
SKILL VERSUS CHANCE IN THE DIGITAL AGE: A STUDY OF INDIA'S LEGAL FRAMEWORK FOR ONLINE GAMING

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ABSTRACT

The regulation of gaming and gambling in India finds its roots in 'the Public Gambling Act of 1867', a colonial statute that prohibited gambling with a few exceptions in British India. Later, a clear distinction was created between a 'game of skill' and a 'game of chance'; the former was allowed, and the latter was prohibited. This skill vs chance dichotomy shaped the Indian gaming laws for over a century. The judiciary has also played an important role in developing the law on gaming, notably in the case of the 'State of Bombay vs R.M.D.Chamarbaugwala', the court reaffirmed the game involving skills and not mere chance. However, the application of the test has not always been a straight course since the boundaries between skill and chance often overlap in practice.

The advent of the internet and online gaming has made this divide even more complex. Multinational Corporations have their stakes in the online gaming industry, hosting games like poker, rummy, and other fantasy sports. While these games do fall under the category of games of skill, they come with other hazards of the online world. The major concerns are addiction, which affects the mental and physical health of youth, and financial exploitation.

In response, the Online Gaming Act 2025 seeks to create a unified framework. The Act represents a significant step towards harmonising, but its true test lies in balancing competing interests of society at large to curb unlawful gambling while at the same time balancing the interests of the operators under Articles 19 and 21 of the Constitution of India, which guarantees freedom of trade, thereby fostering innovation.

This paper traces the historical development of gaming laws in India, analyses the skill vs chance dichotomy and its application in the online gaming sector, and lastly evaluates the intricacies of the new Act on online gaming.

Keywords: Online Gaming, Game of Skill, Game of Chance, Gambling, Fantasy Sports.

CHAPTER I

INTRODUCTION TO ONLINE GAMING

1.1 INTRODUCTION

The tension between skill and chance is as old as human civilisation itself. In Greek mythology, dice were often seen as instruments of fate, symbolising the whims of the gods rather than the will of mortals. In the Indian epic *Mahabharata*, a seemingly single game of dice turned into a catastrophic war, underlining the dangers of surrendering to fortune rather than reason. Both traditions reveal an enduring truth: while games can entertain and challenge, when left to rely on chance, they become instruments of risk and can destabilise lives and societies.

In the twenty-first century, this ancient dilemma resurfaces in a new form of online gaming. Digital platforms have transformed traditional play into a multibillion-rupee industry, but they have also blurred the fragile boundary between entertainment and gambling. Just as the ancients debated the role of destiny and agency, modern India faces the pressing challenge of separating ‘games of skill’ from ‘games of chance’. Its task is not merely to define games but to strike a balance between freedom and protection, innovation and control, commerce and ethics.

This research examines the Indian legal framework on online gaming, focusing on how jurisprudence navigates the fine line between skill and chance in a digital world.

1.2 RESEARCH METHODOLOGY

1.2.1 Research problem

The online gaming sector is one of the fastest-growing sectors of the economy, and yet it stood unregulated for a long period of time. The skill vs chance dichotomy, which developed in the context of physical gaming and gambling, has been inconsistently applied to online gaming as well. This fragmented regulatory framework raises serious issues regarding financial risk, data privacy, and physical and mental health. Further, the recent legislation, the Online Gaming Act 2025, also relies on the same outdated distinction, i.e. the skill and the chance, and it also imposes a blanket ban on real money gaming, significantly affecting the startups. It also leaves

the unresolved issues of cross-border online gaming markets, which significantly affect the youth of India.

1.2.2 Rationale of the study

India, with 568 million gamers, has the largest gaming market in the world, carrying both economic opportunities and risks. With the passing of the recent legislation on online gaming, the government has tried to regulate this sector; however, some of the concerns remain. This study critically examines these gaps by tracing the historical and judicial development of laws, and it presents recommendations and suggestions for a balanced framework.

1.2.3 Research question

1. What is the historical origin of gaming laws in India?
2. What is the present legal framework for governing the gaming sector in India?
3. Whether Indian courts have applied the skill vs chance test consistently in cases of online gaming, or are there contradictions?
4. Whether the state-level prohibition on online gaming is compatible with the constitutional guarantees under Articles 19(1)(g) and 21?
5. Does the present Online Gaming Act 2025 offer a comprehensive regulatory model for governing the online gaming sector?

