



REGULATION WITHOUT RESTRAINT: A CRITICAL LEGAL ANALYSIS OF THE PROMOTION AND REGULATION OF ONLINE GAMING ACT, 2025

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ABSTRACT

The Promotion and Regulation of Online Gaming Act, 2025 (Act 32 of 2025), bans all online money gaming in India. Section 2(g) defines games by the existence of a monetary stake and adds the phrase "irrespective of whether such game is based on skill, chance, or both," directly overturning a constitutional doctrine that Indian courts developed across seven decades. This paper suggests that the Act is unsustainable under constitutional scrutiny for three reasons. The Act is, first, in pith and substance a betting and gambling law; it stands upon Entry 34 of the State List, and the use by the Reliance of Entry 31 of the Union List upon which the national legislation is to be based fails to ascribe under the doctrine of pith and substance. Second, a complete ban extending to games that had been safeguarded under several High Courts to be commercial activity under Article 19(1)(g) would not pass the proportionality test, which the Supreme Court has been willing to employ since Puttaswamy; a tiered licensing regime with harm-reduction requirements imposed would provide the same protection to consumers at the same constitutional cost. Third, the Authority in subsection 8 cannot make independent classification decisions as its composition, tenure and powers remain wholly subject to executive rule in Section 8(4). The paper also discusses four laws, which include the IT Act 2000, the PMLA 2002, FEMA 1999, and the DPDP Act 2023, with which the new law produces unresolved friction, and ends with a legislative proposal based on the licensing model in the United Kingdom and the approved-operator model in Singapore.

Keywords: Online Gaming, Online Money Game, Skill-Based Games, Entry 34 State List, Article 19(1)(G).

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INTRODUCTION

India never intended to be among the largest gaming markets in the world. It became one anyway. It was the Jio-era crunch on mobile data rates, the median population of about 28, plus the rapid spread of cheap smartphones that the industry saw after 2016, that generated a gaming user base that had topped 500 million registered accounts by 2024. In comparison, that is larger than the entire American population and approximately equal to the population of the United Kingdom, Germany, France, Italy, and Spain combined. The culture that developed around said users was not unidimensional. On one side, there was esports, which is structured competitive playing in such formats as BGMI, Call of Duty Mobile, and Free Fire and then professional competitions, sponsorships, and prize pools that are comparable to traditional sports leagues. The large casual and social gaming market, Ludo King, which recorded more than 600 million downloads, offers commute and idle-time games with no money at stake, and occupies the central place. On the other end was real-money gaming, consisting of fantasy sports competitor Dream11 and its supporters, rummy and poker apps such as A23 and PokerBaazi, and other apps allowing users to deposit money, compete, and win or lose.¹

Dream11 alone had a valuation of around eight billion US dollars by 2024. MPL was in operation in various markets in Asia. Gameskraft had tens of millions of users on its rummy platform and employed hundreds of people. Taken together, the real-money gaming sector brought in GST revenue in the thousands of crores a year, attracted billions of venture capital, and directly and indirectly employed people in product development, payment processing, legal compliance, content development and tournament organisation.

The regulatory framework governing all of it was the Public Gambling Act of 1867. An act that was drafted in colonial India, on the subject of physical gambling houses, and in no imagination knew about the internet, software or mobile phone. States over the years had enacted their own laws, which brought about incoherence instead of clarity. Online gaming was banned in Tamil Nadu, and it was struck down by the Madras High Court. Karnataka was the next; that was also given down by the Karnataka High Court. A client in Goa would be free to use the online interface of a licensed casino. There was a ban on gaming imposed on an Andhra Pradesh user, which included online formats. A site that serves the users on a nationwide scale circumvented a hodgepodge of state legislations that, in certain cases, flatly

¹ Federation of Indian Fantasy Sports, 'Industry Report 2024' (FIFS 2024) 6.

conflict with one another. Actual harms were also accruing in the gap. Several high-profile incidents were reported in the national media of people losing their savings, including life savings, on real-money gaming sites. The complaints of addiction increased. The addictive design features, use of bots on some of the platforms and potential links with money laundering were questioned in investigative reporting. Regulators in other sectors expressed concern about the volume of transactions flowing through gaming payment channels. The case for a national framework to replace the 1867 Act and supersede inconsistent state laws was strong.

