

Gaming Laws to Unveil:

Stroke of Luck or Practised Skill?



Playing a game fairly by rules is important.[1] While most of us are aware of the actual rules of game about playing, the legislation governing games in India is going through a change. Gaming itself has changed big time with technology as it moved from offline to online. According to Inc42, the number of internet users in India is set to surpass one billion in 2023 while the number of online gaming users in India is also projected to grow from 481 million users in 2022 to 657 million users in 2025. [2]

This article revolves around certain aspects of legislation related to gaming.

India does not have separate central legislation on laws related to Gaming except one ancient law "The Public Gambling Act, 1867" (Act) which is still in force in some states of India. This Act is not applicable to the games which are the games of skill wherever played (Sec. 12). Further, betting and gambling are covered under Entry 34 of State List and thus some states have also enacted various laws and the concept and legality of games, whether by chance or skill varies.



GAME OF SKILL VERSUS GAME OF CHANCE:

The legality and governance of any game differs on a large scale by its nature- i.e. whether it is determined as a game of skill or a game of chance. Let's understand the difference between Game of Chance and Game of Skill. The decision whether a particular game is a game of skill or game of chance is decided on case-to-case basis.

The Indian Legislation has not offered any conclusive answer as to which criteria to follow for a certain game to be a game of chance or game of skill in particular and needs to be determined in every case. However, there is a definition covered under the state law of Nagaland.[3]

When faced with a question of determining whether a particular game is a game of chance or a game of skill, the general practice of courts to arrive at a judgement after determining 'Whether a particular skill will decide the end result of the game.'

[1] The article reflects the general work of the author on the date of publication and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

[2] India proves to be a nation of gamers as numbers spike - The Hindu BusinessLine

[3] The Nagaland Act is the only legislation in India, where section 2(3) of THE NAGALAND PROHIBITION OF GAMBLING AND PROMOTION AND REGULATION OF ONLINE GAMES OF SKILL ACT, 2015 defines the term, "games of skill", to "include all such games where there is preponderance of skill over chance, including where the skill relates to strategizing the manner of placing wagers or placing bets or where the skill lies in team selection or selection of virtual stocks based on analysis or where the skill relates to the manner in which the moves are made, whether through deployment of physical or mental skill and acumen".



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Whenever a skill possessed by the player determines end result of the game, it will be generally considered as a game of skill. In cases where the skill has no role to play in the end result of the game, it is likely the game will be declared as the Game of Chance.

Like rummy was held to be a game of skill[4] whereas teen patti was held to be game of chance[5]. Currently,

Bombay High Court is examining whether ludo is a game of chance or game of skill[6]. As per certain legislations games like chess, quiz, bridge, solitaire, sudoku or crossword would be generally considered as a game of skill[7].

In the era of offline gaming, it was easier to determine whether the said gaming activity might be categorized into game of skill or game of chance, but in this era where online gaming is widespread and popular, there needs to be a clear demarcation between gaming and gambling.

Game of Skill	Game of Chance
This is based on knowledge of the subject. An average knowledge, one needn't be an expert on the subject.	This is based on fortune, good luck and minimal skills.
The outcome and gains are influenced by third party factors but majorly is influenced by the choices made based on the skill of the player	The outcome and the gains are influenced by the third party factors, and ones knowledge has no part in it.
Allowed in India	Limited permissibility as per the rules and regulations of various states and Public Gambling Act, 1867

[4] Rummy: State Of Andhra Pradesh vs K. Satyanarayana & Ors MANU/SC/0081/1967

[5] Teen Patti:

[6] Ludo: Keshav Ramesh Muley vs The State Of Maharashtra on 3 June, 2021 in Criminal Application 440 of 2021

[7] Schedule A of Nagaland Act.

IMPORTANT JUDGEMENTS RELATING TO GAME OF CHANCE AND GAME OF SKILL IN RECENT TIMES:

IS DREAM 11 A GAME OF CHANCE OR GAME OF SKILL:

The popularity of the Dream 11 game has surged in the last few years, where one may collate a virtual cricket team on the basis of performance of the player. This is natural considering our cricket crazy nation.

A writ petition was filed in Rajasthan High court in the case of **Chandresh Sankhla Vs Union of India (2020-RJHC)[8]** , stating that this game is amounting to betting activity within the youth of India. Rajasthan High court maintained that this issue has already been settled in the Bombay High Court judgement of **Gurdeep Singh Sacchar vs Union of India** and was not overruled by the Apex court. The court stated that the test to determine whether Dream 11 was a game of chance or skill was to understand whether the result of the game was based on accident or chance, and if there was a conscious risk involved, then the said game would have been gambling.

In case of Dream 11, an amount of skill is involved for playing the game, as the user of the game has to choose the player for a team out of numerous other players based on the performance of the players in reality and the points,

and the scoring is done according to the real-life performance of the said players. Thus, there is no betting or gambling in Dream 11. After the writ petition was dismissed, the appellant filed a special leave petition in the Hon. Supreme court of India[9], wherein, it was again dismissed upholding the view held by the Rajasthan High court.

