



FREEDOM OF TRADE VS STATE REGULATION: THE CONSTITUTIONAL DEBATE ON ONLINE GAMING IN INDIA

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ABSTRACT

*Online gaming has emerged as an expanding component of India's digital economy, while real-money gaming has generated constitutional and regulatory concerns relating to addiction, financial fraud, consumer protection, and economic liberty. This paper examines the constitutional framework governing online gaming, with particular focus on Article 19(1)(g), Article 19(6), and the legislative competence of States under Entry 34 of List II. It traces the judicial evolution from the skill-chance distinction established in *State of Bombay v. R.M.D. Chamarbaugwala* and *K.R. Lakshmanan* to the Supreme Court's 2026 decision in *State of Tamil Nadu v. Junglee Games India Pvt Ltd*. The paper further analyses the *Promotion and Regulation of Online Gaming Act, 2025*, its nationwide prohibition of online money games, and the pending constitutional challenge concerning federalism and proportionality. It concludes by examining consumer, data-protection, and responsible-gaming safeguards within India's evolving regulatory framework and assesses the balance between digital innovation and welfare.*

Keywords: Online Gaming, Betting, Gambling, Constitutional Regulation.

INTRODUCTION

The online gaming industry is among the fastest-growing segments of the Indian digital economy. India's online gaming user base stood at roughly 517 million in 2015, and the domestic gaming market, valued at approximately USD 5.19 billion in 2015, is projected to

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grow at a compound annual rate of over 14 per cent through the next decade, driven by rising smartphone penetration, affordable data, and near-universal UPI-based payments.¹

Beyond employment generation, technology advancement, and digital entrepreneurship, the sector's real-money segment has also drawn sustained regulatory attention. Government figures presented to Parliament recorded 32 suicides linked to online money gaming over 31 months, and independent estimates place cumulative losses to scams, money laundering, and tax evasion through gaming platforms at over INR 25,000 crore between 2022 and 2024.² It is this dual character of online gaming, as a legitimate and rapidly expanding business on the one hand, and a source of addiction, financial fraud, and consumer harm on the other, that has driven the State Governments, and more recently Parliament, to legislate on the sector.

This has resulted in a significant constitutional dispute over the extent of the right to carry on any occupation or business conferred by Article 19(1)(g) of the Constitution of India. Online gaming operators have long maintained that skill-based, real-money gaming is a legitimate business entitled to protection under Article 19(1)(g), while the State Governments have relied on the power to impose reasonable restrictions under Article 19(6), and, more fundamentally, on their exclusive legislative competence over 'betting and gambling' under Entry 34 of List II of the Seventh Schedule.

For much of the past decade, this dispute was fought and largely won by the industry before the High Courts, on the strength of the long-standing judicial distinction between games of skill and games of chance. That position has since been decisively recalibrated. In *State of Tamil Nadu v Jungle Games India Pvt Ltd*,³ decided on 27 May 2026, the Supreme Court held that money staked on the uncertain outcome of any game amounts to betting and gambling regardless of the element of skill involved, and that States are fully competent to prohibit such activity. Parliament has, in the meantime, enacted the first central legislation on the subject, the Promotion and Regulation of Online Gaming Act 2025, which bans online real-money games nationwide and is itself now under constitutional challenge before the Supreme Court. This article traces that evolution: it examines the constitutional framework under Articles

¹ IMARC Group, 'India Gaming Market Report 2026-2034' (2026); DemandSage, 'Online Gaming India Statistics 2026' (2026).

² Ministry of Electronics and Information Technology, Statement of Union Minister Ashwini Vaishnaw on the Promotion and Regulation of Online Gaming Bill 2025, Lok Sabha (20 August 2025); Observer Research Foundation, 'Online Gaming Regulation in India: A Preliminary Review' (September 2025).

³ *State of Tamil Nadu v Jungle Games India Pvt Ltd*, 2026 INSC 594 (Supreme Court, 27 May 2026).

19(1)(g) and 19(6), the rise and fall of the skill-chance distinction as a source of constitutional protection, the shift from fragmented State legislation to a central regulatory regime, and the extent to which India's present regulatory scheme balances economic freedom with the State's regulatory powers.