Parliament's response was the Promotion and Regulation of Online Gaming Act, 2025 (Act 32 of 2025). It was passed by the Lok Sabha on 20 August 2025, cleared by the Rajya Sabha on 21 August, and received Presidential assent on 22 August.² No Parliamentary Standing Committee reviewed the draft. Six days after assent, the government issued a corrigendum correcting a spelling error in the long title. The industry the Act was meant to govern had been waiting years for a national framework. What arrived in two days was a total prohibition.

The Act divides online games into three categories: e-sports (permitted), online social games (permitted), and online money games (prohibited). The prohibition on online money games is absolute — no offering, no advertising, no financial facilitation. The definitional core of the scheme is Section 2(g), which defines 'online money game' as any online game played for money, 'irrespective of whether such game is based on skill, chance, or both.'³ Those four words are the whole problem. Since 1957, the Supreme Court has held that skill-based games fall within a constitutionally distinct category from gambling and are protected under Article 19(1)(g). Parliament has now declared, by statutory definition, that the distinction does not exist.

This paper argues that the Act cannot sustain constitutional scrutiny on three grounds: it is, in its pith and substance, a betting and gambling statute that the Union lacks competence to enact; its blanket prohibition fails the proportionality test the Supreme Court has applied since *Puttaswamy*; and the Authority it creates under Section 8 cannot perform its classification function with the independence that administrative law requires. The paper also examines four existing statutes with which the Act creates unresolved friction and closes with a case for a tiered licensing regime as a constitutionally sound and practically effective alternative.

² Lok Sabha Debates, 20 August 2025; Rajya Sabha Debates, 21 August 2025.

³ Promotion and Regulation of Online Gaming Act 2025, s 2(g).

LEGISLATIVE HISTORY

The central government had already tried to regulate online gaming before the 2025 Act. The IT (Intermediary Guidelines) Amendment Rules of 2023 created a category of 'permissible online real-money games' subject to self-regulatory oversight.⁴ Whatever its deficiencies, that framework reflected a licensing logic: identify qualifying games, set conditions, and require compliance. The 2025 Act does not improve on it. It abandons it.

States had taken more aggressive approaches, with predictable results. Karnataka's 2021 ban on all online games played for stakes was struck down by the Karnataka High Court.⁵ Tamil Nadu's equivalent fell in the Madras High Court.⁶ Both courts reached essentially the same conclusion: games of skill are protected commercial activity under Article 19(1)(g), and blanket prohibition cannot satisfy the reasonable restrictions standard under Article 19(6). The 2025 Act reproduces the same prohibition at the national level. Neither the Act nor its statement of objects and reasons attempts to explain why the constitutional analysis should come out differently when Parliament does it.

I think the speed of the Act's passage matters beyond the procedural. Legislation that spends months in committee review tends to arrive in Parliament with its definitional ambiguities resolved, its interaction with existing law mapped, and its enforcement mechanisms stress-tested against practical scenarios. The 2025 Act has none of these qualities. The corrigendum of 28 August is a symptom — the actual problems are in Section 2, where definitions that will determine the legality of entire business models leave critical questions open.

KEY PROVISIONS

The Definitional Framework: Read Section 2(c) carefully.⁷ To qualify as an e-sport, a game must: be played as part of multi-sports events; involve organised competitive events governed by predefined rules; be recognised under the National Sports Governance Act 2025 and registered with the Authority; have outcomes determined 'solely' by skill or strategic thinking; and must not involve bets or wagers from any person, whether or not they are a participant. That last word — 'solely' — is worth noting. Horse racing has been held to be a game of skill

⁴ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023, r 4A.

⁵ All India Gaming Federation v State of Karnataka WP 15267 of 2021 (Karnataka HC) [44]-[51].

⁶ Junglee Games India Pvt Ltd v State of Tamil Nadu WP 7354 of 2021 (Madras HC) [37]-[43].

⁷ Online Gaming Act 2025, s 2(c).

by the Supreme Court, but a horse's training, the quality of the track, and the horse's health on race day all influence outcomes alongside jockey skill. Whether an e-sport's outcome can ever be 'solely' a function of skill, absent any element of uncertainty or variance, is a question the Act does not engage with.

