

## ONLINE GAMING TREND: EXPLORING LEGAL, FINANCIAL, AND CAREER DIMENSIONS IN INDIA

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### ABSTRACT

*The aim of this article is to highlight the importance of the gaming industry, which will include various fields like the opportunities in the growing online gaming and esports industry, history regarding the laws related to online gaming, how skill is more important than chance to differentiate between an online real money game from betting, some case laws related to the game of skill and game of chance, current jurisdiction of Online gaming in India, new rules given by the MeitY, GST on Online Gaming, Role of IPR in Online Gaming and Esports Industry. This will provide an overall understanding of the gaming laws in India, career opportunities through the Online Gaming industry, and the support provided by the government for the growth of this Industry. Gaming laws are very important as it is a growing sector and regulation is essential in keeping an eye on the online gaming industry so that harm/damage can be prevented to the common man.*

### INTRODUCTION

In today's world, gaming is not just a hobby but it can be a possible career option. It has been said by one of the richest people in India, Mukesh Ambani that, "It is very hard to imagine but gaming will be bigger than music, movies, TV shows put together!". There are many gaming companies in India. Now there is a difference between video gaming and esports. Video gaming consists of everyone who plays games using an electronic gadget. Esports is another type of gaming in which players involved in the game compete with each other which lets them use their skills to win the championships.

### OPPORTUNITIES IN THE GROWING ONLINE GAMING AND ESPORTS INDUSTRY

The online gaming industry claims to currently employ over 100,000 people, with various earlier estimates projecting 1.6-4 lakh additional direct and indirect jobs to be created in two-

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three years across areas such as tech, programming, testing, animation, design, and artistry among others.<sup>1</sup> Coming to the different businesses involved in the esports industry such as Publishers, Developers, Leagues, Broadcasters, and streaming platforms. There is a good opportunity for the above subjects to scale their business with the help of the gaming industry.

Looking at the Publishers and Developers, either they can be the same organization or they share a Principal-Agent relationship. Publishers play a crucial role in the gaming industry by looking at different aspects related to the marketing and financial aspects of game development, while Developers play an important role in the gaming industry by creating the overall game from all the editing, story, and graphics of video games. Leagues/Tournaments play a pivotal role in the esports industry by organizing and structuring competitive gaming events with the inclusion of players from different gaming arenas on the same platform. Broadcasters in the gaming industry typically are the organizations that produce and distribute live or pre-recorded gaming content, such as esports tournaments, or gaming events. For example, ESPN, Sony Liv, and other sports networks. Streaming platforms in the gaming industry refer to digital platforms where gamers and esports organizations stream live gaming content to an online audience. For example, YouTube, Twitch, etc. To understand the difference between Broadcasters and streaming platforms, we can take the example of the Cricket World Cup where the broadcaster is Star Sports and the Streaming platform is Disney Hotstar.

The different businesses that are highlighted were not the traditional sectors of employment but those are the novel sectors that are very much helpful in the creation of new jobs. Thus, it shows us that there is a huge scope of employment which will lead to the development of the Nation by generating new job opportunities.

## **HISTORY**

Online games are regulated by the Public Gambling Act 1867 and the Information Technology Act 2000, which govern online gaming activities in India. Section 66 of the IT Act deals with crime related to computers, whereas Sections 67, 67A, and 67B deal with the discretion to make laws on the subject of online gaming, as gambling and betting are mentioned in the state

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<sup>1</sup> 'Shock and awe for online gaming industry; IRDAI's transformational journey' (Economic Times, 11 Aug 2023) <<https://economictimes.indiatimes.com/tech/newsletters/morning-dispatch/shock-and-aw-for-online-gaming-industry-irdais-transformational-journey/articleshow/102626745.cms?from=mdr>>

list of the constitution.<sup>2</sup> Also, there are some recent amendments to the Information Technology Act 2000. This amendment helps to go hand in hand with the developments happening in the industry.

## HOW SKILL IS IMPORTANT THAN CHANCE

The Game of Skill is a game where the use of skills such as decision-making, knowledge, strategy, and many other skills help in determining the output. The Game of Chance is a game that depends on luck or random events. There are many games where both skill and luck play a role but, the dominance of skill over luck makes the game a “Game of Skill” and not the “Game of Chance”. Examples of Games of Skills are Chess, Poker, Esports, etc. and Examples of Games of Chance are lotteries, slot machines, etc. Skill is very important to make online real money a game of skill rather than a game of chance which helps it to be exempt from the scope of betting.

