

ONLINE GAMING AND REGULATION IN AN INVERSE PROPORTION

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ABSTRACT

In the face of the current epidemic, digital platforms have come to the people's rescue, and they are now used in practically every area, including education, job, and gaming. Due to a lack of legal understanding among the people, the Madras High Court has raised the issue of online gaming platform regulation, citing the growth in their abuse and the entrance of illegal activities through such platforms. For a number of reasons, the article aims to highlight the issue of India's lack of online gambling legislation. Throughout the debate, the author will argue that lawbreakers have used the void to engage in unlawful gaming and betting. The article examines present regimes for regulating such circumvention and explains why the center, rather than the state, should be involved. The paper will offer the status quo of other nations to prove our points and assess the system's flaws. Likewise, the government's approach to online gaming regulation will be examined via the examination of previous and unsuccessful government initiatives to present an extensive and clear picture of the government's position. It also discusses the challenge of using skill and chance tests over the internet and offers advice and a possible approach to regulate the current situation.

Keywords: *Gambling Legislation; Internet; Online Betting; Online Games; Video Game Laws.*

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Introduction

In this decade, India's video game industry has advanced significantly. Previously, the term "video game" conjured up thoughts of computers or cassette-based games; but, with the advent of digitalization, the term "video game" has expanded to include smartphones, virtual reality headsets, and other portable devices. The introduction of video games on smartphones has resulted in a significant increase in people's digital gaming activity. The researchers saw an increase in user participation in online gaming among individuals aged 25–35 years, as well as a slight rise in female users, during the COVID-19 lockdown.¹ Demonetization has aided in the transition of the general people, regardless of socioeconomic position, to digital platforms for most daily functions like online bill payments, online money transfers, and other similar duties. Furthermore, during this COVID-19 outbreak, the demand, usage, and popularity of numerous online games, including TeenPatti, Rummy, Poker, and other fantasy games, has skyrocketed in our nation.² In the previous decade, India, as one of the world's most promising gaming markets, has seen a spike in the number of gaming websites throughout the world.³ According to recent research conducted in India by the well-known firm KPMG, the country's gaming business would reach a value of Rs. 250.3 billion in the next four years, that is 2024.⁴

The growth of the Indian digital gaming industry highlights the surge in gambling and betting. It is common knowledge that there is a profusion of programs available on the internet that allow users to wager and gamble real money on dependent events and games of chance. According to research published by the "International Centre for

¹ K. P. Amin, M.D. Griffiths, and D.D D'souza, 20 *Online Gaming During the COVID-19 Pandemic in India: Strategies for Work-Life Balance*, INT. J. OF MENTAL HEALTH AND ADDICTION (2022)

² Aaroha Kulkarni, 7 *Victims of the Virtual Vortex: Regulating the Video Game Industry in India*, COMMUNICATION, MEDIA, ENTERTAINMENT AND TECHNOLOGY (2020)

³ Suparna Dutt D' Cunha, *How Digital in India is Growing up into a Billion-Dollar Market*, FORBES (last visited Apr. 7, 2022), <https://www.forbes.com/sites/suparnadutt/2018/03/09/how-online-gaming-in-india-is-growing-fast-into-a-billion-dollar-market/?sh=ce8f9f655b62>

⁴ *The Evolving Landscape of Sports Gaming in India*, KPMG (last visited Apr. 7, 2022), <https://assets.kpmg/content/dam/kpmg/in/pdf/2019/03/online-gaming-india-fantasy-sports.pdf>

Sports Security," India has an alarmingly high incidence of engagement in betting operations.⁵ The current betting industry in India is estimated to be worth roughly 130 billion dollars, according to the ICSS research.⁶ This begs the issue of whether or not these gaming platforms should be regulated because of the potential for them to encourage unlawful betting, gambling, and lottery operations.

Surprisingly, India currently lacks specialized online gambling and gaming legislation, leaving the government with little choice except to control these platforms using physical rules, namely the skill vs. chance criteria.⁷ Physical testing on digital platforms has been questioned for a variety of reasons, including the difficulties of applying restricted and severe physical rules to dynamic and vast digital networks.

The reality that gambling activities demand different levels of expertise on physical and online platforms is overlooked, as are the considerable risks of manipulation and cheating on these digital platforms. This is not an issue exclusive to the federal government or the Supreme Court, they have decided to remain silent in the face of such open and active illegal action.⁸ As a result, the author of this article has emphasized the critical need for special laws for video games, as well as the present legal system's failings in regulating these games.

Literature Review

1. Benegal, V., *Gambling Experiences, Problems and Policy in India: A Historical Analysis*, ADDICTION (Abingdon, England), Volume 108, 2013

This study aims to outline a historical review of gaming in India, as well as current anti-gambling laws. From antiquity to the present, gambling has been a popular hobby and a pervasive element of daily life. Recent events, such as the proliferation of sports betting operations and online betting sites, are upending the status quo, triggering calls for gambling to be legalized. The author assembles data from a survey of

⁵ Vivek Benegal, 108(12) *Gambling experiences, problems and policy in India: a historical analysis*, ADDICTION (ABINGDON, ENGLAND), 2062–2067 (2013) <https://doi.org/10.1111/j.1360-0443.2012.04068.x>

⁶ *Ibid.*

⁷ Sanju George, Richard Velleman and Benedict Weobong, 43(2) *Should Gambling Be Legalized in India?*, INDIAN JOURNAL OF PSYCHOLOGICAL MEDICINE (2021).