The practical problem with the e-sport definition is the registration gate. Recognition under the National Sports Governance Act 2025 is a prerequisite. BGMI and Free Fire run competitive circuits with prize pools funded by entry fees. Whether those tournaments are lawful depends entirely on whether those games secure registration in time, and the Act provides no timeline, criteria, or process for that registration. The government holds that gate. Platforms cannot plan their operations around it.

Section 2(i) defines 'online social game' to exclude monetary stakes, but permits subscription or one-time access fees, provided that such payment is not like a stake or wager.⁸ The distinction between a fee and a stake will be litigated. Section 2(j) defines 'other stakes' broadly: anything equivalent or convertible to money, including credits, coins, tokens, and objects, real or virtual, purchased for money directly or 'by indirect means.'⁹ A gaming platform that charges a monthly subscription and lets users earn premium currency — redeemable for cosmetic items or competitive advantages — may well be offering a game that involves 'other stakes' under Section 2(j). The Act provides no test for drawing the line.

Section 2(g) is the provision that determines the Act's constitutional fate.¹⁰ The phrase 'irrespective of whether such a game is based on skill, chance, or both' is a deliberate legislative choice to override the judicial doctrine distinguishing skill from chance. Whether Parliament has the constitutional power to make that choice is examined in Part V. Section 1(2) extends the Act extraterritorially — to services 'offered within the territory of India or operated from outside the territory of India.'¹¹ Three questions follow that the Act does not answer. What counts as 'offering' a service within India for a foreign operator with no Indian presence? How will the prohibition be enforced against an entity with no Indian bank accounts and no Indian directors? And does Section 5's prohibition on participation — not just offering — expose Indian users who access foreign platforms to criminal liability under the Act?

⁸ Online Gaming Act 2025, s 2(i).

⁹ Online Gaming Act 2025, s 2(j).

¹⁰ Online Gaming Act 2025, s 2(g).

¹¹ Online Gaming Act 2025, s 1(2).

The Prohibition: Section 5 prohibits any person from offering, aiding, abetting, inducing, or otherwise engaging in any online money game or gaming service.¹² Section 6 extends the prohibition to advertising, direct or indirect, in any media.¹³ Section 7 covers the financial infrastructure: no bank or payment intermediary may facilitate any transaction toward an online money gaming service.¹⁴

On Section 7: payment gateway blocks are enforceable against Indian intermediaries and have worked reasonably well in other regulatory contexts. Against foreign platforms, they are a speed bump. Cryptocurrency payments, prepaid foreign currency cards, and international transfers through non-Indian payment channels all provide routes around the block. Section 7 removes the path of least resistance. It does not seal the border.

The Authority: Section 8(1) says the Central Government 'may, by notification, constitute an Authority' — or may instead 'designate any existing Authority or Authorities or any agency' to perform the same functions.¹⁵ The primary function, under Section 8(2)(a), is classification: determining whether a particular online game is an online money game or not.¹⁶

Section 8(4) leaves the Authority's entire structure to subordinate legislation.¹⁷ The composition of the body, the qualifications of the Chairperson and members, their tenure, their salary, the grounds on which they may be removed — all of it is to be prescribed by rules that the Central Government will make. There are no statutory minimum qualifications. No fixed terms. No bar on serving government officials. The TRAI Act 1997 requires the Chairperson to have been a Supreme Court judge or Chief Justice of a High Court. The SEBI Act 1992 bars members with conflicting interests. The Online Gaming Act has neither requirement. What it has, in substance, is an advisory body the government can constitute, constitute differently, or not constitute at all, depending on what is convenient.

The 'may constitute' formulation in Section 8(1) deserves to be stated plainly. The Authority is optional. Until the government constitutes it, there is no mechanism for a platform to obtain a formal classification of its game. A platform that genuinely wants to know whether it is

¹² Online Gaming Act 2025, s 5.

¹³ Online Gaming Act 2025, s 6.

¹⁴ Online Gaming Act 2025, s 7.

¹⁵ Online Gaming Act 2025, s 8(1).

¹⁶ Online Gaming Act 2025, s 8(2)(a).

¹⁷ Online Gaming Act 2025, s 8(4).

operating legally — and there will be many — has nobody to ask. The Act creates a prohibition and makes the body that is supposed to administer exceptions discretionary.

