
UNPACKING THE PROGA, 2025: SKILL, CHANCE AND THE CONSTITUTION

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ABSTRACT

This article examines the Promotion and Regulation of Online Gaming Act, 2025 (PROGA), which provides a regulatory framework for Online social games and Esports and also imposes a prohibition on online money games. The Article analyses the constitutional challenges to the Act, primarily focusing on three major areas: legislative competence under Article 246 of the Constitution that differentiates between the power of the Centre and the State; Freedom of profession under Article 19(1)(g); and lastly, on the ground of Right to Privacy under Article 21. The article also refers to various doctrines, such as colourable legislation and the doctrine of Pith and Substance, as well as other key case laws, to examine whether the restrictions imposed by the act are justified or not. Along with the analysis of the provisions of the act, possible justifications have been provided. Ultimately, the constitutional legitimacy of an Act depends upon the judicial scrutiny.

Keywords: Online Gaming, PROGA 2025, Legislative competence, Game of Skill and chance, Article 19(1)(g), Right to Privacy, colourable legislation, and Doctrine of Pith and Substance

BACKGROUND

Online gaming in India has penetrated every corner of the country due to the easy accessibility of the internet. Additionally, with the proliferation of technology and the absence of dedicated regulations, online games have evolved into a comprehensive gaming sector. The gaming sector has brought more harm than good, as it has resulted in the rise of various online gaming-related health disorders, terror fundings through online money games, abetting and inducement of illegal activities and also leading to financial losses to various individuals.

This sector was able to evolve so much due to the differentiation between a Game of Skill and a Game of Chance was highlighted by the Supreme Court in the famous case of *R.M.D. Chamarbaugwalla & Another v. Union of India*.¹ Earlier, the skill-based fantasy sports were allowed to take a plea of “game of skill” to avoid the legal consequences as faced by games based on chance. Although certain states, such as, Andhra Pradesh, Tamil Nadu, & Telangana, have already prohibited skill-based games, while other states, including Karnataka, Goa, and Maharashtra, have enacted certain regulations.

Against this backdrop, on 20 August 2025, the central government rushed through and passed the **Promotion and Regulation of Online Gaming Bill, 2025**, in just seven minutes in the lower house and within 72 hours, the bill was passed by both houses. The bill officially became an act after getting the assent of the President on 22 August 2025, and the act came into effect from 1 October 2025.

INTRODUCTION

The **Promotion and Regulation of Online Gaming Act, 2025** (“**PROGA**” or “**Act**”), imposes a blanket ban upon the online money games, whether based on chance or skill or both, and regulates online social games and E-sports.

This article provides a comprehensive analysis of the Act, examining its constitutional validity on three pillars, with a major emphasis on Online money games.

¹ 1957 AIR SC 628

I. FEDERAL POWERS AND PROGA

The first and foremost issue arises about the authority of the Union government to enact the law, and whether there was any encroachment of the jurisdiction while legislating.

A. Legal Provision:

Article 246², read with the Seventh Schedule, provides for the bifurcation of the jurisdiction of the Centre and state Governments. The Central Government has enacted the Act under entry 31 of the Union List (List I), which deals with “*Posts and telegraphs; telephones, wireless, broadcasting and other like forms of communication*” and Article 47, Part IV, Directive Principles of State Policy that provides for “*Public health*”.

The contention raised herein is that the Act passed under the said entry does not expressly grant the authority to the centre to legislate over the matter concerning “gaming or gambling”, where the actual authority to legislate over the matter falls under the domain of state government as mentioned under the State List (List II), entry 34, seventh schedule i.e. “*Betting and Gambling*”.

B. Legal Doctrines:

The doctrine of “*colourable legislation*”, in a literal sense, means enacting legislation under the guise of a competent authority. In other words, the government enacts legislation by creating a legal fiction of possessing the constitutional authority that it actually lacks. Thus, the government cannot formulate the law by using indirect ways that, *per se*, seem legal, but practically, it aims to achieve otherwise, which is restricted under the law.

The Act in question falls explicitly under the doctrine of colourable legislation because, despite the Centre lacking the authority under Entry 31, List I to legislate over such a niche area still the government, under the guise of Article 47, i.e., public health, has enacted the legislation.

The Hon’ble Supreme Court has also iterated in the case of *R.S. Joshi, Sales Tax Officer, Gujarat and Ors vs. Ajit Mills Limited and Anr*³, if legislation is enacted under the Entry in the list, while in its context it does not fall under that Entry but to another Entry that is assigned to

² Constitution of India

³ 1977 AIR SC 2279

another legislature, then such legislation can be declared as a colourable piece of law, notwithstanding the laudable objective it aims to achieve.

C. Justification:

The two possible justifications on the part of the Union government could be:

Firstly, Entry 97 of List I grants the Union Government the residuary power, i.e, to legislate over those matters which are not mentioned or covered expressly under any list of the Seventh Schedule. As “*Online Money Games*” is not expressly mentioned in any list, the centre, in such a situation, can invoke its residuary powers to legislate over the matter.