1.2.4 Review of literature

1. Saini and Sethi's 'Law relating to Gambling, Betting, Lotteries and Clubs'¹. The book is the amalgamation of all state and central legislations on the subject of betting and gambling, along with the amendments, which are well incorporated. The book also incorporates exposition of exhaustive law, lucid interpretation and up-to-date judicial pronouncements of the court on the subject.
2. Mukul Mudgal & Vidushpat Singhania 'Law and Sports in India'², the book examines

¹ Saini and Sethi's, 'Law relating to Gambling, Betting, Lotteries and Clubs' 4th edition

² Mukul Mudgal & Vidushpat Singhania: 'Law and Sports in India'², 2e 2016

the position of gaming in the constitutional framework of India. It discusses in detail the laws relating to gambling in India, the rationale of such laws and the need to regulate the online gaming sector.

3. Peter duersch, marco Lambrecht, and joerg oechssler 'Measuring Skill and chance in Games'³, the researchers highlight the importance of gaming industry particularly the online gaming sector. Paper also examines the skill vs chance test and suggests a new empirical criterion for distinguishing game of skill from that of chance.
4. U Dinesh Kumar, 'Fantasy sports: a game of Skill or chance'⁴, the researcher delves particularly into fantasy sports which is a form of online skill based game. The researcher examines the present laws and the judicial interpretations to analyses the status of fantasy sports.

1.2.5 Research design

The research follows doctrinal research analysis relying primarily on the statutes and judicial decisions. It draws on the constitution of India, the 'Public Gambling Act 1867', and other state legislations and the recent 'Online Gaming Act of 2025' as a key statutory source. Secondary sources include articles, journals, newspaper editorials and books. The research also follows an analytical approach to analyse the present laws on online gaming and evaluate the adequacy of these laws in light of constitutional guarantees and socio-economic realities.

Hypothesis

Gaming sector is one of the most important sectors yet it was long that is was being unregulated. The new online gaming Act of 2025 presents a landmark moment in history of India although it does not efficiently resolve the dilemma of skill vs chance as laid down by the judiciary.

1.2.6 Tentative chapterisation

Chapter I- Introduction

The chapter gives brief introduction of gaming sector in India including the origin and

³ Peter duersch, marco Lambrecht, and joerg oechssler 'Measuring Skill and chance in Games' European Economic Review vol 127 (2020) 103472

⁴ U Dinesh Kumar, 'Fantasy sports: a game of Skill or chance' (2019 IIMB)

development of the concept of “skill vs chance”. It also highlights the changing circumstances and the introduction of online gaming sector in India.

Chapter II- historical development of gaming laws

This chapter traces the historical evolution of gaming sector in India taking into account the the statutes and framewroks enacted in India. It also highlights the role of judiciary in interpreting the laws.

Chapter III-constitutional analysis

The chapter delves into constitutional perspective of gaming laws in India. It highlights the provisions and jucial precedents and how courts have interpreted the famous skill vs chance test in online games.

Chapter IV- current status of gaming law in India

This chapter undertakes the analysis of the recent online gaming act 2025

Chapter V- Suggestions, findings and conclusion

This chapter lays down the suggestions, findings and conclusion of the research study

1.2.7 Timeline

The research was completed in the span of one month.

1.2.8 Limitations

- The research analyses the Recent law on online gaming and thus is limited as there are no judicial interpretations and empirical data to assess its long-term impact.
- The research is limited to Indian laws, and thus, a worldwide perspective is not evaluated.

1.2.9 Contribution

The research contributes to the academic discourse on online gaming by analysing the present

laws on online gaming, and the skill vs chance test and its applicability in the online realm. The research evaluates the present legislation, highlights its advantages and drawbacks and offers suggestions to uphold the interests of all the stakeholders.

CHAPTER II

2.1 HISTORY AND EVOLUTION OF GAMING LAWS IN INDIA

The gaming and gambling in India have ancient roots and are deeply rooted in the social and cultural fabric of India. The earliest evidence can be traced back to the Harrapan civilisation (1000 BC), wherein remains of dice and game boards were found during excavation, and even the 'Rig Veda' mentions a hymn called "Gambler's Lament", suggesting the popularity of gambling during the Indo-Aryan era.⁵

In Indian epics like the Ramayana and Mahabharata, references to the game of chance and skill can be traced. These texts, although dated 430 BC, suggest that gambling dates back to 7300 BC. The forms of gambling that existed earlier include board games with dice, such as chess with dice called chaturanga and games like Passa.⁶ The Mahabharata perhaps serves the most prominent example; it narrates the story of Prince Yudhisthira, who lost his wealth and his kingdom due to gambling, leading his family to exile. Further, the infamous dice game between the Kauravas and the Pandavas altered the course of an epic war. An ancient Buddhist text dated around 300 BC indicates the use of the nuts of the 'Bibhitaki tree' as dice, even before the six-faced dice were invented. Early sports betting generally included competitions like cock fights or ram fights.