## CASE LAWS

Varun Gumber V Union Territory of Chandigarh (2017): In this case, the petitioner, “Varun Gumber”, approached the Punjab Haryana High Court, stating that he wanted to ban the online game “Dream 11” as it falls under the category of Game of Chance. He further stated that he lost approximately \$50,000 on the app playing different games. After that, the respondents contended that the game Dream 11 is not a game of chance and then explained the concept of fantasy games where a team is formed in the virtual world by the participant, who first has to select the game he/she wants to play, for example, cricket; thereafter, he needs to form his own team by selecting the players from the two teams present; and after forming his team, he enters the contest with lots of other participants. Fantasy sports work on the basis of the players playing on the ground in real life in that match, and the points scored will increase or decrease according to the players playing on the pitch. After the match is over, the participant with the highest score receives the prize money.

The counsel of the respondent further contended that to play a game, the participant should have a lot of knowledge of the sport, the formation of the team, the type of match, etc. Hence, there is very little chance to consider Dream 11 a Game of chance.

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<sup>2</sup> Nidhi Mishra ‘Laws on online gaming in India’(ipleaders, 18 Aug 2023) <<https://blog.ipleaders.in/laws-on-online-gaming-in-india/>>

Hence, the Court held that “the element of skill” is the predominant outcome of Dream 11 games. On the basis of the above analysis, it is exempt from the Provision of Gambling Act 1867 (PGA).<sup>3</sup> The above case clearly highlights how skills are crucial in making a game a “Game of Skill” and not a “Game of Chance” and making that game an exception from the Provision of Gambling Act 1867 (PGA). This case also gave us the clarity that various aspects of our knowledge play a role in bringing the output while playing a game.

*Galactus Funware Technology v State of Karnataka (2022)*: In this case, the petitioners from the online gaming industry have filed a writ petition under Art. 226 of the Indian Constitution in the Karnataka High Court against the Amendment in Karnataka Police (Amendment) Act 2021, which criminalises betting, wagering, and gambling, whether by playing a game of skill or a game of chance. And it includes all types of betting and wagering. On the other hand, playing games where cash or kind is not involved is not prohibited by the government. The Amendment has widened the scope of “gaming” under Section 2(7), which prohibits online games of skill when played with money. The petitioners argued that this Amendment results from excessive paternalism and populism.

The Court held that Amendment ultra vires the fundamental right to equality Art 14 as it prohibits games of skill and chance where stakes are involved, despite differences established between the two. Since the Act violates the principle of proportionality, it absolutely quashes the game of skill. The Amended definition of gaming in Sec. 2(7) is directly contradictory to the amended Section 176 of the Principal Act, which states to maintain the difference between the game of skill and the game of chance. The Court further stated that banning all games involving monetary stakes in the public interest has no data to support the arguments and further held that the legislation should be made without violating the basic structure of the Constitution.<sup>4</sup>

Here, in this case, the state government of Karnataka had used its powers and declared the game of chance as well as the game of skill into the ambit of betting and wagering. Thus, the court stated that the government has made amendments violating the basic structure of the Constitution. So, the rules made by the government should be made with keeping in mind the basic structure of the constitution.

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<sup>3</sup> Nidhi Mishra ‘Laws on online gaming in India’(ipleaders, 18 Aug 2023)<<https://blog.ipleaders.in/laws-on-online-gaming-in-india/>>

<sup>4</sup> *Ibid*

## **JURISDICTION OF ONLINE GAMING IN INDIA**

Online Gaming: The Indian government defines an online game as “a game that is offered on the Internet and is accessible by a user through a computer resource or an intermediary.”<sup>5</sup> The Ministry of Electronics and Information Technology has been appointed as a nodal ministry for Online gaming in India

Esports: Esports are essentially electronic sports in which a large number of players with the necessary skill sets compete against each other on an online platform. <sup>6</sup>The Department of Sports under the Ministry of Youth Affairs and Sports has been notified as the Nodal Ministry for “Esports as a part of multi-sports events”.

The above move of the government regarding the allocation of sectors to different ministries was appreciated by the giants of the gaming Industry. It is being said that the above move by the government will bring clarity and the decision is in line with the Government’s initiative regarding the AVGC (Animation, Visual Effects, Gaming, Comics) Sector which will help India in making the global hub for Online Gaming.

