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INDIA'S PROMOTION AND REGULATION OF ONLINE GAMING ACT, 2025: A LEGAL OVERVIEW

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INTRODUCTION TO THE PROMOTION AND REGULATION OF ONLINE GAMING ACT, 2025

The Promotion and Regulation of Online Gaming Bill, 2025 (“Bill”) was introduced in the Lok Sabha on 20.08.2025 and was passed the same day. Subsequently, the Bill was also passed by the Rajya Sabhaⁱ and eventually it received the Presidential Assent on 22.08.2025. On the same day, the Promotion and Regulation of Online Gaming Act, 2025 (“Act”) was also published by the government in the official Gazetteⁱⁱ. As per the Statement of Object and Reasons attached to the Bill, the Act mainly aims to categorise the segments of the online gaming sector into 3 categories i.e. the e-sports, online social games and online money games, and further aims to “*establish a structured mechanism for policy formulation, stakeholder engagement and facilitation of development of the sector in a transparent and coherent manner*”. However, when dealing with online money games, the Act has implemented a complete prohibition and criminalization of the online money games while stating in the Statement of Object and Reasons that “*it is prudent and practical in the interest of general public to completely prohibit the activity of online money gaming, rather than attempts to regulation*”.

It is to be noted that while the Act is already on the verge of being implemented and coming into effect, in parallel, under the new GST regime announced by the government on 03.09.2025, there is GST attributed to online money gaming at 40%^{iiiiv}. It is to be seen if attributing GST to online money games has a retrospective effect and if it would be used by the government of India to collect taxes on the transactions that were conducted prior to the Act coming into effect.

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KEY ASPECTS OF THE ACT

JURISDICTION OF THE ACT

The Act applies to the whole of India and also applies to online money gaming services offered within the territory of India or operated from outside the territory of India [Section 1(2)]. This gives the Act extra-territorial application and so the operators who have their servers and infrastructure outside the territory of India but their online money gaming services are accessible in India will also be covered under the Act.

SEGREGATION OF ONLINE GAMES

As per Section 2(1)(f) of the Act, an online game means “*any game, which is played on an electronic or a digital device and is managed and operated as a software through the internet or any other kind of technology facilitating electronic communication*”. As stated in the preceding para, online games are further segregated into 3 categories as follows:-

E-sports [Section 2(1)(c)] mean online games that are played as part of multi-sports events and involve organised competitive events between individuals or teams, conducted in multiplayer formats and governed by predefined rules. The outcome of these games should be determined solely by factors such as physical dexterity, mental agility, strategic thinking or other similar skills of the players. These games may also include payment of registration or participation fees solely for the purpose of entering the competition or covering administrative costs and may include performance-based prize money for the player. However, placing bets, wagers or any other stakes by any person, whether or not such person is a participant, including any winning out of such bets, wagers or any other stakes, is not allowed. Additionally, e-sports have to be duly recognised and registered with the authority or agency under section 3 of the National Sports Governance Act, 2025.

Online Money Games [Section 2(1)(g)] are defined as “*online game, irrespective of whether such game is based on skill, chance, or both, played by a user by paying fees, depositing money or other stakes in expectation of winning which entails monetary and other enrichment in return of money or other stakes; but shall not include any e-sports*”.

Online Social Games [Section 2(1)(i)] mean online games that are not e-sports or online money games. These are defined as not involving staking of money or other stakes or participation with the expectation of winning by way of monetary gain in return of money or other stakes, and are offered solely for entertainment, recreation or skill-development purposes. These games may allow access through payment of a subscription fee or one-time access fee, provided that such payment is not in the nature of a stake or wager.

PROHIBITION OF ONLINE MONEY GAMES

From the get-go, the Act has been seen as a blatant attempt to primarily target the online money gaming industry and outrightly prohibit them. However, it is to be noted that not all forms of games involving real money, or games played for monetary benefit, have been prohibited under the Act. Under the definition of e-sport, the Act does carve out an exception where e-sport “*may include payment of registration or participation fees solely for the purpose of entering the competition or covering administrative costs and may include performance-based prize money by the player*”. However, the aspect of placing bets and wagers has been explicitly excluded from the ambit of e-sport as well.

As for the specific prohibitions, the Act has laid out the following prohibitions:-

Offering (Section 5): General prohibition on offering, aiding, abetting, inducing or indulging/engaging in any form of offering of online money game and/or online money gaming service.