⁸ CS S. Ravishankar, *Online Gaming, Gaming Laws & legal Puzzles in India*, ICSI (last visited Apr. 7, 2022) <https://www.icsi.edu/media/portals/22/Gaming%20Laws.pdf>

existing literature, including historical sources, lay press publications, and online sources, to offer an overview of gambling and anti-gambling legislation from antiquity to the present.

2. Gupta, R., *Legalising Betting in Sports: Some Reflections on Lawmaking, Economic and Politi*, Volume 48, No. 48, (November 30, 2013)

In this paper, the author argues that arguments over allowing sports betting in the wake of the Indian Premier League controversy elicit two main problems about our legal and legislative processes, as well as how we respond to such scandals. Initially, the author disputes the state's moral power to prohibit gambling. Further, the paper examines the ineffectiveness of legislation as a viable reason to abolish or alter it.

3. Jha, Inakshi, Dey, Shantanu, *Legalisation of Gambling on Outcomes of Sporting Events—A Farcical Solution to an Uncontrollable Problem?*, Nirma University Law Journal, Volume 3 , Issue 2, 2014

The authors of this article want to analyze the polemic subject of legalizing sports betting in India within the limitations of the evolving legal structure. Both the authors have engaged in a thorough analysis of the Indian Gambling Laws affirming the aims of inclusion and continue to a comprehensive illustrated perusing a set of arguments arguing for and against the issue's cause, employing a sequential assessment of the subject in hand. The second half of the paper, which is aware of the Pro-Legalization Agenda movement's ideological underpinnings, makes a concerted effort to propose constructive structural explanations for the manifestation of the desired change before coming to a conclusion by clarifying the authors' stance on the issue and highlighting the Legislative Dynamism argument.

4. Valleur, M., *Gambling and gambling-related problems in France*, *Addiction* (Abingdon, England), Volume 110 , Issue 12 , 2015

The author of this paper aimed to present an overview of France's gaming environment and gambling-related issues, including history, law, gambling policy, and epidemiological statistics on excessive gambling. Since the establishment of the royal lottery in 1776, governmental monopoly has been the cornerstone of French

gambling regulation. While land-based gambling remains largely a state monopoly, the internet gaming market was partly liberalized in 2010. And in reaction to the surge in gambling venues and possibilities, regulating bodies were formed, mounting evidence of gambling-related concerns, European Commission pressures, and the expansion of internet gambling. According to the paper, the incidence of problem gambling is much greater among internet gamblers in France than among land-based gamblers; nevertheless, this disparity cannot be explained only by the fact that online gaming is more addicting.

5. Pawar, Sakshi, Lohiya, Naman, *Legalising Online Sports Betting In India: a Gamble Unto Itself?*, Indian Journal of Law and Public Policy, Volume 4, Issue 1, 2017

In 2017, the Supreme Court of India decided to rule on the constitutionality of letting Pan-India sports betting and internet betting platforms. However, many nations in this contrast consider gambling to be illegal within their borders. Furthermore, many jurisdictions' laws have not kept up with technology advancements and do not regulate internet gambling. Many Indians continue to illegally utilize online betting sites and invest millions of rupees in the industry, establishing a parallel underground economy. The author of the paper addresses the lack of regulatory frameworks in this industry and offers improvements that would usher India to legalize online betting.

6. Kulkarni, Aaroha, *Victims of the Virtual Vortex: Regulating the Video Game Industry in India*, Communication, Media, Entertainment and Technology, Volume 7, 2020

Technology has become more accessible as a result of globalization. Since children mainly utilize sophisticated electronics for entertainment, most traditional games and leisure activities for children have been replaced by video games. The author discusses the current state of India's video game industry and assesses recent game bans. In addition, the author tries to evaluate the varied effects that video games have had on the Indian population. Furthermore, current law attempting to govern the video game business is examined, as well as legislation in use across the world. This

research project looks into how video games may be controlled more strictly and effectively, as well as possible solutions.

7. George S, Velleman R, Weobong B., Should Gambling Be Legalized in India? Indian Journal of Psychological Medicine, Volume 43, Issue 2, 2021

The research aims to objectively assess the advantages and disadvantages of legalising and regulating gambling in India, as well as provide future suggestions. The main arguments in this paper advocating the legalizing and regulation of India's illicit gambling/gaming business concentrate around the fact that it is a massive sector in terms of economics. As highlighted in the paper, the quantities of money engaged in India are enormous, as are the numbers of persons involved, with sports betting being the most popular type of illicit gambling. Gambling and gambling-related disorders have a negative influence on the most vulnerable in society, according to research from throughout the world. According to the authors, there is currently no compelling justification in favor of gambling legalization in India. They conclude that at this point, the question, "why should gambling be tolerated," should receive more attention than the how-to question, "how can it be legalized." Ethnographic data that has been well-designed and epidemiological studies across India should be used to address the why issue.

8. Avula, Kedara Gouri, Enactment Of The New Online Gaming Acts – A Game Changer In Socio - Economic And Legal Perspective – A Need Of The Hour, Aayushi International Interdisciplinary Research Journal, Special Issue No. 86, 2021

The author states that new gaming legislation must be enacted in India as soon as possible. Gambling, poker, casinos, lotteries, betting, and other related activities are all subject to gaming legislation, with a concentration on gambling legislation. With the exception of Nagaland and Sikkim in the north-eastern states, which have implemented Online gambling, there are no such gaming laws that have been passed in India as a result of technical innovation. This article provides a critical assessment of the necessity for new gambling legislation in India, in general, and in Andhra Pradesh, in particular. Considering how these events tempt participants by displaying

money as well as using both "Game of Skill" and "Game of Chance" to achieve financial gain, tournament organizers are exploiting legal loopholes and getting away with it, which demands strong laws to prohibit.