Further, in the case of *Sat Pal and Co. & Ors vs. Lt. Governor of Delhi*⁴, the court observed that when a subject matter of the legislation does not squarely fit under a specific entry, the Parliament can invoke its power under Entry 97, List I and in such cases, the authority would be immune and no questions relating to competence would be raised.

Secondly, the Act could also be justified by applying the doctrine of “*Pith and Substance*”, which is applied to determine the true nature and objective of the law when the validity of the law is challenged. Herein, the Act was passed under Entry 31, List I, allowing the Union to legislate indirectly over online money games, amounting to a slight encroachment in Entry 34, List II.

In the renowned case of “*State of Bombay & Anr. Vs. F.N Balsara*”⁵, the court has well settled that if a Centre, while legislating incidentally trenches on a matter outside the permissible authority, it is necessary to inquire into the true nature, i.e, pith and substance of the impugned Act.

FREEDOM OF PROFESSION vs PUBLIC INTEREST

The second issue arises whether this act resulted in the violation of the Fundamental right of Freedom of trade or profession of the individual?

⁴ 1979 AIR SC 1550

⁵ 1951 AIR SC 318

A. Legal Provision:

The POGRA violates the Fundamental right enshrined under Article 19(1)(g)⁶, i.e, the Freedom of trade or profession, as it restricts the right to carry out trade or profession by imposing a ban on all kinds of online money games. However, Article 19(1)(g) is not an absolute right, but rather subject to the reasonable restrictions as specified in Article 19(6), i.e. “in the interest of the General Public”.

The principal ground for contesting the validity under Article 19(1)(g) arises from the Supreme Court’s recognition of skill-based games in *KR Lakshmanan v. State of Tamil Nadu*⁷, wherein the Court determined that horse racing does not constitute gambling or betting, as it is a game of skill and qualifies as a protected commercial activity.

Furthermore, in the case of *State of Bombay v. R.M.D. Chamarbaugwala*⁸, the court has relied on the principle that gambling is extra commercium, but a game that predominates skills is not gambling and is a constitutionally protected business.

B. Justification:

The court has examined the scope of reasonable restriction in the case of *Chintaman Rao v. State of Madhya Pradesh*⁹, where the prohibition imposed on manufacturing bidis during monsoon was excessive and arbitrary in nature and didn’t bear a reasonable relation to the objective it aimed to achieve. Consequently, the court held that the reasonable restriction imposed on Article 19(1)(g) must not be arbitrary or excessive in nature and must strike a proper balance between individual freedom and social control.

One major justification of the Act under Article 19(1)(g) is that the prohibition imposed on the online money games is in the interest of general public as specified in the preamble of the Act and cannot be considered as arbitrary or excessive in nature, as the Act has tried to maintain a balance between individual freedom by bringing regulatory framework for Online social games/E-sports and social control by imposing a blanket ban on online money games.

⁶ Constitution of India

⁷ 1996 SCC 2 226

⁸ AIR 1957 SC 699

⁹ 1950 INSC 27 (Nov 8, 1950)

SCRUTINY OF PROGA UNDER ARTICLE 21

Another issue is whether the Act violates the Right to Privacy as enshrined under Article 21 of the Constitution.

A. Legal Provision:

Section 16 of the PROGA grants the authority to law enforcement officers to encroach into the physical or digital premises of any individual for conducting any search solely on the grounds of reasonable suspicion, even without a warrant. This grant of extensive authority would allow access of the user's private data on mere suspicion, and this overrides the general procedural safeguards.

On the other hand, the **right to privacy** as laid down in the case of *K S Puttaswamy vs. Union of India*¹⁰, was held to be an inherent part of Article 21¹¹, that is, an essence of the individual's right to live with dignity.

B. Justification:

The Article 21 while granting the right to privacy, also provides the ground for curtailing this right, i.e. *in accordance with the procedure established by law*, which implies that the Right to privacy can be restrained when there is an existence of a statute that establishes a fair, just and reasonable procedure, that must not be arbitrary or excessive in nature and that procedure is established to achieve the objective of that statute, then Article 21 can be restrained.

In this scenario, the PROGA Act was enacted to restrain the online money games due to its extensive consequences, and Section 16 allows the violation of privacy to achieve the objective of curbing the flow of terror financing, money laundering, illegal activities, etc.

Thus, in light of the above reasoning, the Act can be said to fall under the exception of Article 21 as the procedure established is fair and reasonable because it aims to achieve the objective of the Act.

¹⁰ 2017 AIR SC 4161

¹¹ Constitution of India

CONCLUSION

The Promotion and Regulation of Online Gaming Act, 2025, came as a response to various risks and rising threats to society due to the online gaming sector, whether operated in India or outside India. This act imposes a comprehensive ban on online money games, while bringing a regulatory framework for other online social games and E-sports.

While, the validity of the Act is challenged on three major constitutional grounds, i.e. legislative competence, Freedom of trade and Right to privacy, but despite of the contentions raised and justifications provided under this article, the ultimate test regarding the validity of the Act rests with the judiciary to scrutinise it, and to determine whether the restrictions imposed thereunder passes the test of reasonability and proportionality within the constitutional framework of India.