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Play Games 24 X 7 Private Limited vs State Of Kerala on 27 September, 2021

Kerala government had issued a notification declaring the game of online rummy as illegal. A writ petition was filed in High court of Kerala, stating that rummy was a game of skill and not a game of chance. The petitioners were the online service providers who were providing the gaming services to the masses. In an earlier case of State of Andhra Pradesh Vs. K Satyanarayana, the Supreme Court had examined Section 14 of the Public gambling act, 1968 examined, and rummy was held to be a game of mere skill. Thus, relying on the earlier supreme court judgements, it was held that rummy is a game of skill, whether or not played with stakes.

HOW THE CONCEPT OF GAME OF CHANCE AND GAME OF SKILL DIFFERS ACROSS STATES IN INDIA:

Telangana: Telangana Gaming Act, 1974 all gambling activities banned which includes the Games under the Game of chance since 2017

Nagaland: Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015

Maharashtra: Maharashtra Prevention of the Gambling Act, 1887

Delhi : Delhi Public Gambling Act, 1955

As far as Casinos are concerned, there are 3 states in India currently which allow Casinos namely, Goa, Sikkim and Diu and Daman.

[8] MANU/RH/0182/2020

[9]<https://www.meity.gov.in/content/draft-amendments-it-intermediary-guidelines-and-digital-media-ethics-code-rules-2021>

ONLINE GAMING: AMENDMENT TO IT INTERMEDIARY RULES AND ROLE OF GAMING INTERMEDIARY

Ministry of Electronics and Information Technology (“MeitY”) vide its notification dated 2 January 2023 has proposed an amendment to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“IT Intermediary Rules”) and invited public suggestions to a proposed amendment to the IT Intermediary Rules.

The amendments are specifically proposed to regulate the framework for online gaming, and to also bring the service providers providing gaming service (“Gaming Intermediary”) in the ambit of the laws.

Online Games are defined to mean a game that is offered on the Internet and is accessible by a user through a computer resource if he makes a **deposit** with the expectation of earning winnings.

It is further provided that though generally online games refer to a deposit, Rule 6 provides that if the Ministry is satisfied that an online game (offered without making any deposit) has the potential of creating risks of harm to the sovereignty and integrity of India or security of the State or friendly relations with foreign States or public order, **on account of causing addiction or other harm among children**, it may, by notification declare that such game shall be treated as an online game for the purposes of these rules.

By proposing these amendments, MeitY is introducing controlling and supervising authorities who shall be directly or indirectly responsible for determining whether the particular Game is a “Game of Chance” or “Game of Skill”.

Under this proposed amendment in the IT Intermediary Rules, Gaming Intermediary shall be under certain following obligations:

- Provisions of documents: to provide the rules and regulations of the game, privacy policy and user agreement to the user in English or any language specified in the eighth schedule to the Constitution in the language of his choice.
- Information: make reasonable efforts to cause the user of its computer resource not to host, display, upload, modify, publish, transmit, store, update or share any information that is relating or encouraging money laundering or gambling.

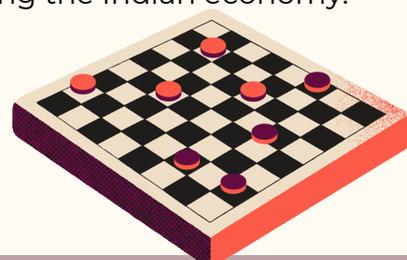


- Compliance: check that if the game is an online game whether the same is in conformity with any law for the time being in force in India or not, including any such law relating to gambling or betting or the age at which an individual is competent to enter into a contract.
- Due Diligence: carry out all such additional due diligence mentioned in the IT Intermediary Rules within 3 months of the enactment of the proposed IT Intermediary Rules, while offering any online game.
- Appointment: 1. appointing Chief Compliance Officer who shall be responsible for all compliances. 2. appointing a nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.
- Grievance Redressal Mechanism: to implement an appropriate mechanism for the receipt of complaints under sub-rule (2) of rule 3 and grievances in relation to the violation of provisions under this rule, which shall enable the complainant to track the status of such complaint or grievance by providing a unique ticket number for every complaint or grievance received by the online gaming intermediary.

These IT Intermediaries Rules also provide required protection to the Gaming Intermediary from being prosecuted for misuse of the platforms by third parties. The proposed amendment has also introduced a Self-Regulatory Mechanism which will ensure that the games do not have any such content which is in violation of applicable laws.

CONCLUSION:

The online gaming industry has gained momentum after the pandemic and with the increase in use of gadgets and access to them, the gaming industry has opened the doors to a plethora of audience which is also boosting the Indian economy.



These games should be played responsibly and there should be stringent laws governing them, so that the games which are more of a gambling nature are controlled and such online games do not ride on the hopes and dreams of the general public. Any wrongdoing on the part of such game organisers should be identified to ensure that it does not go unpunished. The proposed new enactment is likely to bring conformity and legitimacy to online gaming thereby controlling the menace of illegal offshore gambling platforms.

Gaming companies can get the following 3 take aways:

1. Prepare checklists of compliance to existing regulations and proposed regulations with respect to online gaming on periodical basis.
2. Supervise and monitor compliance on regular basis with respect to Legal compliance.
3. Train software developers and software architects about Game of Chance v/s Game of Skill and develop game product, accordingly.

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