9. Rathakrishnan, B., George, S., Gambling in Malaysia: An overview, *BJPsych International*, Volume 18, Issue 2, 2021

In the 19th century, Chinese traders seem to have introduced gambling to Malaysia. In Malaysia, gambling is immensely popular in both legal and illicit forms. Lotteries, casino games, and horse racing are permitted types of gambling in Malaysia, however, all kinds of sports betting and internet gambling are prohibited. Regardless of this, Malaysian gambling research is lacking, and there is no comprehensive plan in place to address gaming-related issues. This paper provides an overview of the Malaysian gaming industry, gambling legislation, and research findings to date, as well as making recommendations for the future.

10. Amin, K.P., Griffiths, M.D. & Dsouza, D.D., Online Gaming During the COVID-19 Pandemic in India: Strategies for Work-Life Balance, *International Journal of Mental Health and Addiction*, Volume 20, 2022

The author discusses the Online Gaming Industry in India during the COVID-19 Pandemic in this paper. At the time of writing, the unique coronavirus pandemic has brought the whole globe to a halt, infecting millions of people globally. The Indian government launched statewide lockdown and self-isolation regulations to fight the spread of COVID-19. As a result, many people have experienced disruption in their jobs and schooling as well as psychological hardship as a result of the actions. The gaming sector, for example, has been remarkably unscathed by the epidemic, with user involvement increasing significantly over this time. According to the author, previous study data shows that most gaming participation is beneficial and that the advantages can be educational, physical, and psychological. It also implies that bad gaming is associated with psychological issues. During the COVID-19 epidemic, the author emphasizes the importance of providing the best mental health treatment to the whole public, particularly vulnerable populations.

The Current Legal Situation in India Regarding Online Gambling

The Indian Constitution permits both the federal and state governments to enact laws governing gaming, including gambling, lottery, and other forms of gambling, and a few states have done so. Because state governments have not modified their local laws to meet the requirements of the contemporary technological era, the introduction of the internet has rendered these laws ineffective. It creates loopholes and provides miscreants wide reign. To provide a fuller picture of the issue, the authors will use existing state legislation, court declarations, and the perspectives of the federal and state governments to describe the present position with online gambling.

At first, all gambling operations in India were governed by the central statute known as The Public Gambling Act, 1867. This law prohibited all gambling and betting industries, with the exception of lotteries and skill games.⁹ In addition, all states are empowered to establish legislation to control such activities in their jurisdiction under Entry 34, List II of the Constitution of India's Seventh Schedule.¹⁰ Various states have attempted to interpret the legality of internet gambling in their jurisdiction in the past. Orissa,¹¹ Assam¹² and Telangana¹³ have all outlawed any form of stakes-based internet gambling. Furthermore, since there was no way to trace them, leading to revenue losses for the state, the Government of Maharashtra outlawed internet lotteries in their jurisdiction.¹⁴ The states that are most receptive to internet gaming are Sikkim¹⁵ and Nagaland¹⁶. The "Sikkim Online Gaming (Regulation) Amendment Act 2015" allows service providers to set up online gaming machines in gaming parlors that are connected to a LAN. As a result, internet gambling in Sikkim is theoretically limited to gaming houses, casinos, and other licensed establishments.¹⁷

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, aims to regulate and operate online games of skill

⁹ Public Gambling Act 1867, § 3.

¹⁰ Public Gambling Act 1867, § 6.

¹¹ The Orissa Prevention of Gambling Act, 1954, § 3.

¹² The Assam Game and Betting Act, 1970, § 14.

¹³ The Telangana Gaming (Amendment) Act, 2017, § 3.

¹⁴ *Maharashtra Decides to ban Online Lotteries*, CRICKET PREDICTION (last visited Apr. 7, 2022), <https://cricketprediction.com/gambling/lottery/decides-ban-online-lotteries/>.

¹⁵ The Sikkim Online Gaming (Regulation) Act, 2008, § 3(1).

¹⁶ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, § 2(10).

¹⁷ LAW COMMISSION OF INDIA, REP NO. 276, LEGAL FRAMEWORK: GAMBLING AND SPORTS BETTING INCLUDING INCRICKET IN INDIA, (2018).

through the granting of licenses by the Nagaland government.¹⁸ This Act grant licenses to any internet site to run games like rummy, poker, and other similar games in all states where such games are legal. Section 11(1) said that state governments shall notify the licensing authority of Nagaland if licensees infringe the terms of this Act, local laws, or norms.¹⁹ Despite the fact that this act should be viewed as a great step forward in the field of internet gambling, however, a specific component of the statute raises concerns regarding its constitutionality. The act's section 7(3) permits any firm formed in India to apply for a license, and the licenses are valid across the country. This clause simply challenges the validity of the legislation, which has previously been challenged in court on the basis that state activities must have some "territorial and geographical link" with the state in question.²⁰ It's also worth noting that state laws can't be imposed outside of the state's geographical limits. As a result, this act might be viewed as lacking constitutional legality, which can be challenged in court.

Furthermore, the Law Commission of India's 276th report was prepared in mid-2018 to investigate the possibilities of legalizing betting and gaming in India. The group first proposed that, given the current climate, legalizing betting and gaming across India is not acceptable, and that a blanket prohibition be implemented.²¹

Nevertheless, the study recommended outlawing acts be made illegal in India, acknowledging India's rapid growth of online gaming and adding that a blanket ban would not help the government control gambling in the nation.²² Aside from that, the research made several recommendations for the government to consider if it decides to build a regulatory framework in India to address this issue. According to

¹⁸ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, § 7(3).

