> [The Indian Express - May 2, 2023](#)



## 2. Cyberbullying

Cyberbullying is a type of bullying in which one or more than one individuals use technology to intentionally cause mental harm to another person. If someone is not performing well in a game, other players may curse or make negative remarks on that player that can turn into bullying, or even exclude the player from playing together. Avatars have become a popular feature in modern gaming culture that allow players to express themselves in the online communities, without the fear of exposure. However, these features can also create an environment where players engage in bullying and harassment without fear of its outcome. **The difficulty in identifying anonymous players makes this issue worse, which can make it challenging to hold them accountable for their actions.** Cybercriminals often attempt to deceive gamers by posting links that appear to be game-related but are, in fact, malware or viruses, which can cause severe damage to the computer system. In addition, tyrants may use these platforms to target children, making it crucial that children are educated on how to stay safe online and avoid these potential dangers.

## 3. Addiction

In the rapidly changing technical world of today, adolescents are exposed to diverse recreation about online gaming. Over time, outdoor games have been substituted by indoor games which in turn has been outrightly done away with by online games. Rapid expansion of electronic gadgets has come to pose a major threat to adolescents leading to measured physical and psychological breakdowns. Online gaming has broken down child-to-child interaction which is both emotional and sentimental. Online gaming has converted a child into an automaton. Online gaming's popularity is increasing day by day. **In India, there is about 66% of Youth, the majority of which is addicted to online gaming are not aware of the ill effect of online gaming and its popularity.** These games are readily available at no cost, at all places, and at all times. Due to the addiction to these online games, such behavior is observed in children -

- Playing in secret or lying about how long he/she has been playing
- Mulling over video games when engrossed in other activities
- Sacrificing time at work or school to play
- Using games to escape from reality
- Anxiety or depression
- Becoming alienated from friends and family
- Becoming irritated if unable to play
- Lacking enough hours of sleep
- Losing interest in other activities and hobbies
- Increasingly ignoring personal hygiene.

A child in Alwar, Rajasthan, who was deeply addicted to games like PUBG and Free Fire, experienced memory loss after losing an online game.<sup>32</sup> **Dr Abbas Mehdi**, a psychiatrist based in Lucknow, shed light on the impact of online gaming on children's mental health. He explained that **excessive gaming disrupts the balance of serotonin and dopamine, two neurotransmitters in the brain, leading to behavioral changes.** He also mentioned that the **American Psychiatric Society** recognizes gaming addiction as a separate disorder. By raising awareness and actively monitoring their children's activities, parents can play a significant role in preventing and addressing the negative impacts of online gaming.

#### 4. **Money Laundering and Fraud**

Money laundering is a serious issue in the online video gaming industry. **Criminals are exploiting virtual currencies and in-game items to launder illicit funds, taking advantage of the industry's lack of regulatory control and oversight.** Traditional money laundering methods are no longer effective due to strict regulations on financial institutions, such as the **Anti-Money Laundering (AML)** and **Ultimate Beneficial Owner (UBO)** requirements. Though, cybercriminals are constantly searching for new ways to launder money, and the video game industry has emerged as a new and attractive target.

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<sup>32</sup>[dailyO - Jul 12, 2023](#)

Certain video games allow players to purchase game materials, including weapons and unique clothing, using real money. These materials are then used to buy illicit goods and services, such as drugs and weapons, or to create fake virtual items, which can be sold to other players. This unregulated environment provides a breeding ground for money laundering activities, which can have serious consequences for gamers and the wider community.

To combat these issues, game developers and regulatory agencies have implemented several measures to prevent money laundering in the industry. Stricter controls on virtual currencies and in-game items have been introduced, with players now required to provide identification and proof of address when making purchases. Transactions are closely monitored for suspicious activity, while game developers have placed limits on the amount of virtual currency that can be purchased or traded. Fraud detection and prevention systems, powered by advanced machine learning algorithms, have also been implemented to identify and prevent potentially suspicious transactions. Overall, game developers and law enforcement agencies need to work together using a combination of technology and regulations to combat money laundering in the online video gaming industry. By proactively identifying, tracking, and preventing illegal activities, we can create a safer and more secure gaming environment for all players, while protecting the wider community from the harmful effects of money laundering.

## **Recommendations**

1. Strengthening KYC norms and implementing an established age-rating mechanism for each game could help. Minors should only be allowed to proceed with parental consent, and OTP verification on Aadhaar could verify age and identity, preventing access to age-inappropriate content.
2. Registration should be allowed for 18 years and above for games involving real-time money. There are many cases involving kids in gambling by stealing money from their parents and

other family members. Restricting the age in money transactions to 18 years and above makes sure sensible, or at par, careful use of money.