It is a misconception that gambling laws were introduced in India by the British during colonial rule, but such a system existed in India. The early philosophical texts, like the 'Manusmriti', condemned gambling as an immoral act and thus prohibited it for its potential to destroy kingdoms. It also mentioned punishment, such as banishment or other corporal punishments, for indulging in gambling. Although gambling was condemned, it later became a great source of revenue for the kings and thus began the era of state-controlled gambling.

The paradigm shift in the gaming regulation in India can be seen with the advent of the British.

⁵ Judith E Walsh, A brief History of India , page no 41

⁶ Gambling In India: A Historical And Legal Perspective, <https://theamikusqriac.com>

The gaming laws were developed during the colonial rule, and the first statute was enacted, the 'Public Gaming Act of 1867'. The statute regularised the operation of gaming houses, and gambling in public places was made unlawful. The Act did not prohibit private games, the games that involved skill, horse racing and lotteries. The Act, designed in the 19th century, continues to form the backbone of major gambling laws in India.

Post-independence, the gambling regulation developed further. The framers of the Constitution assigned gaming and betting under 'entry 34' of the state list under the seventh schedule of the Constitution of India, thereby granting the states exclusive power to legislate on the subject. Thus, different states have different laws governing the gaming sector. The central government retained a limited role, primarily in relation to lotteries and horse racing, both of which were treated differently from conventional gambling. This division of powers has remained central to the complexity of India's gaming laws.

Furthermore, the gaming industry has undergone a significant shift with the advent of the internet in the early 90s. The online and digital gaming platforms have been rising exponentially over the last few years, as seen in the rise of online card games like poker and modern age games like fantasy sports. The enormous potential of the gaming industry in the Indian market has also led to a gush of online gaming websites, consequently increasing the threat of misuse of those platforms.

The judiciary has also played a significant role in the evolution of gaming laws in India. The judicial interpretations have shaped the laws as they stand today. The Supreme Court, in its landmark cases, have defined the scope and trajectory of gaming regulation by introducing the distinction between the 'game of skill vs the game of chance'. This judicial interpretation continues to influence the present-day issues of online gaming as well.

CHAPTER III

3.1 'GAME OF SKILL' vs 'GAME OF CHANCE': A CONSTITUTIONAL AND JUDICIAL PERSPECTIVE

The word "Gambling" has not been defined under any statute; however, the 'Black's Law Dictionary' defines the word 'gambling' or 'gaming' as "the act of risking something of value for a chance to win a prize", while a wager is defined as "money or other consideration risked

to an uncertain activity”. Indian gaming statutes have also drafted a similar definition of a common gaming house.

According to the ‘Public Gambling Act, 1867’ (Public Gambling Act): “Common gaming-house means any house, walled enclosure, room or place in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, enclosure, room or place, whether by way of charge for the use of the instruments of gaming, or of the house, enclosure, room or place, or otherwise howsoever.”

The gaming laws have been developed by the judiciary through various judicial pronouncements, and the key framework in this regard is the distinction drawn between the “game of chance” and “game of skill”. This distinction also differentiates between gambling and other games. A game may be of chance or skill, or a combination of both. A game of chance is characterised entirely by luck, uncertainty and doubt. A game of skill, on the other hand, is one in which the success depends on the intellect, experience and adroitness of the individual.

This distinction of game of chance and game of skill has been retained largely by all the Indian states in their respective state legislations with respect to gambling laws, and consequently, these state legislations prohibit betting on games which are characterised by a game of chance while permitting the games that require skill. Most of the gambling laws do not provide specific definitions as to which activities constitute “games of chance” or “games of skill”. Thus, it becomes necessary to rely on authoritative judicial pronouncements to assess the nature of a game on a case-by-case basis.

In the landmark judgments of “the State of Andhra Pradesh v K. Satyanarayana & Ors⁷” and the “State of Bombay v R.M.D. Chamarbaugwala⁸”, the Supreme Court of India held that “no game is entirely a game of skill, as essentially all games involve some degree of chance. Accordingly, the Court laid down the dominant element test, which is used to ascertain whether skill or chance plays the predominant role in determining the outcome of a game.”

