

E-GAMING LANDSCAPE IN INDIA – A CRITIQUE ON REGULATORY AND TAX ISSUES PLAGUING THE INDUSTRY

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Introduction

E-gaming in India has evolved significantly over the years, beginning in the 1980s and 1990s, with video game arcades and consoles like Nintendo and SEGA, which were primarily confined to urban areas. The early 2000s saw a shift towards computer gaming, with games like Call of Duty, Need For Speed, Counter-Strike, etc., and internet cafés fostering multiplayer gaming. The 2010s marked a revolution driven by affordable smartphones and mobile games like Clash of Clans and PUBG Mobile, which made gaming a mainstream activity even in rural areas. E-sports gained traction in the late 2010s, with professional tournaments and games like Battleground Mobile India (BGMI) and Valorant fueling the growth of this sector. The COVID-19 pandemic further accelerated this expansion, as gaming became a social outlet during lockdowns. However, the industry now faces several challenges, including state-level bans, the imposition of Goods and Services Tax (GST) @ 28% on online gaming, and ongoing debates over the classification of games of skill versus games of chance.

These issues echo the ethical dilemmas as have been depicted in the great Indian epic in the Mahabharata. Yudhishtira, the eldest of the Pandavas, who was renowned for his wisdom and integrity, was drawn into a high-stakes gambling game by his cousins, the Kauravas, where he gambled away his kingdom, all his wealth, his brothers, his wife and finally even himself, leading to the banishment of the Pandavas from the kingdom and they had to go into exile. His ill-fated involvement in the “Game of Dice” is a cautionary tale about the destructive consequences of unchecked gambling and the fine line between skill and luck. Much like his story, today’s e-gaming landscape faces ethical questions regarding responsible gaming and the potential harms associated with games of chance.

The lessons from Yudhishtira’s experience highlighted the need for fairness, self-restraint, and a balanced regulatory framework to ensure the sustainable growth of the gaming industry while mitigating its risks.

Gaming Versus Gambling: The Core Debate

The dichotomy between gaming and gambling lies at the heart of India’s regulatory challenges. Games of skill, such as chess and fantasy sports, are considered lawful, while games of chance, akin to gambling, face stringent restrictions or outright bans. However, this distinction remains fraught with ambiguity, as certain games exhibit elements of both skill and chance.

Fantasy gaming platforms like **MPL** and **Dream11** have successfully argued that their games are skill-based, relying on player expertise, strategy, and real-world data. The Courts, including the High Court of Delhi, have endorsed this view, providing a degree of legal certainty in **Digital Collectibles Pte Ltd v. Galactus Funware Technology Pvt. Ltd. (2024)**.

In contrast, chance-based games like online lotteries and roulette fall squarely within the purview of gambling regulations. State-specific laws further exacerbate this fragmentation, with some states banning even skill-based games. The absence of a unified legal framework creates uncertainty and stifles innovation and investment in the sector.

Regulatory Landscape : Lack of Uniformity

India's e-gaming sector operates within a fragmented regulatory framework, with States exercising exclusive jurisdiction over gambling under **Entry No. 34 of List II, Schedule VII to the Constitution**¹. This has resulted in a mosaic of laws, with progressive States like Meghalaya adopting regulated frameworks while others, such as Tamil Nadu, have imposed sweeping bans on online games, including skill-based ones.

The contentious skill versus chance debate further complicates matters, as States differ in interpretations. Fantasy sports, for example, operate legally in some states but are restricted or banned in others, leaving gaming companies to navigate an unpredictable and inconsistent legal environment.

At the national level, the **Information Technology Act, 2000 as amended in 2023**, introduced guidelines for intermediaries to streamline operations. Key provisions include mandatory **KYC verification** for players and establishing **Self-Regulatory Bodies (SRBs)** to oversee compliance. However, the guidelines are yet to be **notified**, leaving a vacuum in regulatory oversight.

Moreover, foreign-based intermediaries face significant challenges, including licensing hurdles and compliance with India's labyrinthine legal requirements. This lack of coherence hampers the industry's potential, discourages foreign investment and limits the scope of growth. A cohesive regulatory framework is very much needed to unlock the industry's full potential and for India to become a global leader in e-gaming.

Taxation Challenges in E-Gaming

The taxation landscape for India's e-gaming industry has undergone significant changes, presenting new challenges for stakeholders. Historically, gaming platforms were subject to **18% GST** on platform fees, a manageable rate that supported growth and innovation. However, the **Union Budget for 2023-24** introduced a **28% GST on gross gaming revenue**, fundamentally altering the industry's financial dynamics.

This shift to taxing the gross amount, which includes platform fees and convenience charges, effectively equates skill-based games with gambling. Industry leaders have voiced concerns that such a blanket approach stifles innovation, deters foreign investors, and disproportionately affects startups. Smaller operators, in particular, struggle to absorb the increased tax burden, which threatens their viability.

The Courts in India have drawn a distinction between games of skill and games of chance. In the case of **State of Andhra Pradesh v. K. Satyanarayana (1968)**, the Hon'ble Supreme Court of India has ruled that games like rummy and poker, which are based on skill, do not fall under the definition of gambling and are, therefore, permissible. However, games of chance, like those played in casinos, are banned in most Indian states.

Legal disputes have further complicated the scenario. The High Court at Karnataka, in the case of **Directorate General of Goods and Services Tax Intelligence (HQs) & Ors. v. Gameskraft Technologies Pvt. Ltd.** (hereinafter referred to as the "Gameskraft Case"), ruled that online rummy games are not taxable as the same are not considered to be betting or gambling and quashed the GST Show Cause Notice demanding ₹21,000 crores. However, the government's **retrospective amendment** to GST provisions to overcome the judgment of the Karnataka High Court in the Gameskraft Case coupled with the huge demand, escalated the issue to the Supreme Court of India. This pending judgment could have far-reaching implications for the industry's future.