3. Transactions and communication must be restricted within the borders of India. The Online Gaming licensee must cooperate with the Indian Government to avoid cybercrime or terror-planning amongst the players.
4. International games must be strictly supervised for transactions to avoid international money laundering. For a more distinctive and detailed overview, these gaming companies must set up their regulating bodies in India. This can help in maintaining the value of Rupee (₹) as the companies will have to pay revenue in India.
5. Esports is a rising sport that is supported worldwide. It must be regulated by setting up a separate governmental board.
6. Cryptocurrency, being the talk of the town, is not suitable for the Indian economy. Its nature is very risky for the Indian administration to handle, as it is prone to fraud, currency fluctuation, money laundering, and many more financial crises.
7. Despite the backlash from the gaming industry, the 28% GST on online games must be implemented in India. It puts a limit on gambling for the moneybags who are always determined to exploit the given luxury.

Being a social evil, online gambling and betting should be categorized as demerit goods like tobacco, pan masala, gutka, cigarettes (and alcohol in some states), and be levied with high taxes.

8. Electronic devices must have a time restriction feature for casual gaming apps, limiting the screen time to 2-3 hours/per day.
9. Famous personalities promoting online gambling apps must be held liable for using their prominence as a negative influence on their admirers under the Consumer Protection Act, 2019 - Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 (notification by the Central Consumer Protection Authority on 9th June 2022).

10. Strict actions must be taken against in-app advertisements. **These advertisements not only consume data but can be misleading at times.** Clicking on unauthorized advertisements can often lead to cybercrimes.
11. **AI-powered fantasy games like Dream11 track user data and sell it to third-party entities.** Public Wi-Fi networks used by players make data even more vulnerable. Lack of data encryption makes it easier for hackers to decode the data. The government must track app usage and data to prevent foreign access to sensitive data.

### **Examples from around the world**

12. The Chinese state imposed time limits on access to video games for players under the age of 18 since 1 November 2019. From that point, **children weren't meant to play games for longer than 90 minutes a day, or 3 hours on public holidays.** Those rules were further tightened in August 2021 so those under 18 could only play for 1 hour on Fridays, weekends, and public holidays. The aim of the policy, which has been cited by other governments, is to combat gaming addiction.
13. American gaming laws are heavily influenced by the history of gambling itself. **In 2006, Congress passed the Unlawful Internet Gambling Enforcement Act, which made it illegal for wagering businesses to knowingly accept payment in connection with unlawful Internet gambling (though it does not itself make Internet gambling illegal).** They also passed the **Children's Online Privacy Protection Act (COPPA)**, which restricts the online marketing of certain products, including gambling, to children under 13.
14. Due to its major impact on youngsters, **the South Korean government imposed The Youth Protection Revision Act, commonly known as the Shutdown Law or Cinderella Law, which forbade children under the age of sixteen to play online video games between the hours of 00:00 and 06:00.** The new amendment to the Game Industry Promotion Act requires companies to display the probability of obtaining rewards

from loot boxes<sup>33</sup> in games, ads, and on official websites to reduce the chances of online gambling through casual gaming. The absence of such information or the indication of false probabilities entails a fine of up to ₹20 million (₹12.7 lakhs) or imprisonment for up to two years.

## Conclusion

India's online gaming industry has witnessed remarkable growth in recent years, and the Online Gaming (Regulation) Bill, 2022 is a significant development towards regulating this dynamic sector. The bill aims to establish a framework that safeguards the interests of all stakeholders, providing them with protection against fraud and misuse. Despite its promising potential, **the bill lacks transparency, as it does not provide clear guidelines regarding the division of legislative responsibilities between the central and state governments. Additionally, it fails to address key concerns such as data protection and consumer grievances.** To ensure that the Online Gaming (Regulation) Bill, 2022 is a comprehensive and effective regulatory framework for the industry, it is essential to address these issues and make necessary amendments.

Esports is a rapidly growing industry that is gaining popularity around the world. However, in India, many people still confuse esports with casual games like fantasy or rummy. It's important to understand that esports is an organized form of video game competition that can take place both online and offline. By recognizing esports as a legitimate and exciting form of competition, we can help promote the growth and development of this industry in India. Certainly, India has witnessed a remarkable surge in the growth of Fantasy Sports Mobile Game Development in recent years, making it one of the most promising industries in the country. With its enormous expansion and ever-increasing popularity, India has become a lucrative destination for various fantasy sports enterprises. Fantasy cricket, in particular, has emerged as a popular choice among sports enthusiasts. As a result, the demand for fantasy cricket app development has skyrocketed in India. With all these favorable opportunities and a large market potential, the fantasy sports industry is poised to take India by storm.

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<sup>33</sup> Loot boxes have been defined as “features in video games which may be accessed through gameplay, or purchased with in-game items, virtual currencies, or directly with real-world money”. They often appear as chests, crates, or card packs.

The online gaming industry has been witnessing exponential growth in recent times, with an increasing focus on delivering a more immersive and diverse gaming experience for players worldwide. The industry is constantly evolving, driven by the interplay of current trends and innovations, leading to an ever-changing gaming landscape. This vibrant and dynamic environment is filled with opportunities for game developers to explore, and if they can harness these opportunities effectively, they can take their creations to new heights. Therefore, the potential of the online gaming industry is limitless, and with the right approach, developers can create games that are not only fun and interactive but also socially responsible and inclusive.

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