The dominant element of any game may be determined by examining certain factors, which include, but are not limited to, profound knowledge, training, skill or expertise of a player and whether these factors have a significant impact on the outcome of the game. This differentiates

⁷ AIR 1968 SC 825

⁸ 1957 AIR 699

a game of skill from that of chance, as these factors are generally applicable in a game of skill, while a game of chance is entirely dependent on luck. Games which are substantially based on the skill of the players involved are considered commercial activities and afforded constitutional protection.

With particular reference to the game of rummy, the Supreme Court has held that successful outcomes in the game depend on the element and exercise of skill and has stated that “it requires a certain amount of skill because the fall of the cards has to be memorised and the building up of rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of rummy is a game of pure chance. It is mainly and preponderantly a game of skill. While the Supreme Court has stated that any game involving the shuffling and dealing of cards contains an inherent element of chance due to the unpredictable distribution of the cards in the shuffled deck, it ruled that rummy is a game of skill as it requires a certain amount of skill particularly in memorising the sequence of falling cards and strategically holding or discarding cards to build a strong hand”.

The Supreme Court of India, thus, put clarity on the term “mere skill”, stating that the game is considered to be a game of skill where the outcome of the game is determined more by the player’s skill than by chance.

In 2005, the Madras High Court, in the case of “Manakadu Elainger Nala Sports, Narpani Mandram vs State of Tamil Nadu⁹”, ruled that “games such as chess and carom, even when involving payment of club fees, i.e., payment of consideration, did not amount to gambling as the games were predominantly games of skill rather than chance. As such, they were classified as games of skill and exempted under the Public Gambling Act, 1867.”

3.2 GAMING LAWS IN INDIA

List II of Schedule 7 of the Constitution of India comprises the subject of betting and gambling; thus, the states are empowered to regulate this sector; consequently, the following laws are in effect-

1. The State of Sikkim permits the working of casino games, but on the condition of obtaining a license under the ‘Sikkim Online Gaming Act of 2008’, with a further

⁹ AIR 2005 MADRAS 214, 2005 (1)

condition that these games are propagated exclusively through intranet terminals.

2. On similar lines, the State of Meghalaya legislated the 'Meghalaya Act of 2021', under which the operators may advance both online and land-based games of chance after obtaining a necessary license from the appropriate authority.
3. The 'Assam Game and Betting Act, 1970' ("Assam Act") prohibits "bets" or "invitations to bet" in the state. As such, any game or sport (irrespective of its reliance on skill or chance, since no differentiation is made) that involves playing for money or any form of valuable security is prohibited under the Assam Act.
4. Similarly, the 'Orissa Prevention of Gambling Act, 1955' ("Orissa Act") prohibits the playing of a game for money or other stakes, akin to the Assam Act, with the exception that the State Government has the power to exempt, by a general or special order, any social club or party playing games for bona fide recreational purposes from the restrictions imposed by the Orissa Act.
5. The Hon'ble Supreme Court of India has categorically ruled that the speculation on horse racing is a game of skill and thus entitled to protection. In 2017, the High Court of Punjab & Haryana relied on the 'Lakshmanan case'¹⁰ and ruled that fantasy sports are predominantly a game of skill. As a result, it has been exempted from the prohibitions outlined in the Gaming Laws. In the recent landmark case of 'Avinash Mehrotra v. State of Rajasthan', the Supreme Court of India affirmed the legality of fantasy sports and made it a settled law.

This opened a window that cricket has been awaiting for years. A cricket-crazy nation was the ultimate destination for any sports gambling operators. Further, these fantasy sports were advertised by the famous faces like Sourav Ganguly and Virat Kohli in order to have a widespread impact.

CHAPTER IV

4.1 PRESENT SCENARIO

The online gaming sector has been growing rapidly in India, and this can be attributed to the

¹⁰ (1996 INSC 57)

availability of the internet, smartphones and increasing digital participation. This rapid expansion of the internet is accompanied by severe challenges as well. While on one hand, e-sports and educational games provide scope for innovation and skill application, on the other hand, the rise of online money gaming poses a serious threat. As per government data, there has been a rise in cases of mental health issues, debt traps and suicides, especially amongst the youth. To address this challenge, the Parliament of India has passed a new bill, the 'Promotion and Regulation of Online Gaming Act, 2025'. This marks a watershed moment in India's attempt to regulate the rapidly expanding online gaming sector. It undertakes a dual approach, firstly to promote legitimate sectors like e-sports, social gaming and skill-based gaming and secondly to prohibit online gaming involving real money.

