

**PLAYING BY THE RULES- A CLOSER LOOK AT INFORMATION
TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA)
AMENDMENT RULES, 2023 AND ITS EFFECT ON THE ONLINE GAMING
INDUSTRY**

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ABSTRACT

The Ministry of Electronics and Information Technology in India recently amended The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. This article provides an in-depth review of such changes. It draws attention to the necessity of regulated legislation in the rapidly growing online gaming sector in order to guarantee user safety and create a framework for intermediaries and regulatory agencies. The regulation of online games, including those played for real money, is the primary concern of the amended rules because it has led to concerns about user safety and the lack of sufficient regulations. To effectively enforce the regulations, key advances include the creation of an online gaming self-regulatory body, online gaming intermediaries, and a grievance appellate committee. The issue of state-specific power over betting and gaming raises questions about this bill's provisions and its impact on the development of the sector. The article also explores the historical background of Indian gaming legislation and the current state of gaming restrictions concerning the game of skill and the game of chance. It comes with the suggestion that for the industry to progress further, it will be essential to resolve state-specific challenges.

INTRODUCTION

Online gaming is one of the many industries that have evolved as a result of the expanding use of the internet and digital devices around the world. There are currently 5.18 billion¹ internet users globally and with time, especially after covid lockdown more and more individuals are playing online games, with an estimated 3.2 billion users worldwide. This boosted the market globally by contributing around USD 68 billion in 2023, and it is anticipated to hit USD 134 billion by 2030, growing at a CAGR² of 10.2%. India has seen a massive boom in the online

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¹ Ani Petrosyan, Internet and social media users in the world 2023, Statista (Apr. 3, 2023),

<https://www.statista.com/statistics/617136/digital-population-worldwide/>.

² “Compound Annual Growth Rate”

gaming industry. According to the AVGC task force report, India is now one of the fastest-growing sectors in the global gaming industry and has a contribution of USD 1.8 billion to the global gaming market which is expected to reach USD. 3.8 billion by the year 2025 with estimated 440 million gamers³ and ranked second after China in terms of the market's size. The increased participation and contribution of India with more than 500 startups in this industry marks the stepping stone for competing with other nations in this industry and would require a specific set of legislative rules and regulations to regulate online gaming.

The central government in this regard has finally decided to draw central level law for regulating the online gaming industry and has appointed the Ministry of Electronics and Information Technology (MeitY) as the nodal office to regulate online gaming and The Department of Sports for e-sports. *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023* will be the central level guideline framework that will be followed to regulate the online gaming industry throughout India. The amended rules will provide a uniform framework to govern the industry, would ensure standardized functioning, and would provide for the regulation of "online gaming intermediaries" by amending the Intermediaries Rules⁴ and at the same time focus on expanding gaming innovation and protecting citizens by banning/prohibiting wagering online games in all spheres.

This paper will be analyzing the amended rules and their impact on the gaming industry while understanding key concepts and the role and contribution of various stakeholders involved in this field. This analysis will also outline the problems with the revised rules and concerns in light of the present demands.

HISTORY OF GAMING LAWS IN INDIA

India has a long and evolving history related to gaming laws. In ancient times there existed various games which involved games of chance and gambling activities, and were part of traditional activities which not always involved monetary concepts. In the colonial period, Britishers made some regulatory laws governing games. *The Public Gambling Act of 1867* is one such law that regulated gambling activities and prohibited the operation of gambling

³ "Beyond the tipping point - A primer on online casual gaming in India", KPMG report, accessed on May20, 2023, <https://assets.kpmg.com/content/dam/kpmg/in/pdf/2021/06/digital-mobile-casual-gaming-in-india.pdf>.

⁴ "The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021"

activities in public places. This law particularly focused on physical playing as the concept of online did not exist long then.