### **RULES BY MINISTRY OF ELECTRONICS AND INFORMATION TECHNOLOGY (MEITY)**

Approving Regulatory Body – The online games will have to register with a self-regulatory body, and only those with approval from the body, will be allowed to legally function in India. As for the self-regulatory bodies, there can be more than one in number, and they will have to provide the ministry with a list of games they have registered and the criteria followed for registration.

Mandatory Player Verification through KYC Norms – An online gaming company will have to undertake due diligence in the form of Know-your-Customer norms (as per the norms laid by RBI). The companies will also have to inform the users of the manner of determination and distribution, withdrawal, and refund of the winnings. Additionally, the company will have to

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<sup>5</sup> ‘Breaking down MeITY’s new online gaming rules: How it will impact the Indian gaming industry’(Indian Express, 09 Apr 2023) <<https://indianexpress.com/article/technology/gaming/meity-new-online-gaming-rules-explained-8544334/>>

<sup>6</sup> Bhumika Indulia ‘Regulation on Esports in India’(SCC Online, 17 Aug 2022) <<https://www.sconline.com/blog/post/2022/08/17/regulation-of-esports-in-india/>>

secure a Random Number Generation (RNG), an algorithm to ensure that outcomes are statistically random and unpredictable.

**Curtailing Wagering** – As per the rules, Self-regulatory bodies do not allow wagering i.e. no bidding on the outcomes of the game. The rules also prohibit the advertising of games involving betting and gambling on social media platforms. Social media platforms must confirm with the self-regulatory body if the online gaming company has been registered before agreeing to host their advertisements.

**Displaying Verification Mark** – Online gaming platforms are required to publish a verification mark (watermark) as proof of verification from a self-regulatory body for any permissible online real money game.

**Ensuring Compliance** – Similar to what's followed in social media and e-commerce companies, the rules propose the appointment of a compliance officer to ensure that the platform follows the norms, a nodal officer to act as a liaison with the government, and a grievance officer to resolve complaints.<sup>7</sup>

**Updates regarding self-regulatory body:** The Information Technology Ministry has deferred plans to establish a self-regulatory body (SRB) for the gaming sector, according to a report by The Economic Times (ET). Previously, Business Standard had reported that if the ministry determines SRBs are unduly influenced by major players and lack independence, government certification for games might be considered as an alternative to self-regulation.<sup>8</sup>

## **GST ON ONLINE GAMES**

28% GST was to be imposed on Online Gaming in India, but currently, the decision is on stay: The decision to impose a 28% tax on online games, horse trading, and casino stays. This was announced by Finance Minister Nirmala Sitaraman at the GST council meeting on August 2, 2023. The council however clarified that 28% GST would be levied on full-faced value and

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<sup>7</sup> Shivangi 'MeitY Regulations for Online Gaming: The Way Forward'(Authbridge, 27 Jan 2023)  
<<https://authbridge.com/blog/meity-rules-for-online-gaming/>>

<sup>8</sup> 'IT ministry puts plan to form self-regulatory body for gaming on hold'(Business Standard, 29 Sep 2023)  
<[https://www.business-standard.com/industry/news/it-ministry-puts-plan-to-form-self-regulatory-body-for-gaming-on-hold-123092900169\\_1.html](https://www.business-standard.com/industry/news/it-ministry-puts-plan-to-form-self-regulatory-body-for-gaming-on-hold-123092900169_1.html)>

not Gross Gaming Revenue (GGR) or platform fee.<sup>9</sup> Though the decision is to stay, this move is not welcomed by the gaming industry.

The stakeholders in the business also believe that the high GST rate has a detrimental effect on customers. Players may find it more expensive to play online games due to the higher tax burden, which may prompt them to look for alternatives like offshore or illegal sites that do not collect GST or have cheaper rates. A number of negative effects, such as an increase in gambling addiction and a decrease in government income, might result from such a situation.<sup>10</sup>

## **INTELLECTUAL PROPERTY RIGHTS IN THE ONLINE GAMING INDUSTRY**

Intellectual Property Rights are considered to be an asset for the Online gaming industry which safeguards the rights of all the stakeholders who contribute to the making of the game. It plays a crucial role in the industry by safeguarding the rights of publishers, developers, and all other stakeholders in the online gaming industry. Intellectual property includes intangible creations of the human mind such as inventions, literary and artistic works, brands, and trade secrets. Within the gaming industry IPRs are vital for safeguarding and encouraging innovation promoting fair competition and stimulating investment. These rights encompass copyright, trademarks, patents, and trade secrets each serving a unique purpose within game development, distribution, and protection.