Offences and Enforcement: Section 9(1) makes offering an online money gaming service punishable with up to three years' imprisonment and a fine of up to one crore rupees.¹⁸ Repeat offenders under Section 9(4) face mandatory minimums of three years and one crore rupees, extendable to five years and two crore rupees.¹⁹ Section 10 designates the principal offences cognizable and non-bailable.²⁰ Section 11 imposes personal criminal liability on company officers unless they establish both that the offence occurred without their knowledge and that they exercised all due diligence to prevent it.²¹

An industry that was fully legal on 21 August 2025 faces non-bailable arrest for its executives from the date of commencement. There is no savings provision for pending operations. There is no defined commencement date. There is no Authority to consult for guidance. Companies with revenues built on real-money gaming are not in a legal grey area — they are in criminal exposure — and the statute gives them no mechanism for resolving it.

Section 14 invokes Section 69A of the IT Act for blocking online money gaming services, but adds that it applies 'notwithstanding anything contained in this Act or in section 69A.'²² Section 69A carries procedural protections: the designated officer must form a reasoned opinion, and the Rules require an opportunity of hearing. Whether the Online Gaming Act's 'notwithstanding' displaces those protections or merely cross-references the blocking mechanism is genuinely ambiguous. Courts will receive competing arguments on this, and the government has offered no clarification. Section 18 gives the Act an overriding effect over inconsistent law,²³ but whether it overrides procedural protections embedded in Section 69A's framework is exactly the kind of question that a committee review process would have resolved.

¹⁸ Online Gaming Act 2025, s 9(1).

¹⁹ Online Gaming Act 2025, s 9(4).

²⁰ Online Gaming Act 2025, s 10.

²¹ Online Gaming Act 2025, s 11.

²² Online Gaming Act 2025, s 14.

²³ Online Gaming Act 2025, s 18.

INTERACTION WITH EXISTING STATUTES

Section 18 says the Act does not derogate from existing law, but has an overriding effect in case of inconsistency. This creates an ambiguous atmosphere across four statutes, out of which the act recognises none. Under the PMLA 2002, entities that handle proceeds of gaming transactions are reporting entities with due diligence and suspicious transaction reporting obligations.²⁴ An e-sports platform is still a PMLA reporting entity if lawfully operating under the Online Gaming Act. The Online Gaming Act neither alters these obligations nor aligns with them. Operators who comply with the Online Gaming Act's classification regime will need a separate PMLA compliance infrastructure, and the two frameworks offer no guidance on how they interact.

The DPDP Act 2023 makes gaming platforms that process KYC and identity verification data into data fiduciaries with obligations of purpose limitation, data minimisation, and consent management.²⁵ The Online Gaming Act will require data collection for registration and compliance; the DPDP Act regulates how that data can be kept and worked upon. These requirements can contradict. A platform using identity data collected for age verification for advertisement personalisation has a problem with regard to the DPDP Act, regardless of whether the Online Gaming Act says anything about it. Neither of the statutes tells operators how to navigate the overlap.

The IT Act's blocking mechanism under Section 69A²⁶ is invoked by Section 14 of the Online Gaming Act, with a 'notwithstanding' that creates the procedural uncertainty discussed above. The immediate issue is practical: the IT Act blocking procedure operates on applications to the designated officer, who considers them under the Blocking Rules. The Online Gaming Act appears to contemplate blocking as a consequence of non-compliance with Section 5, 6, or 7, rather than as a procedure triggered by application. It is not clear which process governs, and the 'notwithstanding' does not help.

FEMA 1999 governs cross-border transactions.²⁷ Persons indulging in transactions with foreign gaming platforms from an Indian bank account are making a foreign exchange transaction subject to FEMA. Whether this creates RBI violations, and/or the government

²⁴ Prevention of Money Laundering Act 2002 (India), s 2(1)(sa) (as amended by Finance Act 2023).

²⁵ Digital Personal Data Protection Act 2023 (India), s 4.

²⁶ Information Technology Act 2000 (India), s 69A.

²⁷ Foreign Exchange Management Act 1999 (India), s 3.

intends to pursue users — not just operators — under both FEMA and the Online Gaming Act simultaneously, is nowhere mentioned clearly. Section 5's prohibition on participation by users is clearly drafted, but its intersection with FEMA creates a double-exposure for ordinary users that the statute should have addressed explicitly.