THE CONSTITUTIONAL FRAMEWORK: FREEDOM OF TRADE UNDER ARTICLE 19(1)(g)

Article 19(1)(g) of the Constitution guarantees every citizen the fundamental right 'to practise any profession, or to carry on any occupation, trade or business.'⁴ The right is not absolute: it protects a lawful business activity from the moment it is undertaken, but the extent of that protection, and whether a particular activity qualifies as a business at all, depends on how courts characterise the activity. Operators of skill-based online games contend that they are engaged in a legitimate business activity and are therefore entitled to invoke this guarantee; but the entitlement is not established merely because an activity is not expressly forbidden by an existing statute, since the constitutional question is whether the activity itself falls within the protected category of trade or business in the first place, a question examined further below in relation to the skill-chance distinction.

Where an activity does fall within Article 19(1)(g), it remains subject to reasonable restrictions imposed by the State 'in the interests of the general public' under Article 19(6).⁵ This permits the State to regulate trade through licensing conditions, mandatory disclosures, and other protective measures, including safeguards against fraud and addiction. Whether a given restriction is constitutionally valid turns on the doctrine of proportionality, as elaborated by the Supreme Court in *Modern Dental College and Research Centre v. State of Madhya Pradesh* and *K.S. Puttaswamy v. Union of India*.⁶ The test requires, first, that the restriction pursue a legitimate State aim; second, that there be a rational or suitable connection between the restriction and that aim; third, that the restriction be necessary, in the sense that no less restrictive but equally effective alternative is available; and fourth, that the restriction strike a fair balance between the extent of the interference and the public benefit sought.

⁴ INDIA CONST. art. 19(1)(g).

⁵ INDIA CONST. art. 19(6).

⁶ *Modern Dental College and Research Centre v State of Madhya Pradesh*, (2016) 7 SCC 353; *Justice K.S. Puttaswamy v Union of India*, (2019) 1 SCC 1 (Aadhaar judgment, applying the four-fold proportionality test to Article 19 restrictions).

Applied to online gaming, the legitimate aim is not in dispute: curbing addiction, protecting minors, preventing financial fraud and money laundering, and safeguarding consumers are all recognised objects of public policy. The harder constitutional questions concern suitability, necessity, and balance. A licensing regime with know-your-customer checks, spending limits, and advertising restrictions is plainly a suitable and less restrictive means of addressing these harms than an outright prohibition. Whether, and to what extent, a complete ban on staked online games can nonetheless be justified as necessary has been the central battleground in the litigation discussed below, and it is on this point that the constitutional analysis has shifted most significantly in the past year.

THE SKILL-CHANCE DISTINCTION: FROM CHAMARBAUGWALA TO THE SUPREME COURT'S 2026 RECALIBRATION

The starting point of Indian gaming jurisprudence is the Supreme Court's decision in *State of Bombay v. R.M.D. Chamarbaugwala*,⁷ which held that gambling is *res extra commercium*, outside the scope of legitimate commerce, and therefore does not attract the protection Article 19(1)(g) affords to trade and business. The Court simultaneously recognised that activities in which success depends predominantly on skill, even where an element of chance is present, are not gambling and do fall within the protected category. This distinction was carried forward in *K.R. Lakshmanan v State of Tamil Nadu*,⁸ where the Court held that horse racing was a game of skill and thus a legitimate, constitutionally protected business activity.

As real-money online gaming expanded, several High Courts extended this reasoning to digital platforms. In *Junglee Games India Pvt Ltd v State of Tamil Nadu*,⁹ the Madras High Court struck down the provisions of the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021 that banned wagering on all online games, holding that the State could not disregard the settled distinction between games of skill and games of chance, and that a blanket prohibition on skill-based online rummy and poker was an unreasonable restriction on Article 19(1)(g). In *All India Gaming Federation v State of Karnataka*,¹⁰ the Karnataka High Court similarly struck down provisions of the Karnataka Police (Amendment) Act 2021 that criminalised playing

⁷ *State of Bombay v R.M.D. Chamarbaugwala*, AIR 1957 SC 699.