State-specific laws- The Constitution of India has provided individual states to regulate and legislate on matters related to gambling and betting (game of chance and wagering) through state lists (*Entry 34, List II of Seventh Schedule*). Therefore, the status of gambling laws differs from state to state and they have the power to implement and regulate laws on games within their jurisdiction, while some granting and others having either strict norms or complete ban. These laws provide for the issuance of licenses, regulation of gaming activities, and imposition of taxes. Some states include Goa, Sikkim, Nagaland, Karnataka, Telangana, and more. Some of the recent state-specific online gaming laws are-

The Andhra Pradesh Gaming (Amendment) Act, 2020- This act prohibits all kinds of online gaming inside the territory of Andhra Pradesh. This includes the game of skill and the game of chance and even draw heavy penalty to individuals involving themselves in online gaming.

The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016- this act allows online games involving skill within the territory of Nagaland. It issues licenses and sets out regulatory rules for the operators offering these games.

The Online Gaming (Regulation) Bill, 2022

This is a private members bill that was introduced in Lok Sabha in April 2022, which aims to regulate all forms of online gaming and seeks to create an Online Gaming Commission (OGC) to regulate the functioning of the online gaming industry. This bill would direct a licensing regime, which will be handled by the commission, to grant, suspend and even revoke the license of online gaming sites. But this bill had certain shortcomings which include non-distinction between casual gaming and real money gaming platforms. Fails to address KYC norms and also didn't focus on the existing licensing regime in place.

To move forward with regulations, the central government amended the Allocation of Business Rules 1961 and added matters relating to online and e-sports under MeitY and e-sports under the Department of Sports. MeitY released certain draft amendments in January 2023 and put them for consultations with various stakeholders and authorities before bringing those

amendments to effect. Finally, on 6 April 2023, *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023* was provided through the official gazette notification.

SOME HIGHLIGHTS OF AMENDED RULES

The definition of “online game” means “a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary”⁵. This is a broad definition and it covers all kinds of online games that are played on the internet in India. This puts forward the question of how many kinds of online games exist.

Online games have 2 categories namely Game of Skill and Game of Chance. This classification aids legislators in defining certain gaming categories. Game of Skill is a game that requires certain user skills, knowledge, and expertise to win. These kinds of games are legal in India. Game of Chance are games that heavily rely on chance and it surpasses the skill of the player in the game. Winning is mostly determined by chance and no prior knowledge helps in winning the game.

“Online gaming intermediary”⁶ means any intermediary that enables the users of its computer resource to access online games on the internet. This amended rule has given intermediaries an obligatory duty, requiring them to display a recognizable mark that an online game has been approved by an online gaming SRB.

- They have to disclose information specific to the online game, such as the policy regarding withdrawals or refunds made with the expectation of winning money, the method of distribution, and the fees payable by the user, while disclosing the rules and regulations, privacy policy, terms, and conditions, agreements, etc. to the users. This has to be in English or any language as per the Eight Schedule of the Constitution.
- The intermediary shall make reasonable efforts to ensure to not host the non-verified online game, or advertisement of non-permissible games. The KYC method must be used for verifying the user's identification in such an online game.
- Taking precautions to protect user deposits made for such online gaming. Intermediaries should not by themselves finance by way of credit or any other option,

⁵ Section 2 (1) (qa) of IT Amendment Rules, 2023

⁶ Section 2 (1) (qb) of IT Amendment Rules, 2023

for the user/ third party to play online games. Before receiving any deposits, intermediaries must confirm the identity of users of such online games, provided that this is done following Reserve Bank of India-established norms.

- The online gaming intermediary, who is enabling any user to access permissible online real money games, shall inform the users of such change as soon as possible, but not after 24 hrs⁷ after the effect of that respective change.
- The intermediary shall publish the name of the grievance officer with his contact details and mechanisms using which users can make complaints against violation of rules in their website or application or both. The grievance officer has to acknowledge the complaint within 24hrs and resolve the complaint within 15 days of such receipt.
- Appoint- (i) a nodal contact person for 24/7 coordination with law enforcement agencies and officials to ensure that their requests or orders made in line with the provisions of the law or rules thereunder are followed. (ii) appoint a Chief Compliance Officer who shall be responsible for ensuring compliance of rules, (iii) a Resident Grievance Officer, who will be solving user complaints under 24 hrs, provided they should be a resident of India.