¹⁹ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015, §11(1).

²⁰ Jay Sayta, *Despite its Flaws, Nagaland's Legislation on Online Games of Skill Excites the Gaming Industry*, SWARAJYA (last visited Apr. 7, 2022), <https://swarajyamag.com/books/despise-its-flaws-nagalands-legislation-on-online-games-of-skill-excites-the-gaming-industry>

²¹ Auroshree, *276th Law Commission Report on Legal Framework: Gambling and Sports Betting Including in Cricket in India*, THE SCC ONLINE BLOG (last visited Apr. 7, 2022), <https://www.scconline.com/blog/post/2018/09/05/276th-law-commission-report-on-legal-framework-gambling-and-sports-betting-including-in-cricket-in-india/>

²² Aditi Singh, *Law Commission Recommends Regulated Gambling and Betting in Sports to Curb Fraud*, MINT (last visited Apr. 7, 2022), <https://www.livemint.com/Politics/347GdwsMY2a0fScdJpuHPK/Law-Commission-recommends-regulated-gambling-and-betting-in.html>

the research, the government can use Sections 67 and 69A of the Information Technology Act to manage to gamble and bet on online platforms if it wishes to outlaw them.²³

If the government agrees to regulate betting and gambling in India, cash generated from online gaming might be utilized for public benefit, according to the research.²⁴ The panel advised that the linking of PAN and AADHAR should be established to safeguard vulnerable parts of society to regulate online gambling and betting while keeping the state's economic and social welfare in mind.²⁵ It was also recommended that betting be classified by income slabs, preventing low-income individuals from participating in high-rate betting. While investigating online betting platforms, the panel also examined abroad websites and concluded that a considerable amount of money is being transferred to foreign countries, causing the Indian government to lose money. The panelists stated that stopping these behaviors is difficult and that players should always use VPN.

As a result, the best potential solution is to regulate these websites and alter FDI and FEMA regulations to help increase FDI in the country, which would assist generate money.²⁶ Furthermore, the panel recommended that the Central government utilize its legislative jurisdiction under Articles 249 and 252 of the Indian Constitution to regulate online gambling.²⁷ In addition, the panel recommended that the state adheres to using the authorities granted by the Seventh Schedule to regulate gaming and gambling on a physical basis. Despite the fact that the panel recommended several measures to regulate online gaming and gambling for the state's social welfare as well as income creation, the government has taken no action to date. Questions concerning the central government's activities in

²³ The Information and Technology Act, §§ 67, 69A

²⁴ Raadhika Gupta, 48(48) *Legalising Betting in Sports: Some Reflections on Lawmaking*, ECONOMIC AND POLITICAL WEEKLY, 13–15. (2013). <http://www.jstor.org/stable/23528912>

²⁵ *Supra* note., 20

²⁶ Sakshi Pawar and Naman Lohiya, 4(1) *Legalising Online Sports Betting In India: a Gamble Unto Itself?* INDIAN JOURNAL OF LAW AND PUBLIC POLICY (2017)

²⁷ Inakshi Jha and Shantanu Dey, 3(2) *Legalisation of Gambling on Outcomes of Sporting Events—A Farical Solution to an Uncontrollable Problem?* NIRMA UNIVERSITY LAW JOURNAL (2014)

response to the law report's recommendations abound in the legislature, but no response has yet been received.²⁸

Dr. Shashi Tharoor submitted a private bill in late 2018 in response to the issue, which included some of the recommendations from the 276th law commission report. Online Sports Gambling refers to games that include predicting the outcome of a sports event as well as making a wager on the outcome, in part or whole, of such sporting event, using a telecommunication device, according to Section 2(n) of the law.²⁹ The third chapter of the bill discussed the regulation of betting operations on internet platforms and proposed the formation of an online sports betting commission. The government should allow FDI in licensed online sports gaming, according to section 25 of the law.³⁰ Although this law was presented in 2018, it has yet to be passed. This measure, however, was a welcome step toward regulating internet betting, but it was limited to sports betting and did not include online gaming.

The legality of online gaming has been questioned in a number of cases before the courts. *M/s Gaussian Networks Pvt. Ltd. v. Monica Lakhanpal and the State of NCT* is one of the relevant cases.³¹ The court ruled in this instance that skill games played for money in digital space are banned since there is a substantial risk of game manipulation when played on virtual platforms.³² Further, the court held that the level of ability required to play online games cannot be compared to that required to play offline games. Furthermore, the Supreme Court ruled in *Dr. K.R. Lakshmanan v. State of Tamil Nadu*,³³ that offline rummy is a skill game. While debating the issue of online rummy, the Supreme Court decided to put a hold on the debate over whether the game is a game of skill or chance and directed the federal

²⁸ Sneha Johari, *No Clarity on the Status of Online Gaming and betting in India*, MEDIANAMA (last visited Apr. 7, 2022), <https://www.medianama.com/2019/02/223-online-gaming-betting-status-unclear-india/>

²⁹ The Sports (Online Gaming and Prevention of Fraud) Bill, 2018, § 2(n).

³⁰ The Sports (Online Gaming and Prevention of Fraud) Bill, 2018, § 25.

³¹ *M/s Gaussian Networks Pvt. Ltd. v. Monica Lakhanpal and the State of NCT*, CRP No. 119 of 2012.

