

Uniform Gaming Laws: Need of the Hour in India



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Introduction

With the sudden outbreak of Covid-19 pandemic, everyone in the country was left indoors with little mobility and entertainment options. Covid-19 has brought everyone's life to a standstill and potentially impacted hospitality, tourism, aviation, automobile and real estate & construction sectors. The one sector which benefited was the online gaming sector. Factors such as latest trends in the technology like cloud gaming, growth in eSports, 5G internet plans, smartphone gaming, growth in adoption of digital payment systems, localized games and local developer ecosystem had an added advantage to the growth of the online gaming industry which reached a new pinnacle since the onset of the pandemic. According to the report titled '*Gaming- India Story*' by Maple Capital Advisors (August 2020), the online gaming industry is said to be growing at the rate of CAGR of 22%. As per the report titled '*Indian Gaming - At an inflexion point*' by Maple Capital Advisors (March 2021), the gaming sector in India attracted \$544 million in investments during the August 2020-January 2021 period which is set to double over the next 12-18 months on the back of higher user awareness and accelerated engagement. However, amidst all the surge in the investments, there are certain legal issues which still remain unresolved because of the archaic and complex legal regime in India.

Analysis

The legal landscape governing gaming/gambling in India is complicated as it involves both federal/central legislation and state legislations. The central law which governs gambling in India is the Public Gambling Act, 1867 ("**Act**") which criminalises the act of 'gambling' in a public forum and the keeping of a 'common gaming house'. While the terms 'gaming' or 'gambling' are not defined in the Act, it defines 'common-gaming house' to mean "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". Importantly, section 12 of the Act provides an exemption with regard to 'games of mere skill' from the application of penal provisions of the law.

After the adoption of the Constitution of India in the year 1949, the respective states were given the power to legislate on "betting and gambling" pursuant to Entry 34 of List II of Schedule VII of the Constitution of India. Most of the states such as Madhya Pradesh, Punjab, Uttar Pradesh etc. have merely adopted the Act with certain amendments and other states such as Assam, Goa, Orissa etc. have enacted their own state laws on gaming/gambling.

The contours of what constitutes "game of mere skill" has not been provided under the Act or the state enactments. The courts have largely relied on the dominant 'factor test' or 'test of preponderance' and distinguished between the game of skill and game of chance to describe game of skill as one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player and game of chance, on the other hand, is one in which the element of chance predominates over the element of skill.

It is an accepted position that a game which predominantly involves an element of skill over chance doesn't come

under the ambit of gambling in India but the skill versus chance debate is highly contentious in the sense that there exists different state laws with respect to treating a particular game as skill-based or chance-based. The High Court of Gujarat & Bombay in the case of *Dominance Games Pvt. Limited v. State of Gujarat (2018)* & *Nasir Salim Patel v. State of Maharashtra & Ors. (2017)*, respectively, had held poker to be a game of chance whereas the state of West Bengal expressly exempts poker from the ambit of gambling.

Presently, online games for real money can be offered without a license in the states of Madhya Pradesh, Maharashtra, Manipur, Mizoram, Puducherry, Punjab, Tripura, Uttarakhand, Uttar Pradesh etc. The states like Sikkim, Nagaland, Meghalaya and West Bengal have adopted a license-based regime as per their respective enactments. Andhra Pradesh, Arunachal Pradesh, Assam, Orissa and Telangana has banned all forms of gaming/gambling for real money. But the natural question that comes up is that are these bans effective in the virtual world? Generally, the laws banning online gaming for real money has made the activity itself a cognizable offence but has not put any obligation on the gaming websites/apps to compulsorily use geo location or other technology to establish where the gambler was physically located before they could wager online. Therefore, irrespective of the blanket bans by the states people have managed to get their way around these bans.

Recently, NITI Aayog has released a draft report titled 'Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India', suggesting a single, self-regulatory body for fantasy sports. Though it is a positive step towards the right direction but also at the same time it is important to understand that fantasy sports is just one branch of the online skill gaming industry. Additionally, the legal position around fantasy sports is comparatively clearer than other online games such as poker, rummy etc., as these games are treated differently in different states. The Madras High Court in the case of *D. Siluvai Venance vs. State (2019)* also observed that a comprehensive regulatory framework by a regulatory body is necessary to regulate the online sports which would further encourage investment in the sector, increase technological advancements and generate revenue and employment.

Conclusion

Undeniably, the need of the hour is either to update the central law or come up with guiding principles in order to standardise the regulations governing the gaming industry. The government is required to play an active role in bringing uniformity in the laws governing the online gaming industry. The government may also explore other solutions such as imposing restrictions on gaming advertisements so that they do not target minors, limit the deposits/losses and time spent on the gaming website or impose measures to protect players. We hope the government to step in soon and bring uniformity around gaming laws, considering the tremendous growth and investment in the gaming industry.

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