Creation of an “online gaming self-regulatory body” (*further referred to as SRB)

These SRBs will be appointed by the government and they will be responsible to put all the rules and regulations in order, looking for the registration of games, and providing the framework for registration. Every single online game will be registered in the SRB and it will help in legitimizing the overall structure for safe transactions involved in the online games. Provisions related to this body are designated under rule 4A.

It will be an independent body with 7 board members. Each member will be independently performing his/her specialization which will be productive for the efficient regulation of the online game. These specializations include a psychological expert, an educationist, a nominee from the ministry, an online gaming expert, an expert in the field of information and communication technology, an individual from an organization of child rights, and an individual appointed with prior approval of the ministry.

These varied specializations will ensure a non-conflicting nature between members. Any entity that wishes to be an online gaming self-regulatory body has to register itself under section-8 of

⁷ Section 3 (1)(f) of IT Amendment Rules, 2023

The Companies Act, 2013⁸. This membership will act as a representation of the gaming industry. The entity has to ensure sufficient financial capacity to run and perform the functions associated with online gaming SRB. A test for categorizing the skill and chance-based online games would be made by SRB, this increased scrutiny will ensure that no gambling, betting, and other illegal practices which are harmful to the user exist within the industry.

In the case of online real money games, online SRB can initially rely on the information provided by the applicant for verification of online real money games and can declare such games as permissible for not more than 3 months. Provided further the SRB has to perform a complete inquiry within 3 months and after such said period, should declare the game as permissible or should inform the applicant in writing with reasons involved for not meeting the required rules. Under sub-rule 8 of rule 4A, online SRB shall commonly publish on its website or application or both, a framework for verifying the online real money games and other things like safeguards against user harm, measures to safeguard children, measures to safeguard users against addiction, financial loss among other things.

“Online real money game” means an “online game where a user deposits cash or kind with the expectation of earning winnings on that deposit”⁹. These kinds of games generally include poker, slot machines, sports betting, and fantasy sports among others. Most of the regulation in this amendment is related to online games involving money transactions. Online real money games will be verified by the online gaming SRB as permissible games within the industry. ‘Winnings’ here means any prize rewarded in cash or kind based on the performance and rules associated with the game.

The following inquiry will be performed by online SRBs to declare the online game as a real money game:

- The online real money game does not involve wagering in any form.
- The following online gaming intermediary and the online game is under compliance with rule 3 and 4, any law related to the age of individual (competent age) to enter contact, and also the framework made by online SRBs.

⁸ Rule 4A (2)(a) of IT Amendment Rules, 2023

⁹ Section-2 (1) (qd) of IT Amendment Rules, 2023

Grievance appellate committee: the central government would be establishing grievance appellate committees within 3 months from the commencement of these amended rules (i.e., 6 April 2023). This committee will comprise a chairperson, and 2 full-time members appointed by the central government (one as ex-officio) and both shall be independent members. Any grievance not resolved or any person aggrieved by the decision of the grievance officer may prefer to appeal to this committee. This committee will expeditiously deal with the appeals and would work to resolve the issue within 30 days from the date of appeal. Also, this committee can form an online dispute redressal mechanism, wherein all procedures would be conducted in digital mode.

CURRENT POSITION OF GAME OF SKILL VS GAME OF CHANCE:

Currently, the game of chance is illegal in India, and online games which involve only skill and knowledge are permissible. Furthermore, all reasonable mechanisms are ensured to remove chance-based online gaming to ensure user protection, which is critical for the nation and the growth of this industry. The supreme court has recognized games where success substantially depends on the skill of the user and despite having some element of chances, the skill was applicable, are not 'gambling'¹⁰. According to Black's Law Dictionary "Act of gambling means an agreement between two or more persons to play together at a game of chance for a stake or wager which is to become the property of winner, and to which all contribute." Currently what seems to be game of chance (gambling and betting) are regulated by the state themselves through the constitutional power provided to them. There are several controversies and many debates as to what particular states are doing to the gaming regulation.