⁸ *K.R. Lakshmanan v State of Tamil Nadu*, (1996) 2 SCC 226.

⁹ *Junglee Games India Pvt Ltd v State of Tamil Nadu*, 2021 SCC OnLine Mad 2762 (Madras High Court, 3 August 2021).

¹⁰ *All India Gaming Federation v State of Karnataka*, Writ Petition (Civil) No. 18703 of 2021 (Karnataka High Court, 14 February 2022).

games of skill for stakes, holding those provisions ultra vires the Constitution and violative of Articles 14 and 19(1)(g).

It is worth noting that the addiction and financial-harm concerns driving this litigation attach specifically to real-money formats, that is, games in which players stake and can lose money, rather than to online gaming generally. Free-to-play mobile games, subscription-based platforms, and non-monetised e-sports do not raise the same betting-and-gambling classification issue and have not been the target of either the State legislation or the constitutional challenges discussed here.

This skill-protective line of authority no longer represents the law. On 27 May 2026, a two-judge Bench of the Supreme Court, in *State of Tamil Nadu v Junglee Games India Pvt Ltd*,¹¹ allowed the appeals of the States of Tamil Nadu and Karnataka and set aside both the Madras High Court's judgment in *Junglee Games* and the Karnataka High Court's judgment in *All India Gaming Federation*. The Court held that the expression 'betting and gambling' in Entry 34 of List II cannot be narrowed to mean 'betting on games of chance'; that the moment money is staked on the uncertain outcome of any game, the activity becomes betting and gambling irrespective of whether the underlying game is one of skill or chance; that such activity is res extra commercium and therefore attracts no protection under Article 19(1)(g); and that State Legislatures are fully competent, under Entry 34 and, independently, under Entry 1 (public order) of List II, to regulate, restrict, or wholly prohibit online money gaming, including rummy, poker, and fantasy sports.

The practical effect is that the skill-chance distinction, while it remains doctrinally intact for activities where no money is staked, no longer confers constitutional immunity on real-money gaming merely because the underlying game rewards skill. The constitutional question has shifted from whether a game is one of skill to whether the State (or, as discussed below, Parliament) has validly exercised its regulatory competence and satisfied the proportionality standard in doing so.

¹¹ *State of Tamil Nadu v Junglee Games India Pvt Ltd*, 2026 INSC 594. See also Business Standard, 'Supreme Court upholds state power to curb online betting platforms' (27 May 2026).

THE REGULATORY FRAMEWORK: FROM FRAGMENTED STATE LAWS TO THE PROGA 2025

In the years preceding the Supreme Court's 2026 ruling, the absence of a uniform central law meant that regulation of online gaming varied widely from State to State. Tamil Nadu, Karnataka, Andhra Pradesh, and Telangana each enacted, and in most cases saw partly or wholly struck down, legislation banning or restricting online games played for stakes, creating considerable legal uncertainty for platforms operating on a pan-India basis.

Parliament has since occupied the field at the central level. The Promotion and Regulation of Online Gaming Act 2025 received Presidential assent on 22 August 2025, and its Rules were notified on 22 April 2026.¹² The Act is India's first comprehensive central legislation on the subject. It imposes a blanket prohibition on offering, operating, or facilitating 'online money games', expressly regardless of whether the game in question is predominantly one of skill or chance, and bans related advertising and the processing of related financial transactions by banks and payment intermediaries. At the same time, it recognises and promotes e-sports and non-monetised online social games as distinct, permitted categories, and establishes an Online Gaming Authority for licensing, classification, and oversight of the sector.

The Act is itself the subject of a pending constitutional challenge. Petitions filed before the Karnataka, Madhya Pradesh, and Delhi High Courts were transferred to the Supreme Court at the Union's request, and the matter has since been placed before a three-judge Bench in view of the questions of legislative competence involved.¹³ The petitioners argue that a nationwide prohibition of this kind trenches on the States' exclusive power over 'betting and gambling' under Entry 34 of List II, that it unreasonably restricts the right to trade under Article 19(1)(g) even for real-money games that are genuinely skill-based, and that it infringes personal autonomy and livelihood under Article 21. The Union defends the Act as a valid exercise of its power to legislate on matters of public order, financial stability, and cross-border digital services that fall outside the States' territorial competence, and as necessary to prevent circumvention through offshore platforms.