The proposed legislation delineates three categories of online games: e-sports, social gaming, and real-money games (RMGs). While the framework seeks to promote e-sports and social gaming, it imposes a complete prohibition on RMGs and their associated advertisements.

The Act defines an online money game as one played digitally, irrespective of whether it is based on skill, chance, or a combination thereof, where participation requires a monetary stake or involves the expectation of financial gain, either directly or through convertible tokens, credits, or virtual currency. Within this ambit, games such as Poker, Rummy, Fantasy Cricket, and Ludo are classified as RMGs. The sector's popularity is evident from celebrity endorsements, including Dream11 (Ranbir Kapoor, Aamir Khan), Rummy Circle (Hrithik Roshan), and My11Circle (Sourav Ganguly).

E-sports are recognised under the National Sports Governance Act, 2025, and must be registered with the proposed regulatory body. These games may involve registration or participation fees, but prize allocation remains performance-based. Social gaming, though lacking a precise statutory definition, is included within the wider understanding of online games, encompassing recreational or educational activities facilitated by electronic devices and internet-based software. Section 4 of the Bill empowers the government to actively support the development of such games.

The legislative framework adopts a twofold strategy: first, the imposition of an absolute ban on betting-oriented real-money gaming, with violations attracting severe penalties including imprisonment of up to three years and fines of up to ₹1 crore; and second, the formal recognition of e-sports and social gaming as legitimate skill-based recreational activities.

A central institutional innovation proposed under the Bill is the establishment of a Central Online Gaming Authority. Entrusted with licensing, compliance monitoring, and the formulation of regulatory standards, the Authority also serves as a mediator between the Union and State governments.

CHAPTER V

CONCLUSION

The online gaming sector is a fast-growing field and was, for a long period of time, unregulated. The present Act, although it aims to regulate nuances of online gaming, does not cover all the intricacies of it. Several major questions remain unanswered regarding an outright ban. Firstly, does it have a rational connection to the Gaming Act's objective of safeguarding youth from financial and mental harm? Secondly, would a ban simply suppress the existing market, driving it into an unregulated, untaxed, and unaccountable underground economy? Alternatively, could stringent fiscal controls on gaming companies achieve the same protective goals? All these questions pose a serious issue; nevertheless, the nothing should be banned argument does not stand in a situation where real money gaming is involved, which is nothing but a euphemism for gambling, and thus must be prohibited.

SUGGESTIONS

The Online gaming regulation in India stands at a crossroads. The online Gaming Act of 2025, although it is a significant step, its challenges go beyond the legislation. The judiciary has long struggled with the distinction between a game of skill and one of chance, while at the same time balancing the constitutional rights of the citizens. State, meanwhile, imposed a blanket ban, raising crucial questions of the effectiveness and the impact of such a ban on the industry as a whole.

1. The present framework must adopt a spectrum-based approach wherein the games involving skills require lighter regulation, the hybrid games fall under medium regulation, and the pure chance game under strict regulation.
2. The right to life, as guaranteed under Article 21, also includes the right to live with dignity, which in turn includes leisure as recreation as a part of dignity. In lines of this digital recreation must also be recognised as a part of Article 21, and thus the restriction

on online gaming must meet the proportionality criteria, which is to be just fair and reasonable.

3. Drawing from the legislation of different nation-states, India should adopt a national licensing system to grant a license to the operators who fulfil the basic set of criteria by the appropriate authority. This would reduce the risk of fraud and protect the public at large.
4. Another significant system is the self-exclusion register, wherein users can voluntarily block themselves from all the gaming websites if they fear the risk of addiction.
5. From an economic point of view, the present blanket ban on real money gaming, irrespective of the game of skill or chance, will push the gaming industries out of the country and thus would significantly affect the job creation within the country. A significant portion of India's gaming industry involves the component of real money gaming. India should adopt a mechanism wherein skill-based gaming should be allowed to operate under a licensed system, which will encourage start-ups and promote innovation.
6. The biggest risk that remains unaddressed is the cross-border online gaming networks. Unregulated websites operating outside India lure players into illegal games and earn money. A strong enforcement mechanism is required to monitor these illicit websites and block payments to such unlicensed sites. France and Italy are examples of nations having such cross-border enforcement.

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