In the landmark case of "**State of Andhra Pradesh v. K. Satyanarayana & Ors**,¹¹" the supreme court held that playing 13-card rummy mainly as a game of skill and not a game of chance, by further observing "it requires a certain amount of skill because the fall of the cards has to be memorized and the building up of rummy requires considerable skill in holding and discarding cards". The Kerala high court in "**Ramachandran K v The Circle Inspector of Police**"¹², held that playing rummy for stakes would amount to gambling under the Kerala gambling act 1960.

¹⁰ "RMD Chamarbaugawala v. Union of India, AIR 1957 SC 628"

¹¹ AIR 1968, SC 825

¹² "WP(C). No. 35535 of 2018"

Betting on a game of chance is prohibited under various gaming spheres. In India, betting on a Horse race is legal and constitutes a game of skill and it is pronounced in the case of “**Dr. KR Lakshmanan v State of Tamil Nadu**”¹³. Whether sports betting is a game of skill or not is still pending before the Supreme Court in the case of “**Geeta Rani vs Union of India and Ors**”. This question was sidestepped by this amended rule wherein, the distinction power and guidelines have been provided to the SRB and various other safety, categorization, and verification provisions as per the current position of online games.

The recent “Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act”, has put out prohibitions on the advertisement of online gambling and promoting online games involving games of chance with money (Rummy and poker) in any form. This is a stringent step as no category is provided by the state as to which they are classifying the ban on online games involving chance and it will create confusion with online games involving skill. Also, Tamil Nadu has put heavy penalties on those inducing people to play these online gambling games which may extend to Rs 5 lakh or imprisonment up to 1yr or both.

Center-state coordination would be a powerful play and these cases and instances are signifying the central agenda of both center and state which is to protect individuals from harm caused by these games of chance and these amended rules ensure the exclusion of online games involving the game of chance in any form and stepping ahead in the industry.

WAY FORWARD

With online gaming intermediaries and online self-regulatory bodies, the effective implementation of rules and a regulated environment regarding the playing of online real money online games will ensure covering user security, national security, industrial growth, and smooth functioning of the online gaming industry. Also, the focus on user security is emphasized covering all aspects involving physical as well as mental health, finance, advertisement, user addiction, and much more which showcases the center's focus on sustainable growth. More could be done in this amended rule which would include a better explanation of terms involved in this rule which are both broad and ambiguous and scale down the possible and actual need for which they are used.

¹³ AIR 1996, SC 1153

Though some problems are anticipated to be there in the future which will involve the center state implementation of law, rules, and categorization of online games involving games of chance. For this, a framework can be made which can be used by states to highlight what all kinds of online games are fully chance based and what are not. Furthermore, there may exist some state-specific compliances to be met by online gaming platforms in addition to central amended rules. This would ensure the differentiation of games and would ensure that skill-based online games, involving money and non-money games, be part of the playing field and make a fully regulated industry. This way center's vision for a regulated gaming industry will be fulfilled and would ensure a balanced center-state relationship.

CONCLUSION

Without a path, exploration becomes directionless. These amended rules are the path that was crucial to India for a regulated and mapped framework to move the complex online gaming industry to newer heights. The wider ambit and uniformity of these rules are required for the regulated future of the gaming industry in India. MeitY has brought the gaming industry in the right direction with these rules in place. With time, the industry demands and the boosted skills of youth in this industry will be safeguarded by the online gaming intermediaries and online gaming self-regulatory body. They are placed with the view to regulate and safeguard the process, implementation, and categorization of rules placed in the amended rules. With more deliberations and consultations, the concerns and ambiguities involved in the amended rules would be fixed.

These new regulations are an important move towards India's goal of strengthening its position in the global gaming market. These regulations demonstrate the vision and assistance provided by the ministry and, at an initial phase, contain all the various elements that will cover a wider range of the industry. The evolving pace of this industry would further make place for rectification of possible mishandlings present in the rules and will ensure the ever growth and safety of the online gaming industry.

A proper framework between state and center regarding betting and gambling (game of chance) and a collaborative working approach, will help in resolving present hindrances and would boost the industry's growth by attracting more investments and establishing more startups in this space, which are in governments vision for reaching U.S.D. 1 trillion Digital Economy by 2025-26.

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