¹² Promotion and Regulation of Online Gaming Act 2025 (India); Ministry of Electronics and Information Technology, Promotion and Regulation of Online Gaming Rules 2025 (notified 22 April 2026).

¹³ Supreme Court Observer, 'Challenge to the Promotion and Regulation of Online Gaming Act, 2025' (case tracker, updated July 2026).

It is important not to overstate what the Supreme Court's 2026 ruling in *Junglee Games* actually decided. That judgment upheld the specific Tamil Nadu and Karnataka State enactments before it as valid exercises of State legislative power over betting and gambling; it did not hold that every conceivable State measure regulating online gaming is, for that reason alone, constitutional. Each State law must still be shown to fall within Entry 34 or Entry 1 of List II and to satisfy the applicable constitutional standards on its own facts. Separately, and distinctly, whether Parliament itself possesses the competence to impose a uniform, nationwide prohibition through the PROGA, displacing the States' field altogether, raises its own federalism questions that the Supreme Court is yet to resolve. The skill-chance debate and the Centre-State competence debate are therefore related but analytically distinct, and the pending PROGA litigation will settle the latter.

BALANCING PUBLIC INTEREST WITH ECONOMIC LIBERTY

Regulation of online gaming remains, at its core, a balancing exercise between the State's duty to protect public welfare and the constitutional right to economic freedom. The case for regulation is supported by more than anecdote: a CSRBOX study surveying over 5,700 respondents across seventeen States found widespread debt, psychological distress, and social disruption linked to real-money gaming, and Parliament was informed that gaming-related fraud and losses run into thousands of crores annually.¹⁴ Industry representatives and some commentators have, in turn, criticised both the State laws and the PROGA as disproportionate, arguing that a blanket ban risks pushing users toward unregulated offshore platforms that offer no consumer protection at all, and that it forecloses legitimate, skill-based business activity along with harmful gambling.

A more calibrated regulatory framework, whether built around the PROGA or, if it is struck down or narrowed, around State legislation operating within Entry 34, would combine firm limits on staking with targeted safeguards for whatever gaming activity remains permitted: robust know-your-customer verification, spending and loss limits, self-exclusion mechanisms, effective grievance redress, and mandatory disclosure of the odds and mechanics underlying a game. Algorithmic transparency and data protection are integral to this approach, since gaming platforms collect extensive behavioural and financial data on users; obligations of purpose

¹⁴ CSRBOX, 'The Digital Gamble: How Online Real Money Games are Costing India Its Future' (2025); Ministry of Electronics and Information Technology, Statement of Union Minister Ashwini Vaishnaw, Lok Sabha (20 August 2025).

limitation, data minimisation, and informed consent under the Digital Personal Data Protection Act 2023 already supply a domestic legal basis on which such safeguards can be built and enforced.

CONCLUSION

The constitutional debate on online gaming in India has moved decisively since it was first framed as a contest between the skill-chance distinction and State power under Article 19(6). The Supreme Court's ruling in *Junglee Games* has settled that once money is staked on an uncertain outcome, the activity is betting and gambling for constitutional purposes regardless of the skill involved, and that States possess plenary power under Entry 34 and Entry 1 of List II to prohibit it. Parliament has, through the Promotion and Regulation of Online Gaming Act 2025, since occupied the field at the national level, banning online money games while carving out e-sports and non-monetised social gaming for promotion. The live constitutional question is accordingly no longer skill versus chance, but whether Parliament's nationwide prohibition is a proportionate and competent exercise of legislative power, a question now pending before the Supreme Court. Whatever the outcome, a coherent regulatory framework, central or State, should continue to distinguish real-money wagering from skill-building and non-monetised gaming, rest on evidence rather than anecdote, and incorporate the consumer and data-protection safeguards needed to reconcile India's digital economic growth with the public welfare concerns that have driven this decade of litigation.