¹ The seventh schedule of the Indian Constitution (under Article 246) allocates the powers between the Union and the State Governments as India has a federal structure.

Over the years, there have been various attempts to introduce legislation to regulate the gaming industry in India. The Public Gambling Act, 1867, which governs land-based gambling activities, is outdated and does not take into account modern online gaming. In 2020, the Online Gaming (Regulation) Bill was proposed, but it is still under review and has not been passed into law till date. This lack of a national law coupled with prohibitively high taxation has left the industry fragmented, with different states having their own policies.

Another contentious issue is the taxation of **actionable claims**, which has blurred the lines between gaming revenues and gambling proceeds. Globally, countries like Singapore and the US adopt differentiated tax regimes that recognize the unique nature of skill-based games. India could benefit from emulating such models to foster sustainable growth while ensuring fair taxation.

Addressing these taxation issues is vital to prevent artificial barriers that hinder the industry’s growth, especially when its potential to contribute to India’s digital economy remains immense.

Social and Ethical Issues : Morality Vs Revenue

| Aspects | Morality Concerns | Revenue consideration |
|------------------------|---|--|
| Gambling-like Behavior | Critics argue that e-gaming fosters addiction, financial losses, and harmful gambling habits. | Economic growth is fueled by games involving monetary stakes. |
| Mental Health Impact | Addiction, depression, and anxiety risks for younger players. Lack of age verification. | The gaming industry creates employment and job opportunities. |
| Content Regulation | Games may promote violence, substance abuse, or unhealthy behavior. | E-gaming contributes significantly to GDP and attracts foreign investment. |
| Government Tax Revenue | Concerns that heavy regulation may harm the industry’s growth. | E-gaming generates tax revenues, helping fund public services. |
| Job Creation | The social impact on the community includes concerns over underpaid, unregulated work. | The industry contributes to job creation across multiple sectors. |
| Balanced Regulation | There is a need for ethical regulation to protect vulnerable players. | Imposing excessive regulation may hamper innovation and growth. |

Legal Agreements & Contracts with Players

The rapid growth of online gaming has introduced complex legal considerations, making well-drafted agreements essential for clarity on compensation, IP rights, and expectations. Key challenges include unfair terms, rigid clauses, and insufficient health and career longevity provisions. Sponsorships, critical for revenue and branding, require attention to exclusivity, transparency, and IP rights, especially with increasing involvement from non-endemic brands. Protecting player rights through fair compensation, health considerations, and freedom of movement is vital, with unionization emerging to balance power dynamics. IP rights over gamertags and streaming content also demand legal safeguards.

Emerging issues like gambling regulations, technological disruptions, and cross-border legal complexities necessitate adaptive legal frameworks. Transparent agreements between platforms and players address rights, obligations, liabilities, data privacy, and fair use, fostering professionalism and trust. Flexible contracts that comply with global and local laws mitigate jurisdictional conflicts and tax challenges.

Way Forward : Recommendations

Unified Regulatory and Taxation Framework: Establishing a centralized regulatory policy to harmonize state-specific laws, ensuring consistency and predictability for businesses and e-gaming players.

Tiered GST Model: Introducing a differentiated Goods and Services Tax (GST) structure to distinguish between skill-based and chance-based games and reducing the current 28% GST on gross revenue for skill-based games to a more sustainable rate, thereby alleviating financial pressures on startups and attracting foreign investment. The valuation methodology also needs a relook as imposition of high rate of taxation on the total sweep stakes is a death knell for the industry and the more reasonable method is to impose GST on the service charges / platform fees as against the sweep stakes.

Independent Certifying Agencies: The establishment of independent certifying bodies to manage mandatory Know Your Customer (KYC) and player verification processes. This would enhance transparency, ensure accountability, and minimize the compliance burden on gaming platforms.

Self-Regulatory Bodies (SRBs): Accelerating the creation and operationalization of Self-Regulatory Bodies (SRBs) under the Information Technology (IT) Act 2023 to ensure adequate oversight and self-governance within the industry.

Government Initiatives: Launching targeted government incentives for e-gaming startups through programs like “Digital India” to foster innovation and growth within the sector. Such initiatives can create a conducive environment for the sector’s expansion and global competitiveness.

Balanced Policy Approach: Policymakers must strike a judicious balance between consumer protection, revenue generation, and industry growth. The ultimate goal should be positioning India as a global leader in the e-gaming ecosystem while fostering a sustainable and innovative environment.

Conclusion

The e-gaming industry in India holds immense potential, but the current regulatory and tax challenges pose significant barriers to its growth. A comprehensive legal framework that clarifies the distinction between skill-based and chance-based games, a rational tax system (both in terms of reasonable rate of tax and assessable value), and effective enforcement mechanisms are crucial to the sector’s future success. By addressing these issues, India can unlock the full potential of its gaming industry, leading to a more vibrant digital economy, job creation, and increased tax revenue.

The focus of the government and the legislature should be on taking steps towards addressing the various challenges plaguing the gaming industry. The sector requires comprehensive regulatory reforms, including establishing Self-Regulatory Bodies (SRBs) and a differentiated GST structure to support its growth. Strengthening legal frameworks and structuring proper contracts can enhance transparency and build trust among stakeholders. To unlock its full potential, India must balance consumer protection, ethical standards, and economic growth. A unified regulatory approach and targeted government incentives could position India as a global leader in the e-gaming ecosystem, fostering sustainable development and innovation in this rapidly expanding industry.