CONSTITUTIONAL FRAMEWORK

Legislative Competence: Entry 34 of the State List in the Seventh Schedule assigns 'Betting and Gambling' exclusively to the states.²⁸ The Union's basis for the Act is presumably Entry 31 of the Union List, which covers Posts, Telegraphs, and other forms of communication, combined with the broader power to regulate digital intermediaries operating on internet infrastructure across state lines.²⁹

Let us take the Union's best case seriously. Online gaming services operate interstate and across international borders. State laws have produced incoherent regulatory patchworks. Users in one state face prohibitions that users in another do not. There is a genuine coordination problem, and Entry 31 gives the Union authority to monitor electronic communication infrastructure.

The doctrine of pith and substance, however, asks what the legislation is really about — its true nature and character, not the entry, the legislature has cited as its authority.³⁰ Upon reading the Online Gaming Act's preamble, one will come across the fact that it states online money games 'have led to serious social, financial, psychological and public health harms'; that platforms 'use manipulative design features, addictive algorithms, bots and undisclosed agents'; and that such services 'have been linked to financial fraud, money-laundering, tax evasion.' The language of Gambling Control vocalises that the medium being the internet does not convert it into communication regulation, any more than regulating what can be said on the radio would be communication infrastructure law rather than speech regulation. A court applying pith and substance to this Act will find that it is, in substance, an Entry 34 enactment.

Once that conclusion is reached, the competence question is raised. States have exclusive authority over betting and gambling. The Union cannot, by calling its legislation a communication regulation, override that exclusivity. Section 18's overriding effect upon

²⁸ Constitution of India 1950, Seventh Schedule, List II, Entry 34.

²⁹ Constitution of India 1950, Seventh Schedule, List I, Entry 31.

³⁰ *State of West Bengal v Kesoram Industries Ltd* [2004] 10 SCC 201 [44].

inconsistent laws does not compensate for a competence defect — a law enacted without legislative competence has no overriding effect over anything.

Skill-based games and Article 19(1)(g): The foundational case is *State of Bombay v. R.M.D. Chamarbaugwala*.³¹ The Supreme Court held in 1957 that prize competitions where success depends substantially on skill are not 'gambling' in the constitutional sense and therefore do not fall within the legislative power that state gambling laws draw on. *K.R. Lakshmanan v. State of Tamil Nadu*³² extended this principle in 1996: skill-based games are legitimate commercial activity protected under Article 19(1)(g), and restrictions on them must pass the test of reasonable restrictions under Article 19(6). The freedom of conducting a business in skill-related gaming cannot be banned, but can be controlled.

Online gaming is directly **subject** to this doctrine according to the case law **in** *Varun Gumber v. Union Territory of Chandigarh*,³³ had conducted a close examination of what it actually takes to make a competitive fantasy cricket team, which it felt is knowledge of player form, injury status, pitch conditions, **head-to-head** statistics, and had the view that skill is predominant. Integrating technology in producing a quality product, **in** *Gameskraft Technology Pvt Ltd v. Directorate General of GST Intelligence*,³⁴ the Karnataka High Court researched rummy, at a similar length: the cards are randomly dealt, but what makes the difference between a winning and a losing player is the memory, evaluation of probabilities and the discard strategy over any volume of cards played.

It is in this context that the phrase in Section 2(g) of the Act, which says it does not have to do with skill, is not a drafting option that Parliament can just make. The constitutional range that an activity will fit in does not depend on how it is referred to in a law, but on the skill **versus chance** doctrine. It is up to the parliament to define online money **games** as it pleases in the context of the Act. The thing that it cannot do is transform the constitutional nature of the activity through the definition it takes. The Constitution defends Fantasy Cricket as commerce since it is a disposition that is **skill-based**. It is referred to as an online money game in Section 2(g). The question that a court will pose is what fantasy cricket is, not what Parliament has chosen to refer to it as.

³¹ *State of Bombay v R.M.D. Chamarbaugwala* [1957] SCR 874.

³² *K.R. Lakshmanan v State of Tamil Nadu* [1996] 2 SCC 226.

³³ *Varun Gumber v Union Territory of Chandigarh* CWP 7559 of 2017 (Punjab and Haryana HC).

³⁴ *Gameskraft Technology Pvt Ltd v Directorate General of GST Intelligence* WP 19570 of 2023 (Karnataka HC).