³² Abhishek Saxena & Aashna Kothiyal, *Poker In India - Left Poker Faced By Regulations*, MONDAQ (last visited Apr. 7 2022), <https://www.mondaq.com/india/gaming/866462/poker-in-india--left-poker-faced-by-regulations%20>.

³³ *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, (1996) 2 SCC 226.

government to decide.³⁴ The federal administration has yet to express its thoughts on the subject. While deciding on a case involving offline rummy, the Madras High Court expressed worry about the absence of regulation surrounding online gaming and ordered the state government to develop regulations to appropriately control the position of online gambling and gaming.³⁵ As a result, there is still some doubt about whether or not an online skill game is prohibited. Thus, we may deduce that, despite the urgent need for a robust framework, the relevant government has taken no action, resulting in a static state of online gambling.

A Global Perspective

There are grey areas in gaming regulation not just in India, but also in other countries such as a lack of regulatory standards for gaming, gambling, betting, and so on.³⁶ On a global scale, the issue of regulating internet gaming is more complicated; other nations' perspectives on online gaming legislation may be split into three categories: total ban, no-ban, and partial ban.³⁷ The authors attempted to evaluate the state of online gaming regulation in Australia, France, Malaysia, Russia, Switzerland, the United Kingdom, and the United States of America in order to have a better understanding of the issue.

Both the federal and state governments control internet gambling in Australia. Internet gambling activities such as online casinos, poker, blackjack, and other games are outlawed under the country's Interactive Gambling Act of 2001. Furthermore, Section 7A of the Act forbids the promotion of interactive gaming websites designed specifically for Australians.³⁸ When the authorities have awarded licenses, sports betting, horse racing, greyhound racing, and other similar activities are authorized in Australia.

In France, unlike in Australia, internet gambling is regulated solely by the federal government. Because the financial benefits of online betting outweighed the

³⁴ Swati Shalini, *Is Online Betting or Gambling Legal in India*, MY ADVO (last visited Apr. 7 2022), <https://www.myadvo.in/blog/Online-Gambling-Is-India-Game/>

³⁵ D. Siluvai Venance v. State, (2020) SCC OnLine Mad 1546

³⁶ *Gaming Translation: Which Countries Don't Allow Online Gambling?*, JACKPOT TRANSLATION (last visited Apr. 7 2022), <https://www.jackpottranslation.com/2017/04/27/gaming-translation-which-countries-dont-allow-online-gambling/>

³⁷ *Supra* note. 16

³⁸ The Interactive Gambling Act, 2001, §7A.

negative effects in the country, all forms of internet betting and gambling are legal in France, with the exception of classic casino games such as roulette and slot machines, which were proven to be more addictive than other games.³⁹ Furthermore, internet gambling is governed by the Gaming Act, which is a federal law. The Regulatory Authority for Online Games, commonly known as the *Autorité de régulation des Jeux en ligne*, was established under this Act.⁴⁰ And it was in charge of regulating the tariffs and licensing provisions for online gambling in France.⁴¹

As an Islamic state, the Malaysian government formerly forbade all forms of gaming in the nation. Telecommunication is included in the source of betting under The Betting Act of 1953, which explicitly forbids any operator from engaging in any type of betting activity.⁴² This Act, however, included various exceptions after acquiring permissions, such as betting on horse races and lotteries. Aside from that, Malaysia prohibits all forms of gaming and gambling. Furthermore, the country's Syariah Criminal Offences (Federal Territories) Act, 1997 expressly states that all forms of gaming shall be illegal in the country.⁴³ However, the Malaysian government is considering allowing for internet gambling and is also mulling a tax moratorium to incentivize online gaming in the nation, according to the Philippine Amusement and Gaming Corp (PAGCOR).⁴⁴

Furthermore, under Russian Federal Law N244-FZ172⁴⁵ only five distinct gambling zones were permitted to operate in venues with slot machines and table games.⁴⁶ Russians gamble on overseas websites because the Russian government is more concerned with regulating gaming firms than with people, resulting in income losses for the government. In the case of *Pskov Region v. Rostelecom*,⁴⁷ the

³⁹ Marc Valleur, 110(12) *Gambling and gambling-related problems in France*. ADDICTION (ABINGDON, ENGLAND), 1872–1876. (2015). <https://doi.org/10.1111/add.12967>

⁴⁰ GAMING ACT, 2010, art. 35.

⁴¹ *Supra* note., 35

⁴² Balan Rathakrishnan and Sanju George, 18(2) *Gambling in Malaysia: An Overview*. BJPSYCH INTERNATIONAL 32–34.(2021) <https://doi.org/10.1192/bji.2020.55>

⁴³ The Syariah Criminal Offences (Federal Territories) Act, 1997, §18.

⁴⁴ Will Malaysia Open up to Online Gambling?, ASIA GAMING BRIEF (last visited Apr. 7, 2022), <https://agbrief.com/news/malaysia/16/09/2020/will-malaysia-open-up-to-online-gambling/>

⁴⁵ Federal Law N244-FZ172, 2006.

⁴⁶ Stephen Carter, *Online Betting in Russia: an Overview*, I GAMING BUSINESS, (last visited Apr. 7, 2022) <https://igamingbusiness.com/online-betting-in-russia-an-overview/>

⁴⁷ Deputy State Prosecutor for the Pskov Region v. Rostelecom (Case No. 91-KGPR12-3).