Advertising (Section 6): General prohibition on making or commissioning advertisements, aiding, abetting, inducing, or being involved in the making or commissioning any advertisement, in any media (including electronic), which directly or indirectly promotes or induces any person to play any online money game or indulge in any activity promoting online money gaming. This by interpretation would also include surrogate advertisement and also prohibits brand ambassadors from promoting online money games.

Transacting (Section 7): General prohibition on banks, financial institutions, and any person facilitating financial transactions or authorising funds from engaging directly or indirectly (including aiding and abetting) in payment for any online money gaming service, including facilitating any such transaction or authorising funds thereof.

PUNISHMENTS UNDER THE ACT

General punishments under Chapter III of the Act include

Punishment for Offering Online Money Games [Section 9(1)]: Imprisonment up to three years and/or with fine of up to one crore rupees.

Punishment for Advertising and directly/indirectly promoting Online Money Games [Section 9(2)]: Imprisonment up to two years and/or with a fine up to fifty lakh rupees.

Punishment for facilitation of financial transactions or authorisation of funds towards payment for Online Money Games [Section 9(3)]: Imprisonment up to three years and/or with a fine up to one crore rupees.

The offences of offering online money games and facilitating financial transactions are cognizable and non-bailable (Section 10).

Further punishments are also envisaged in case of subsequent contraventions offering or advertising of online money games. The Act also imposes corporate liability where the officers in charge of or responsible to the company for the conduct of business that constitutes as an offence under the Act are also liable to be punished.

Further, under Section 15 of the Act, any information generated, transmitted, received or hosted in any computer resource in relation to online money gaming service shall be liable to be blocked for access by the public.

PUNISHMENTS UNDER OTHER STATUTES

In addition to the punishments prescribed under the Act, the provisions of Section 112 of the Bharatiya Nyaya Sanhita, 2023 will also be applicable, which prescribes the punishment of one year, up to seven years for unauthorized betting and gambling.

In combination with the above statutes, the Act thereby appears to create a blanket prohibition on online money games and any ancillary activities where the service providers at any level would be liable to face penal actions.

AUTHORITY ON ONLINE GAMING

For the purpose of categorising and registering different forms of online games, the Act envisages constituting an Authority under Section 8, that would be tasked with determining whether a particular online game is an online money game or otherwise and accordingly recognize, categorise, and register online games into e-sports or online social games (Sections 3, 4). The Authority may also be tasked with responding to complaints relating to online games that are prejudicial to the interests of users.

The Authority envisaged under the Act may be akin to or affiliated with various National Sports Governing Bodies listed under Section 3 of the National Sports Governance Act, 2025. In fact, the Act has incorporated the role of the authority under Section 3 of the National Sports Governance Act, 2025 to recognise e-sports. Thus, it appears that regulation of e-sports would be undertaken under both the Act and the National Sports Governance Act, 2025, and the respective authorities thereof. However, since the Authority under the Act is yet to be appointed, it's possible that the same authority is constituted under both the Act herein and the National Sports Governance Act, 2025.

PROMOTION OF E-SPORTS & ONLINE SOCIAL GAMES.

In contrast to the online money games, the Act seeks to promote and regulate e-sports and online social games. The Act aims to create guidelines and standards for organisation and conduct of e-sports events, support the advancement and development of e-sports and online social games and spread awareness thereof, including establishing training academies for e-sports and creating platforms or programmes to support the development and distribution of online social games. As an idea and concept, the Act appears to paint a very rosy picture of how it aims to support the growth of the online gaming industry.

However, the Act has also been criticised on being vague and unclear about how it aims to promote or support e-sports or online social games. By giving the Authority the power to register and regulate the online games, the Act is primarily creating a licensing scheme where any entity offering an online game would have to prove the nature of their online game and get it registered thereof before it can be available for the customers.

At this stage, it is also anticipated that the creation of the Authority would have a retrospective effect, i.e. to say whether the online games currently available in the market, especially the ones that could fall under the category of e-sports or online social games, would be subject to availing a license before continuing their operations. However, until the rules for the Act are framed by the Central Government, nothing can be said for certain.