Article 14 is a problem that should be considered separately. The condition in section 2(c)(iv) is that to be an e-sport, the winning or losing of a game must be decided by skill alone. Section 2(g) co-exists with the fact that, for prohibition, skill does not matter. One of the provisions of the same law considers skill as the criterion for the definition of permission; another that of prohibition. The administrative registration in the National Sports Governance Act 2025 is the sole foundation of distinguishing between e-sports and fantasy sports, which are skill-based, have entry fees, and prize pools, and are structurally identical in nature. That is not of the intelligible differentia which Article 14 demands.

Whether prohibition satisfies the necessity test: Since Justice K.S. Puttaswamy (Retd.) v. Union of India,³⁵ the Supreme Court has also used a organised proportionality test: the measure must attempt a valid purpose, rationally associated with it, required in the sense that there is no less restrictive option, and an equitable balance must be created between the right restrained and the good obtained.

Shielding the user against addiction and/or financial losses and predatory design is clearly a valid state interest and therefore renders the purposes of the Act justifiable. The problem is the **necessary** limb. A licensing regime requiring mandatory spending limits, compulsory self-exclusion, real-time monitoring for problematic behaviour, operator audits, AML compliance, and KYC would achieve every one of those objectives. Under *Modern Dental College and Research Centre v. State of Madhya Pradesh*,³⁶ The state bears the burden of demonstrating that no less restrictive alternative is available. The Online Gaming Act does not attempt this demonstration. There is no analysis of why prohibition, rather than licensing, was necessary. The statement of objects and reasons describes the harms but does not address the alternative, making the gap constitutionally fatal.

THE SKILL VERSUS CHANCE DOCTRINE

*Chamarbaugwala*³⁷ established the basic framework in 1957. Gambling in the constitutional meaning of the term does not mean prize contests in which it is largely a matter of skill. This was a case of the extent of state power, not a taxonomy in itself. Sports where skill is the

³⁵ Justice K.S. Puttaswamy (Retd.) v Union of India [2017] 10 SCC 1 [310]-[325] (Chandrachud J).

³⁶ *Modern Dental College and Research Centre v State of Madhya Pradesh* [2016] 7 SCC 353 [71]-[80].

³⁷ *Chamarbaugwala* (n 31).

primary determinant are not considered gambling, to which the State List of Entry 34 is devoted. These are trade, and it is the Constitution which safeguards them.

The doctrine is of practical depth. It is not a formal test that courts apply and results in automatic answers. At *Lakshmanan*, the Supreme Court considered what exactly goes into deciding the winner in a horse race - the form of the horse, its training, the decisions of its jockey, conditions of the track, etc. and questioned whether a person with knowledge and judgment has a material advantage over the person who bets at random. It does, and that is enough. The doctrine poses the question of whether expertise is important. In the event that it does, then the activity is on the skill side of the fence. The case of fantasy sports is not a difficult one to perform this test. Being able to pick a competitive fantasy team would require an awareness of the form of players, their injury status, pitch conditions, past head-to-head records, and match dynamics. Across a large enough sample of contests, the players who do this work consistently outperform those who do not. The Punjab and Haryana High Court reached this exact conclusion in *Varun Gumber*.³⁸ The Karnataka High Court reached the same conclusion about rummy in *Gameskraft*,³⁹ finding that the cumulative judgments about which cards to hold, which to discard, and which sequences to complete are not guesswork — they are skill exercised under uncertainty, which is a different thing.

What makes Section 2(g) so constitutionally vulnerable is not that it defines online money games wrongly. It is that it defines them in a way that is not relevant to the constitutional analysis. A court is not going to ask: has Parliament classified fantasy cricket as an online money game? It is going to ask: **Is** fantasy cricket a game in which skill predominates? The answers to those two questions can diverge, and when they do, the constitutional answer governs.

There is an irony in the Act's own structure that courts will find hard to ignore. Section 2(c)(iv) defines e-sports partly by requiring that their outcomes be determined solely by skill. The Act, therefore, depends on the concept of skill for its definition of what is permitted, while simultaneously declaring skill irrelevant to its definition of what is prohibited. It is difficult to present a coherent account of what the statute means when its two core operative provisions treat the same concept in diametrically opposite ways.

³⁸ *Varun Gumber* (n 33).

³⁹ *Gameskraft* (n 34).