Russian Supreme Court also held that Russians must be barred from utilising any online gaming platforms. In India, for example, there is a controversy about whether poker is a “game of chance or skill,”⁴⁸ while in Russia, doubt over what game should be included in gambling lingers, despite the fact that gambling is illegal.

There is a federal system in Switzerland, which implies that the center has the authority to pass laws at both the national and state levels. The Money Gaming Act of 2017, which enables all types of online gaming in the state, governs online gaming. This legislation has been challenged for vote across the country due to the destructive aspects of gambling. After receiving a majority of votes in a referendum, this measure was eventually passed in 2019. It was introduced to curb addiction and govern all types of internet gaming.⁴⁹

In the United Kingdom, internet betting and gambling are governed under the United Kingdom Gaming Act of 2005. Gaming is defined in Section 6 of the Act as “playing a game of chance for money.”⁵⁰ The term "game of chance" is defined under this act to encompass games that combine skill and luck, as well as those in which skill triumphs over chance.⁵¹ Section 9 deals with all sporting activities, including bets on races, tournaments, and other events.⁵² Section 50 of this Act says that only people over the age of 18 are able to participate in gaming and gambling activities, preventing youngsters from doing so.⁵³ Users above the age of 16 can also participate in lotteries, small gambling, and betting within the terms of this Act. In order to operate in the nation, a Gambling Commission has been formed to give licenses to providers of such services, who must pay an extra remote gaming charge.⁵⁴

The US regulatory framework permits all three levels of government, namely the federal, state, and local governments, to enact legislation governing internet gambling. The Unlawful Internet Gambling Enforcement Act governs online

⁴⁸ *Supra* note., 42

⁴⁹ *Supra* note., 16

⁵⁰ The United Kingdom Gambling Act, 2005, § 6.

⁵¹ The United Kingdom Gambling Act, 2005, § 6(2).

⁵² The United Kingdom Gambling Act, 2005, § 9.

⁵³ The United Kingdom Gambling Act, 2005, § 50.

⁵⁴ The United Kingdom Gambling Act, 2005, § 20.

gambling in the nation. This statute prevents operators from taking any monetary instrument in connection with Unlawful Internet Gambling of their own volition. Unlawful Internet Gambling is described as knowingly placing, receiving, otherwise conveying a bet or wager intentionally by any mechanism that employs, at least in part, via the Internet, where the bet or wager is illegal under any relevant Federal or State law in the State or Tribal lands where it is initiated, accepted, or otherwise made.⁵⁵ This law also makes it illegal for any financial institution to handle transactions between Americans and internet gambling websites. Furthermore, the Interstate Wire Act of 1961 prohibits all forms of internet gaming and betting⁵⁶ with the exception of online casinos.⁵⁷ Among legal experts and the judiciary, there has been a disagreement about the interpretation of legislation. As a result, the legal status of internet gambling in the United States remains murky.

The authors discovered that different governments have challenges with regulating and managing internet gaming in their territory after examining online gaming, gambling, and betting laws in different countries. A number of the uncertainties that exist in the Indian government also exist in other countries. For example, the Russian government has banned all forms of gambling in the country but has been unable to regulate those who gamble on overseas websites. In addition, the question of whether poker is a game of chance or skill exists in Russia, as it does in India. Furthermore, Australia has failed to prevent its residents from gambling on overseas sites. Regulations in the United States, like those in India, are vague when it comes to including games of chance in gambling, making it difficult to regulate these activities.

The writers have also acknowledged that adopting some of the regulatory procedures used in other nations might help India get back on track. The UK government's regulations on the internet gambling can be implemented by the country, as they remove any ambiguity concerning the matter. India can take into account the act's provisions prohibiting minors from participating in gaming and gambling, which is a critical factor in terms of laws. In addition, the Malaysian government's approach of

⁵⁵ Unlawful Internet Gambling Enforcement Act, 2006, § 5362.

⁵⁶ United States Department of Justice, *Whether Proposals By Illinois And New York To Use The Internet And Out- Of-State Transaction Processors To Sell Lottery Tickets To In-State Adults Violate The Wire Act*, JUSTICE.GOV (last visited Apr. 7, 2022), <https://www.justice.gov/sites/default/files/olc/opinions/2011/09/31/state-lotteries-opinion.pdf>

⁵⁷ *Thompson v. MasterCard International et al.*, 313 F.3d 257 (5th Cir. 2002).

enabling international players to invest while delaying taxation for operators may be used as a wise policy for luring investments. Furthermore, the French law established a governing body to supervise licensing and tariff rules; this is a crucial step that India has yet to take and must be addressed quickly.

Virtual Space Applicability of Physical Tests

Because there are no specialized regulations to control gambling and betting activities, the reliance must be placed on the skill and chance tests designed for physical platforms, as stated in the first portions of the article. The authors' argument against imposing physical exams in virtual space is based on variations in skill levels on both platforms. There is a greater need for the presence of mind in front of other competitive players in the physical area, whereas there is ample time to react to rivals' activities in online forms. Furthermore, in physical space, an individual plays alone since there is no opportunity for consultation, however, on online platforms, an individual may always consult other individuals, dividing the skill test. The most significant distinction is that online platforms have the potential for manipulation, cheating, and collusion. There's a good likelihood that in online games with more than two players, some people may join up against others for monetary gain. Furthermore, with software games, there is a risk of technical disparity from the service provider's end or from technically savvy players who create hackers or exploit software flaws.

