
REGULATORY ARBITRAGE IN INDIAN GAMING LAW: A CONSTITUTIONAL AND CORPORATE RISK ANALYSIS

Navya Chandan, BA LLB, Jindal Global Law School

ABSTRACT

The exponential growth of India's online gaming sector, driven by technological and demographic shifts, has outpaced the development of a cohesive regulatory framework. The resulting legal landscape is marked by jurisdictional overlaps between state and central authorities, definitional ambiguities, and inconsistent enforcement. This complexity has enabled gaming companies to engage in regulatory arbitrage, strategically navigating gaps and conflicts in the law to minimize compliance obligations and regulatory scrutiny. This article examines whether such behaviour reflects mere corporate opportunism or exposes systemic flaws in India's legislative architecture governing gaming and gambling. Through a doctrinal analysis of statutes, constitutional entries, leading case law, and policy responses, the paper argues that the current regulatory regime is both constitutionally incoherent and structurally inadequate, giving rise to substantial compliance, governance, and investor risks. The article adopts a comparative perspective, drawing on models from the United Kingdom, United States, and Singapore to contextualize the Indian experience and propose actionable reforms. Ultimately, it recommends a harmonized, principle-based legal framework designed to reconcile constitutional mandates, ensure responsible innovation, and foster regulatory certainty for all stakeholders.

Introduction

The online gaming sector in India has experienced exponential growth over the past decade. Fuelled by increasing smartphone penetration, digital payments, and a burgeoning young population, the industry has attracted both domestic and international investors. Real money gaming platforms, in particular, have emerged as lucrative ventures, offering fantasy sports, poker, rummy, and esports formats that blur the line between skill and chance. However, this growth has occurred amidst a fragmented legal environment. While state legislatures assert their authority under Entry 34 of the State List to regulate betting and gambling,¹ the central government, through the Ministry of Electronics and Information Technology (MeitY), has also sought to regulate digital intermediaries engaged in gaming.²

This legal dualism, rooted in constitutional federalism, has created fertile ground for regulatory arbitrage. Gaming companies have capitalised on jurisdictional inconsistencies, definitional ambiguities, and uneven enforcement to design their operations around risk, rather than in compliance with a uniform framework. This paper examines whether such arbitrage constitutes mere corporate opportunism or reflects deeper structural failures in legislative design.

Through a doctrinal analysis of statutory instruments, case law, and administrative responses, this paper argues that India's regulatory framework for online gaming is not only constitutionally incoherent but also structurally incomplete. The resultant arbitrage not only undermines investor certainty and responsible innovation but also poses long-term compliance risks for companies operating in the sector. In examining this issue, the paper situates Indian regulatory developments within a comparative global context and proposes a harmonised legal framework rooted in constitutional principles and economic pragmatism.

The analysis unfolds across five parts. Part II outlines the existing legal framework, juxtaposing state laws, central regulations, and judicial decisions. Part III explores how gaming companies exploit these inconsistencies in practice. Part IV evaluates the governance and compliance risks that arise from this regulatory gap. Part V draws lessons from regulatory models in jurisdictions

¹ The Telangana State Gaming (Amendment) Act, 2017 and the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 both banned online rummy and poker.

² Ministry of Electronics and Information Technology, "IT Rules Amendment 2023", available at <https://www.meity.gov.in> (last accessed June 28, 2025).

such as the United Kingdom, the United States, and Singapore, and offers recommendations for legislative and regulatory reform.

The Legal Framework: A Jurisdictional Puzzle

India's legal architecture governing online gaming is primarily shaped by the Constitution's division of legislative powers. Under Entry 34 of the State List, states are empowered to legislate on matters relating to betting and gambling. Accordingly, most states have adopted versions of the Public Gambling Act of 1867 or enacted independent legislations. While some states such as Goa and Sikkim permit and regulate online gaming through licensing models, others like Telangana and Tamil Nadu have imposed outright prohibitions. This has resulted in a patchwork of legal positions, where the same game might be considered legal in one state and illegal in another.

On the other hand, the central government, citing its powers under the Information Technology Act, 2000, has introduced digital regulation through the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, amended in 2023. These amendments designate online gaming platforms as intermediaries and empower self-regulatory bodies (SRBs) to certify permissible games. While the intent was to fill the regulatory vacuum, these Rules have raised questions about legislative competence, particularly whether the Centre can override state laws via delegated legislation under the IT Act.

Judicial interpretation has attempted to offer clarity, especially through the lens of the "game of skill" versus "game of chance" distinction. In *K.R. Lakshmanan v. State of Tamil Nadu*³, the Supreme Court held that rummy and horse racing are games of skill and therefore outside the ambit of gambling laws. More recently, in *All India Gaming Federation v. State of Karnataka*⁴, the Karnataka High Court struck down a state ban on online gaming, reiterating the protection of skill-based games under Article 19(1)(g) of the Constitution. Nevertheless, these decisions often hinge on factual contexts and fail to produce a universally applicable test.