MICRO-TRANSACTIONS IN F2P GAMES

By definition, Free-to-Play (F2P) games are video games that are offered to the customers free of cost i.e. without paying any initial access fee. The model of F2P games is that the games are freely accessed by the masses and the developers/producers of the F2P games aim to monetise the players by offering them small and optional in-game purchases of virtual items for use in the game. These purchases are made with real money currency and are referred to as micro-transactions.

The Act does not explicitly deal with the concept of micro-transactions in online games as of now. Since the micro-transactions are essentially in exchange for virtual items to be used within the online game, which cannot thereafter be converted back into real money currency, they should not be considered as a stake or wager, and should also not be covered under the definition of “other stakes” under Section 2(1)(j) of the Act. However, since the Act is still in its nascent stage, nothing can be certainly determined at this stage.

CRITICISMS AND CHALLENGES TO THE ACT

Ever since the Bill received Presidential Assent, the online money gaming industry in India has been in shambles. As of date, there have been multiple challenges to the Act filed in various High Courts.

On 08.09.2025, the Hon'ble Supreme Court of India transferred to itself all the petitions filed before the Hon'ble Delhi, Karnataka and Madhya Pradesh High Courts and any other such petitions pending before any of the High Courts.^{viviviii} It is to be noted that none of the High Courts had made any interim orders either in favour or against the Act.

Following the grant of the transfer, the Apex Court is now going to decide on the constitutional validity of the Act and it clarified that the High Courts will not entertain any petition related to this. The transfer petition was filed by the Union government with the reasoning that various matters before different High Courts should be clubbed and transferred to the Apex Court, rather than being heard individually, in order to avoid confusion and contradictory decisions.

GROUND OF CHALLENGE TO THE ACT

ONLINE MONEY GAMES AS GAMES OF SKILL NOT CHANCE

The Act has been challenged in the courts primarily on the grounds of manifest arbitrariness and vagueness. The petitioners in the aforementioned cases have specifically challenged the validity of Sections 2(1)(g), 5, 6, 7 and 9 of the Act. The arguments advanced by the petitioners are that the Act bans even online games of skill and treats the violations of the provisions of the Act as cognizable and non-bailable criminal offences. The Act is argued to be contrary to the settled principle of law laid down by the Hon'ble Supreme Court and multiple High Courts that games of skill, regardless of such games involving the risking of money or otherwise, are a legitimate business activity protected under Article 19(1)(g) of the Constitution of India. With the enactment of the Act, it appears that the clear, unambiguous and judicial distinction that was created between games of skill and games of chance has been set aside and disregarded.

As per the decision of the Apex Court in *Janapada Sabha, Chhindwara Etc v. The Central Provinces Syndicate Ltd.*, AIR 1971 SC 57, the legislature cannot set aside a judgment or the interpretation of law made by a court. As per the decision laid down in 1957 by the Apex Court in *R. M. D. Chamarbaugwalla v. The Union of India*, AIR 1957 SC 628, there is a clear distinction between game of chance and game of skill, which are akin to commercial contracts and wagering contracts. Further, in *Dr. K.R. Lakshmanan v. State Of Tamil Nadu And Anr.*, 1996 (2) SCC 226, the Apex Court upheld *Chamarbaugwalla* (supra) and

further observed- *“It has further been authoritatively held that the competitions which involve substantial skill are not gambling activities. Such competitions are business activities, the protection of which is guaranteed by Article 19(1)(g) of the Constitution.”* Following the decisions of the Apex Court, the High Courts have also followed suit and have categorically ruled that games of skill are legitimate businesses and are therefore protected under Article 19(1)(g) of the Constitution^{ixxxxixixixiv}. The Act disregards the constitutional validity of games of skill, including games involving real money, that have been protected by the Indian Courts under Article 19(1)(g) of the Constitution. A blanket prohibition proposed by the Act on online games of skill, including real money, is therefore unconstitutional.