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- Copyright: Creators are granted copyright to protect their original works, such as game narratives, graphics, music, and source codes.
- Trademark: On the other hand, trademarks exist to safeguard brand names, logos, and distinctive symbols associated with games. These trademarks enable consumers to easily identify and distinguish products in the market.
- Patents: Patents are another type of protection that allows inventors to safeguard novel technological advancements and gameplay mechanics. By obtaining a patent. Inventors are given exclusive rights for a limited time.

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<sup>9</sup> '28% GST on online Gaming: All the key announcements from GST Council Meeting'(Times of India, 03 Aug 2023) <[Online Gaming GST Announcements: 28% GST on online gaming: All the key announcements from GST council meeting - Times of India \(indiatimes.com\)](#)>

<sup>10</sup> Shrishti Singh 'Impact of 28% GST on Online Gaming in India'(TaxGuru, 25 Sep 2023) <[Impact of 28% GST on Online Gaming in India \(taxguru.in\)](#)>

- Trade secrets: Lastly, Trade secrets serve to protect valuable proprietary information in the gaming industry. This includes algorithms, game design processes, and business strategies.<sup>11</sup>

## **INTELLECTUAL PROPERTY RIGHTS IN THE ESPORTS INDUSTRY**

Just like the Online Gaming Industry, Intellectual Property Rights are playing the role of savior for the esports industry. Though the esports industry comes under the jurisdiction of the Ministry of Youth Affairs and Sports, there is no proper statute regarding esports. Due to the lack of laws regarding esports, IPR plays a crucial role in safeguarding the rights of the different stakeholders of esports.

**Copyright:** When it comes to the gaming industry, copyright provides protection to things like source codes and object codes of digital games, such as video games, user manuals of the game, characters of a video game, background music in a game, other multimedia content of a game, other artistic content associated with the game.

**Trademark:** The trademark protects the name, slogan, characters as well as the distinctive packaging of a game.

**Patent:** Esports comprises 3 main things which are an organization, professional gamers, and the game itself. In Esports the one and only thing which can be protected by the patent is the game itself. The patent protects the invention which is used in creating the game.<sup>12</sup>

## **AUTHOR'S OPINION**

It is important to keep note of gaming laws in the world of technology growing at full pace with the help of AI and many other tools. As stated above Online gaming is a huge industry with a large potential of providing employment. The regulations stated above are there to help in the growth of the industry and generate revenue for the government through GST, thus creating a win-win solution for the giants of the online gaming industry as well as the authorities regulating them. It is crucial for the common people to change their traditional view about gaming and take it as an opportunity to earn money by participating in esports or other

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<sup>11</sup> Andy McAdams 'The Role Of Intellectual Property Rights In The Gaming Industry'(The Amikus Qriae, 17 Apr 2020) <[The Role of Intellectual Property Rights in the Gaming Industry - The Amikus Qriae](#)>

<sup>12</sup> Devashish Jaiswal 'Highlighting the complex relationship of Esports and intellectual property rights'(iPleaders, 12 July 2021) <[Highlighting the complex relationship of Esports and intellectual property rights - iPleaders](#)>



gaming events. Gaming laws are very important as it is a growing sector and regulation is essential in keeping an eye on the online gaming industry so that harm/damage can be prevented to the common man.

## CONCLUSION

In conclusion, the article talks about why the online gaming industry is a big deal. It sheds light on various aspects ranging from opportunities in the online gaming and esports industry to the evolution of laws governing online gaming in India. The difference between skill and chance is explained thoroughly with the help of case laws concluding that the paramountcy of skill over chance exempts the game from the ambit of betting and gambling.

Further, it talks about the current jurisdiction of Online gaming in India with the recent rules given by the Ministry of Electronics and Information Technology (MeitY) and the recent regime of GST announced by the GST council. The role of IPR as an asset for the gaming industry safeguarding the rights of various stakeholders in the industry. Notably, the government has given support for the growth of Industry as it provides new opportunities for employment. Thus, the focus of the article is to have information on rules given by the authorities and laws regulating the sector as it is a growing industry.