This duality between state gambling laws and central IT regulation has produced a regulatory paradox. On one hand, games recognised as skill-based may be offered nationally under MeitY's framework; on the other, operators may face local enforcement action in states that

³ *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, (1996) 2 SCC 226.

⁴ *All India Gaming Federation v. State of Karnataka*, W.P. No. 18703/2021, Karnataka High Court (2022).

refuse to acknowledge such classifications. The judiciary's reliance on narrow distinctions and the absence of legislative consensus further compounds the legal uncertainty, inviting companies to exploit the ambiguity.

Exploiting the Gaps: Corporate Strategies of Regulatory Arbitrage

In the face of fragmented regulation, gaming companies have developed methods to exploit legal loopholes while continuing to scale operations. One common tactic involves strategic incorporation. Many companies choose to register in states with more permissive regimes such as Sikkim, Nagaland, or Goa while offering services nationally. This model allows operators to present themselves as "licensed" even in jurisdictions where such licenses have no legal validity.⁵

Geofencing, while commonly used to restrict services in prohibited jurisdictions, is often selectively implemented or technologically porous. Companies may claim compliance by citing geofencing protocols while continuing to allow access to users from banned states through indirect or delayed enforcement.⁶ In some cases, companies rebrand or repackage their offerings to avoid enforcement triggers, replacing the language of "betting" or "wagering" with "contests," "credits," or "skills," thereby making legal classification more difficult for authorities.

Game design is another avenue for regulatory evasion. By subtly modifying gameplay mechanics, developers transform games that may otherwise qualify as chance-based into formats that appear skill-intensive. For instance, the inclusion of leaderboards, point systems, or multiple decision nodes can be used to argue a game's skill component, even if the underlying randomness remains significant.⁷ Such design choices are often guided not only by user experience but also legal defensibility.

Some companies exploit definitional ambiguity in tax law to their advantage. The differential GST treatment of games of skill (typically taxed at 18% as a service) versus games of chance (taxed at 28% as betting) provides financial incentive to classify games strategically. The

⁵ Sikkim Online Gaming (Regulation) Act, 2008 and Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016.

⁶ Rajagopal, K., "Geofencing Loopholes and Online Gaming Bans: An Emerging Legal Grey Area", *The Hindu*, January 18, 2024

⁷ Lakshmanan, R., "Skill vs. Chance in Indian Gaming Law: How Game Mechanics Influence Legal Status", *NLUJ Law Review*, Vol. 11 (2023).

*Gameskraft Technologies Pvt. Ltd. v. Directorate General of GST Intelligence*⁸ case exemplifies the disputes arising from such classification, where a ₹21,000 crore tax demand was raised on a company operating a fantasy sports platform, contending it offered betting services.

Moreover, platforms often rely on the Centre's regulatory cover to assert legality, particularly under the IT Rules. However, when enforcement action is initiated by state police or local regulators, these platforms argue constitutional protection or invoke Article 19(1)(g) rights, creating a cycle of legal contestation and delay. This strategy enables operations to continue while the legality is litigated, effectively postponing compliance obligations.

These tactics reflect not necessarily malicious intent but a rational response to a legally uncertain environment. In the absence of unified standards, companies navigate risk through legal interpretation, operational maneuvering, and forum shopping, a pattern that ultimately undermines the rule of law.

Corporate Governance and Compliance Risks

The absence of a unified regulatory framework exposes gaming companies to significant compliance and governance risks. While regulatory arbitrage may offer short-term operational flexibility, it creates long-term vulnerabilities that impact investor confidence, legal predictability, and institutional credibility.

One major concern is the lack of clarity in licensing and due diligence. Investors, particularly venture capital and private equity firms, struggle to assess the legality of gaming startups due to jurisdiction-specific laws and ongoing litigation. A company operating legally in one state may be subject to penal provisions in another, leading to reputational and financial risk for stakeholders.⁹ This has resulted in increased reliance on legal opinions and compliance certifications, which themselves may be inconsistent or overly optimistic.

From a corporate governance standpoint, boards of directors and senior executives are exposed to potential liability under multiple laws. Section 69A of the Information Technology Act, 2000 empowers the central government to block public access to online platforms in the interest of

⁸ *Gameskraft Technologies Pvt. Ltd. v. Directorate General of GST Intelligence*, W.P. No. 11102/2023, Karnataka High Court (2023).