ECONOMIC AND SOCIAL IMPACT

What was being prohibited: By 2024, India had over 500 million registered online gaming users.⁴⁰ Dream11 carried a valuation of approximately eight billion US dollars. MPL operated across multiple Asian markets. Gameskraft, Head Digital Works and Nazara Technologies had thousands of employees, both directly and indirectly. The gaming transactions and GST collections were in the thousands of crores a year. The significance of these numbers is that big industries cannot be regulated, but the economic impact of prohibition is a direct result of its design. The official economy loses the revenue of real-money gaming. The producing companies either leave or outsource drastically. Their staff members do not move to the esports sector, which is another and smaller enterprise. Taxing income on gaming deals ceases. The informal economy benefits at the cost of the formal one.

These figures are important not only because big industries cannot be regulated but because the economic ramifications of prohibition are the direct result of its design. The money that is made on real-money games is no longer in the official economy. The producing companies either withdraw or bid farewell to it significantly. They do not lose their employees to the esports industry, which is another and smaller business. Gaming credits tax income ceases. What the formal economy loses goes to the informal one.

Whether prohibition achieves its aims: The harms that the Act is focusing on are real and severe. Addiction, financial devastation and connection in money laundering are recorded, not created. Whether prohibition has anything to do with them or not, the question is whether it transfers them or not. As of 2024, the imperfect yet real consumer protections applied to a user playing rummy on a licensed domestic platform included KYC, grievance redressal run by an operator, age verification, and responsible tools in-game making. These safeguards were unevenly enforced and even nominal. They were also enforceable. They might be demanded by a regulator. This could be ordered to be done by a court. Once the Act is in place, a user who still wishes to play rummy with money can look for a foreign-based platform within minutes that will not be subject to any of those requirements, in fact, will not even be subject to Indian law as far as such exists, other than in the theoretical sense that it is.

The US offers a good example. The Unlawful Internet Gambling Enforcement Act of 2006 was also successful in banning online poker across the states. American players did not quit playing.

⁴⁰ FIFS (n 1) 6.

They merely moved to foreign platforms in such a large number that they supported a major offshore industry. The consumer protections that would have been possessed by a licensed domestic industry were not there. The harm did not decrease. It was no longer within the regulatory perimeter, where it was much more difficult to measure and nearly impossible to address. In India, there is no structural explanation as to why things should be any different.

COMPARATIVE MODELS

No comparable jurisdiction has responded to online gaming harms by prohibiting skill-based games. The United Kingdom licenses online gaming operators under the Gambling Act 2005.⁴¹ Operators are required to be financially sound, meet technical standards, and responsible gaming requirements, such as mandatory self-exclusion registries and affordability tests, and to continue to comply with AML. Criticism has been levelled at the UK Gambling Commission because they have taken too long to take action against non-compliant operators, and it is justified. However, the model maintains action in a controlled space with data on harm being gathered, enforcing measures can be taken, and users can sue operators in court.

Singapore's Remote Gambling Act 2014 is stricter: the default is prohibition, but the Minister may issue exemptions to approved operators.⁴² Singapore Pools and Singapore Turf Club are the approved entities. This is simply a licensing model that has a small entrance. Singapore never banned gambling; it banned unregulated gambling. This difference is important since the users of approved platforms have the protection of consumers, the state collects tax, and the government has access to the activity of operators. The Act of India, on the contrary, makes the market completely closed, and this does not accomplish any of these.

Australia's Interactive Gambling Act 2001 is the most instructive comparator because it is a cautionary tale rather than a model to emulate.⁴³ The Act banned a list of games on online casinos but allowed sports betting using licensed casino operators. Subsequent studies established that the ban on internet casino games drove customers to offshore sites inaccessible by the Australian regulators. Australian government policy is reacting in a direction towards increasing the licensed access with more stringent harm-reduction terms, rather than tightening

⁴¹ Gambling Act 2005, ss 67-77.

⁴² Remote Gambling Act 2014 (Singapore), s 26.

⁴³ Interactive Gambling Act 2001 (Cth), s 8A.

the prohibition. India is suggesting repeating the very mistake that Australia had known and has been attempting to amend over the past 20 years.