The issue is not limited to the differences in gaming activity between physical platforms and online mediums, but also extends to the applicability and enforcement of physical laws on online portals. The "Public Gambling Act 1867" in India applies to the "United Provinces, East Punjab, Delhi, and the Central Provinces," and it clearly outlaws the operation of common gaming establishments and other public gambling operations.⁵⁸ However, because gaming and betting regulations fall under the scope of the state list, Entry 34 in the seventh schedule of the Indian Constitution, this act is subject to the applicability of state legislation.⁵⁹ As a result, if a state legislator has passed gaming legislation, the gambling act is effectively abolished in that state. This occurrence appears to be acceptable, but because it is accessible from anywhere in the country, it puts pressure on the capacity of different state legislation to be applied to internet platforms. The Delhi Gambling Act, for example, prohibits

⁵⁸ Public Gambling Act 1867, § 3.

⁵⁹ Public Gambling Act 1867, § 6.

games of chance⁶⁰ but the Goa Gambling Act contains special provisions that allow gambling.⁶¹ While this regulatory disparity is visible in physical space, it is difficult to implement on digital platforms. It's also worth noting that, unlike now, state gaming and betting law in India was written or implemented during a period when digital media and the Internet were rare. As a result, except for Sikkim and Nagaland, no state legislation specifically addresses internet gambling, which is limited to physical locations.

Except in Assam⁶² and Orrisa⁶³ (where gambling is illegal), gambling is only allowed in "common gaming halls" under all state gambling regulations.⁶⁴ Common gaming halls are public facilities designed for the purpose of profit by attracting individuals to participate in "instrumentalities of gaming" with the intention of earning or losing money owing to the risk involved. Casinos are the most well-known example of such buildings. As a result, private locations are not considered gaming houses, and gambling in such locations is not considered illegal. Because it's unclear if virtual spaces belong under the same category as traditional gaming establishments, this circumscribed illegality of gambling activities has raised questions regarding the applicability of ancient state laws to internet portals. In *Mahalakshmi Cultural Association v. Director, Inspector General of Police*, this matter was brought before the Supreme Court.⁶⁵ Although the court reviewed the problem, the writ before the federal court was found to be infructuous when the court was about to resolve the difficulty since the initial petition filed in the Madras High Court was withdrawn by the association of attorneys. In the recent case of *D.Siluvai Venance v. State*, the Madras High Court highlighted a similar issue,⁶⁶ where the court expressed concern about the absence of regulation of gaming on internet platforms when determining on the instance of offline rummy. As a result of this plot twist, it's still up in the air whether or not state law will include internet gambling. This enigma opens the floodgates for the court to examine each case separately and determine whether or not

⁶⁰ Delhi Public Gambling Act, 1955, § 3.

⁶¹ The Goa Public Gambling (Amendment) Bill, 2012, § 13(b).

⁶² The Assam Game and Betting Act, 1970, § 14.

⁶³ The Orissa Prevention of Gambling Act, 1954, § 3.

⁶⁴ Pratyush Kumar Jena and Vishal Chaudhary, *The Legalisation of Betting in India* (last visited Apr. 7, 2022), <https://www.livelaw.in/columns/the-legalisation-of-betting-in-india-161835>

⁶⁵ *Mahalakshmi Cultural Association v. The Director, Inspector General of Police*, (2011) SCC OnLine Mad 1997.

⁶⁶ *D. Siluvai Venance v. State*, (2020) SCC OnLine Mad 1546.

the online game may be controlled under current legislation. There is always a quandary over the applicability of regulations in the virtual gaming area due to the delay in court declarations and the lack of a straight jacket methodology.

Suggestions

With the advent of online gaming activities in India, there has been controversy on which road should be taken. There have always been disagreements between those who feel that all online gambling sites should be prohibited and those who believe that these platforms should be regulated. Individuals who are opposed to regulating online gaming activities frequently argue that doing so will allow people to engage in such unethical acts. Furthermore, the authors argue that it is difficult to properly manage these platforms due to the quick rate of technical progress and the scope of dynamicity within their grasp. As a result, modifying the Information Technology Act alone will not solve the problem of online gaming discussed in the prior chapters.

However, it must be overlooked that a total prohibition would result in a rise in covert illicit betting and gambling operations, which will ultimately prove to be more dangerous to society. Furthermore, the fact that an act cannot be regulated is a poor justification for not doing so at all. Certain initiatives toward regulating these platforms, according to the authors, must be implemented. There are several reasons for making this assertion. To begin with, internet gambling is already allowed in the nation, and the authorities are nothing near putting an end to it. Second, it is common knowledge that most persons associated with the underworld are engaging in such operations and that their proceeds from these platforms are used to fund terror. Legalization would not only stop the movement and spread of black money, but it will also bring in a lot of money to the state.

Regulating internet gambling, as previously said, is difficult and cannot be accomplished simply by changing current legislation. To regulate these platforms, the government should develop specifications to ensure that enforcing these laws does not result in an unethical outcome. To begin, the government should take strong measures to impose a blanket prohibition on children and other vulnerable members of society.

This is a difficult aim to attain, but it may be accomplished by placing requirements on these websites. Websites should be required to take all reasonable precautions to guarantee that minors are not participating in gambling activities on their site, which may be accomplished through different checklists and due diligence. The government should also prohibit the display of any undesirable or pornographic content on such sites, which is commonly done through adverts.