⁹ FICCI-EY Report, "The Future of Online Gaming in India", March 2023.

public order or morality. Several gaming applications have faced takedown requests or deplatforming based on alleged violations of state laws, often without transparent hearings.¹⁰ The lack of procedural safeguards erodes predictability and forces companies to constantly adapt or suspend operations.

Compliance burdens are compounded by tax uncertainties. The GST Council's lack of consensus on whether online gaming constitutes a supply of service or actionable claim results in varying interpretations across jurisdictions. The risk of retrospective taxation, as seen in the *Gameskraft* case, deters compliance and increases litigation. Companies are left navigating between self-classification and departmental scrutiny, with no authoritative resolution mechanism in place.

The broader regulatory climate also affects international collaborations and cross-border data practices. Foreign direct investment (FDI) policies restrict investment in betting and gambling businesses, but the ambiguous classification of RMG platforms creates a grey zone. Companies often structure entities to isolate risk, raising questions of transparency and regulatory arbitrage in capital inflows.¹¹ Inconsistent enforcement further encourages selective compliance, weakening the integrity of governance structures.

Ultimately, the absence of a stable and predictable legal regime undermines the ability of the gaming industry to transition into a formal, accountable, and innovation-driven sector. Without harmonised standards, companies are incentivised to pursue short-term gains at the cost of long-term sustainability.

Comparative Models

India's struggle with fragmented online gaming regulation is not unique. Jurisdictions with complex federal structures have similarly grappled with reconciling innovation, investor interest, and responsible gaming. Comparative analysis offers instructive models for reform.

In the **United Kingdom**, the Gambling Commission operates as a centralised licensing authority under the Gambling Act, 2005. All operators must secure licenses regardless of user location, ensuring uniform consumer protection, advertising standards, and compliance

¹⁰ See Ministry of Electronics and Information Technology, Blocking Orders under Section 69A, available at <https://meity.gov.in>

¹¹ Press Note 3 (2020 Series), Department for Promotion of Industry and Internal Trade, Government of India

obligations.¹² The UK model prioritises transparency, player protection, and a tiered enforcement structure, making regulatory expectations clear for both domestic and offshore operators.

The **United States** demonstrates a more fragmented but evolving approach. Federal law generally prohibits interstate sports betting and games of chance, but individual states are permitted to authorise and regulate online gaming within their jurisdictions. Notably, states like New Jersey and Michigan have created comprehensive licensing and tax structures, which offer predictability while respecting local autonomy.¹³ Importantly, federal guidelines such as the Unlawful Internet Gambling Enforcement Act (UIGEA) provide overarching boundaries that enable a balance between state innovation and national coherence.

Singapore offers a hybrid model under the Gambling Control Act, 2022, wherein all forms of online gambling are prohibited by default unless specifically licensed by the Gambling Regulatory Authority. The law adopts a cautious but adaptable stance, combining strict licensing, corporate accountability, and user verification systems.¹⁴ This approach prioritises clarity and minimises loopholes.

India can draw from these examples to develop a harmonised regulatory framework. First, a **central model law**, enacted under Entry 97 (residuary power) or by invoking Article 249 (national interest), can provide a common legal baseline for online gaming. Such a law should clarify definitions, distinguish between games of skill and chance using fixed criteria, and set up an independent regulatory authority.

Second, the IT Rules should be **integrated and codified** into primary legislation to enhance their legitimacy and enforceability. Self-regulatory bodies (SRBs) must be accredited and made subject to statutory oversight to avoid regulatory capture or conflicts of interest.

Third, the **GST regime must be standardised**, with binding guidelines issued by the GST Council. Classification disputes should be resolved by a dedicated authority to ensure consistency.

¹² UK Gambling Commission, Licensing and Regulation Overview, available at <https://www.gamblingcommission.gov.uk>

¹³ National Council on Problem Gambling, “Online Gambling in the U.S.: A State-by-State Guide”, 2024.

¹⁴ Gambling Control Act, 2022 (Singapore), and Gambling Regulatory Authority Website: <https://www.gra.gov.sg>

Finally, FDI rules must be clarified through a separate framework that distinguishes legitimate gaming enterprises from prohibited gambling activities, ensuring investor protection without compromising regulatory objectives.

Conclusion

The phenomenon of regulatory arbitrage in Indian gaming law reflects not only entrepreneurial opportunism but also structural fragmentation in the country's legislative and regulatory architecture. As online gaming continues to evolve into a major economic and cultural force, India must abandon ad hoc regulation in favour of a cohesive and constitutionally sound legal framework.

By drawing from international best practices and adapting them to India's federal context, policymakers can reduce uncertainty, encourage responsible innovation, and safeguard public interest. Without such reform, the country risks fostering a high-growth sector built on legal ambiguity on outcome neither sustainable nor defensible.