LACK OF LEGISLATIVE COMPETENCE

Another ground of challenging the Act is that the Act lacks legislative competence since the Act is concerned with matters of ‘Betting and Gambling’ which is under the exclusive legislative domain of the State Legislatures as per Entry 34, List II, 7th Schedule of the Constitution. As stated in the preceding paras, the Act in its Statement of Object and Reasons mentions that ‘online money games’ pose social, financial, and regulatory risks to the interest of the general public and further justifies that *“in the interest of consumer protection, public health, public order, and national security, it is expedient in the public interest for the Union Government to assume control over this emerging industry.”* It may also be argued that the Act is also aiming to promote e-sports and online social games. However, upon applying the doctrine of Pith and Substance, it is clear that the Act at its core is a prohibiting legislation which aims to completely prohibit any online games that involve betting and wagering. When the Act is read as a whole, the true scheme, scope and ambit of the Act clearly lie within Entry 34 of the State List: ‘Betting and Gambling’.

The issue of whether public interest alone can cure fundamental defects relating legislative competence is no longer *res integra*.

THE WAY FORWARD

As stated herein above, the Act is being implemented and will come into full force soon, unless it is stayed by the Hon’ble Supreme Court. The Solicitor General of India in the hearing challenging the Act before the Hon’ble High Court of Delhi on 02.09.2025, had stated that the Act is going to be notified soon and the government also intends to appoint the Authority under Section 8 and also frame Rules under the Act.^{xv}

ADVERTISING ONLINE MONEY GAMES

As stated in the preceding paras, the act of advertising online money games directly or indirectly has been outrightly prohibited and contravention of the prohibition is punishable with imprisonment up to 2 years and/or fine up to Rs. 50 lakhs for the first instance. Each subsequent offence is further punishable with 2-3 years of imprisonment and/or a fine of Rs. 50 lakhs to 1 crore. This includes surrogate advertising and brand endorsements. Companies, media houses, OTTs and other intermediary platforms are therefore advised to cease advertising online money games on their platforms for the time being, including in the form of surrogate advertisements.

In case of influencers and/or celebrities who have been the brand ambassadors or have promoted or endorsed online money games in the past, it would be advisable for them to cease such endorsements for the time being.

DISCOURAGING PLAYERS THROUGH TAXATION

Since the government has revised the GST rate for online money games as 40% and has included it in the bracket of 'sin goods/services', it would not be out of place to anticipate that the government might amend the provisions of the Act and carve an exception for online money games based on skill (or considerable skill) by amending Sections 2(1)(g), 5, 6 & 7. Looking at the Statement of Object and Reasons along with the Act, it is clear that the government is set on regulating and curbing the online money gaming industry and intends to protect the public at large, especially the youth. It appears that the government is trying to create an environment of volatile prohibition, along with unfavourable returns and taxation, in order to discourage public participation in online money games. A similar tactic was used when the government was initially dealing with cryptocurrency in India. However, by taxing and regulating online money games, the government is also bound to benefit from the GST revenues collected therefrom.

By enacting 40% GST on online money games, the government has already indirectly manifested discouraging odds for an individual planning to venture into online money games. Considering that the odds of a person winning in an online money game (regardless of skill or chance) is already approximately $1/10^{\text{th}}$, if not even less. Further, even if the individual wins, 40% of the amount is going to be taken by the government as GST. Hence, if a person wins 10 lakhs, they would have to give 4

lakhs as GST. Thereafter, even on the remaining 60% of the winnings, they would still have to pay income tax as per their slab rate. Assuming the income tax slab rate of the winner is 30%, out of the 6 lakhs they get, they would have to again pay 1.8 lakhs as tax to the government. Hence, the winner effectively only gets to retain 4.2 lakhs of the earnings, which is 42% of the original winning amount. Any sensible player who factors in probability while playing online money games can clearly see that even if they win, the 42% retention of their winnings is still not a favourable outcome. Therefore, players would automatically be discouraged from participating in online money games.

ANTICIPATING THE FUTURE OF ONLINE MONEY GAMES.

As for the validity of the Act, the matter is being taken up by the Hon'ble Supreme Court and will soon be adjudicated upon. Considering the rulings of the Apex Court in *Chamarbaugwalla* (supra) and *Lakshmanan* (supra), the Apex Court is likely to rule against prohibiting online money games based on skill. It is to be seen, however, if the Courts outrightly hold the Act to be unconstitutional or employ the doctrine of severability and recommend amendments to the Act.

Considering that an entire industry with a valuation of over Rs. 2 lakh crores, with Rs. 31,000 crores in annual revenue and Rs. 20,000 crores in direct and indirect taxes^{xvi}, could be wiped off, the Hon'ble Supreme Court is bound to take these numbers into consideration while adjudicating the matter.

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