Physical gambling has always been simple to regulate due to its physical representation and the fact that such domains are well-known since they are generally played at regular gaming establishments. There appears to be no set restriction in the case of online gaming, so people from other nations can join, further complicating the matter. As a result, the government should enact strict anti-money laundering and anti-foreign direct investment legislation. The severity of current sanctions can be enhanced to increase the rigor of these rules. Furthermore, the government should concentrate on taxing these dynamic and revenue-generating platforms thoroughly and correctly. The implementation of these measures will enable the government to generate additional money without losing funds to the dark economy or foreign operators.⁶⁷

The problem of online gaming, on the other hand, cannot be solved simply by amending current rules or enacting new legislation for this burgeoning industry. As a result, establishing and establishing a supervisory organization that can supervise the Indian and international functioning of online gambling would be essential to properly regulate this activity and for that matter any system of work. By issuing periodical notices for their regulation, this authority will aid in addressing the dynamic nature of such platforms. Furthermore, the obligation does not cease with the formation of such distinct entities. These entities should also have quasi-judicial and administrative powers, including:

- When online gaming rules are enacted, the supervisory body's first task should be to assess existing online gaming platforms and weed them out if they do not meet the legal requirements. It is possible to do so shortly after the establishment of a

⁶⁷ Kedara Gouri Avula, 86 *Enactment Of The New Online Gaming Acts – A Game Changer In Socio - Economic And Legal Perspective – A Need Of The Hour*, Aayushi INTERNATIONAL INTERDISCIPLINARY RESEARCH JOURNAL (2021)

body like this. The body after institutions can offer gaming platforms a fair time to submit all necessary information about their existence, such as assets, tax receipts, a business strategy, and ownership structure, among other things.⁶⁸

- Any information from these gaming platforms should be available to the supervisory authority for the purposes of due diligence, investigation, and verification of any substantial infractions or criminal activities that happened after these online platforms were shut down. In cases of criminality, as well as when internet platforms engage in the black economy, tax evasion, or disseminating degrading content, the supervisory body should be given the right to penalise the culprit with harsh penalties.
- The body should also be forced to establish a separate cell within its institutions where citizens may make concerns. It will aid the regulatory authorities in identifying illegal and unsuitable internet platform functions. Additionally, because the regulatory body has quasi-judicial powers, it can mediate conflicts between persons and websites by providing sufficient counsel. The judicial functions can operate in a similar way to the consumer courts. In the event of criminal activities, however, the supervisory body should be given the power to order the competent authorities to begin the proceedings.
- Finally, gaming commissions can be created in each state to ensure that the supervisory board functions effectively. These commissions may maintain a close eye on gaming activity both in-person and online in their respective state jurisdictions. The commission might report any illegal practices to the board, which could then take prompt measures to stop them. These commissions will improve the supervisory boards' performance and allow them to have surveillance and control in all parts of the country.

Although the aforementioned changes in the status quo are not thorough, they do provide a wide framework for regulating online gaming businesses. The key issue that may still require consideration once the above-mentioned ideas have been implemented is that of foreigners engaging in online gambling operations in India. In the case of the *Board of Control for Cricket v. Cricket Association of Bihar & Ors*⁶⁹, the Supreme Court of India issued an order directing the law commission to

⁶⁸ *Supra* note., 67

⁶⁹ *Board of Control for Cricket v. Cricket Association of Bihar & Ors.*, (2016) 8 SCC 535.

investigate the situation and fix the vacuum regarding foreign involvement. Various research studies and committee reports have been published since then, but the existing gap in foreign involvement has not been adequately addressed or given serious consideration. Separate legislation, on the other hand, is likely to solve the issue completely.

Conclusion

It is a well-known fact that in desperate circumstances, extreme measures must be taken. In this period of modernity, there are two worlds: the physical world and the digital world. The physical world's rules are well-established, but lawmakers are constantly modifying them. Despite the esteemed Prime Minister's persistent advocacy on behalf of Digital India, internet platforms remain one of the country's most underserved industries. Finally, because of the distinct functioning, scope, and sample area of these platforms, India should abandon its approach of regulating online gambling through physical legislation. Furthermore, if the Indian government is unable to introduce new legislation, it might duplicate essential features of numerous international laws based on their enforcement and implementation in India. Despite the fact that the judiciary has always been active in identifying the issues surrounding the regulation of online platforms, it has always been cautious in applying a dynamic interpretation to existing legislation. It is a well-known reality that legislation cannot be introduced regularly, and so the judiciary, rather than advising the state to introduce new rules, can give life to outdated statutes in the meantime. The necessity for new legislation, on the other hand, is never rejected since the court is limited to interpreting current laws and cannot create new policies. Although the authors acknowledge that fully regulating such platforms is very impossible, this should not deter the government from enacting comprehensive law that covers as much as feasible. The dynamic nature of such platforms can only be managed by establishing a separate regulatory agency with the authority to issue notifications and rules on a regular basis in order to keep tabs on online gambling operations. Furthermore, in the argument over whether online gambling sites should be fully banned or regulated, the authors believe the latter is more possible. The basis for this decision is that a comprehensive prohibition is unenforceable because of the Internet's international nature, which means that a ban will not prevent the masses from engaging in

gambling activities. Furthermore, because of its global reach, online gaming should not be regulated by state laws. The author believes that laws governing internet gambling should be enacted by parliament and that they should apply uniformly across the country. While gambling activities are covered by the state list, the fact that internet and mass communication are covered by union list entry 31 cannot be overlooked.⁷⁰ Finally, when it comes to regulating online gambling sites, the legislature should avoid adopting a rigid and uncompromising attitude toward gamblers. The legislation should emphasize protecting gamblers' rights from unscrupulous players, fraudulent platforms, and hackers.

⁷⁰ INDIA CONST. sch. 7, list I, Entry 31.