CRITICAL ANALYSIS

The Act has three failures, and they are not independent — they reinforce each other. The first is constitutional. Section 2(g)'s 'irrespective of skill' phrase will be struck down or read down by the Supreme Court. The question is not whether but when. The skill-versus-chance doctrine is not statutory law that Parliament can repeal. It is a constitutional doctrine identifying which activities receive Article 19(1)(g) protection. The Act also faces a serious Entry 34 competence challenge that the Union government's Entry 31 reliance will struggle to answer once a court applies pith and substance analysis to what the preamble says. There may be a period during which the Act is in force and enforcement action has commenced before the constitutional cases are resolved. The damage done during that period — to businesses, to employees, to tax revenues — is not reversible.

The second failure is structural. The Authority contained in Section 8 cannot be independent since it has not been made independent in the statute. It is mainly composed at the discretion of the executive. The future survival of business models that support a billion rupees will depend on the classification ruling on the boundary between legal esports and illegal money games. The platforms that will be defiant of the unfavourable classifications will be difficult decisions by a body whose institutional nature replicates the same government that has passed prohibition. The administrative law expects the bodies exercising this type of power to be impartial.

The third is practical. The Act can block domestic payment gateways, it can revoke domestic licences, but it cannot reach a foreign company with no Indian presence. As soon as the local platforms leave the market, the demand will not vanish, but instead, it will shift to the foreign operators that are not subject to Indian regulation in any way. The sphere of enforcement of the Act is the domain of the domestic sphere, precisely the one on which the issue of consumer protection was enforced, despite its inefficiency, alone. Beyond that border is an offshore market to which the Act is not able to reach.

There is also a federalism dimension worth noting. Goa operates licensed casino gaming under state law. Sikkim has a regulated online gaming framework. Section 18's overriding effect creates genuine uncertainty about whether those state frameworks survive the Online Gaming

Act for any activity touching online money games. The Act does not address this. The cooperative federalism model used for the GST, whatever one thinks of its outcomes, at least built in institutional mechanisms for centre-state coordination. The Online Gaming Act builds in none.

CONCLUSION AND RECOMMENDATIONS

The Online Gaming Act 2025 has not been hastily made. The preamble shows true knowledge of actual harms. The fault is that the drafters, working under a two-day legislative schedule and not subject to committee scrutiny, adopted an instrument, a total prohibition, which could not pass the constitutional test, cannot work against the offshore sector to which the displaced demand would be diverted, and was not adopted after any serious consideration of whether a licensing alternative would have performed better. What is produced is a piece of legislation that will take years in the Supreme Court, as the business it was intended to govern goes offshore. The fundamental issues would be resolved in three changes.

Replace prohibition with a tiered licensing regime: The Act should be amended to provide online money gaming according to the conditions of licensing, which is controlled according to the risk character of different kinds of games. The conditions of games where the operator has a house advantage should be more strict than the competitions with a player versus player, since there is a different commercial interest in creating the addiction. Mandatory conditions which apply to all licences need to include spending limits, self-exclusion tools, real-time coverage of problem gambling indicators, KYC and age verification, AML compliance, and an independent annual audit. This is the trend that the UK, Singapore and Australia, in their respective ways, have been practising and ensuring that the users are kept in a restricted environment where protection is not a mere paperwork.

Restore the skill-versus-chance distinction: Section 2(g) should be reformed to remove the provision regardless of whether the game in question is a game of skill, a game of chance or both. The games where the skill is the most dominant should be licensable under the above-mentioned conditions. Games whose primary purpose is or has been to be a game of chance should be covered under more stringent laws, which is consistent with the legitimate interest of the state in capping gambling. The Authority should be advised to classify games according to the parameters as established in Chamarbaugwala and Lakshmanan, especially the existence of expertise. Core benefits compared to chance playing on a statistically significant sample.

Secure the Authority's independence on the face of the statute: Section 8(4) should be changed to state in the statute itself, that minimum qualification requirements to the Chairperson and members, a non-renewable term and not that of government officials serving. It should be open to appeal to an independent judicial body of the High Court with supervisory authority over the seat of the Authority and not the Central Government. Without these, the Authority will fail to perform the role that the Act assigns it in a manner that administrative law will legally consider to be valid. It is possible to predict two things:

The Supreme Court will take months to be approached to consider Section 2(g) and the competence of the Act. The local market will shrink, and this will result in the expansion of the domestic market of offshore gaming. Both of these, in one way or another, are the nonattainment of the Act to perform what it promised to perform. The Parliament is now asking whether either of them ought to be driven out or dealt with at this time, when the structure of regulation is being built.