



Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2023 – ISSN 2582-7820
Editor-in-Chief – Prof. (Dr.) Rishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium provided the original work is properly cited.

Regulation of E-Sports in India: Can online Gaming be brought under the purview of Cyber Laws in India?

Karthik Vijayanand^a

^aCHRIST University, Bangalore, India

Received 18 January 2023; *Accepted* 03 February 2023; *Published* 06 February 2023

Online gaming has always been a trend around the corner, but it could never become a popular platform in India. Moreover, competitive online gaming or e-sports has been trying to make a mark in the Indian gaming industry. The nation has seen a transition in the gaming fashion from basic low-pixel games to PlayStation. Games may be of two types namely, a game of skill and a game of chance which are often debated in the parlance. There have been notable judicial decisions concerning the game of skill and the game of chance. E-sports in India has been constantly growing and has received multiple recognitions as well. There have been several laws relating to gambling which have been territorial in India i.e. each state has had its gambling laws. But the recent regulation of e-sports in India brings forward a central regime to control competitive online gaming in India. Alongside the regulation, it also brings with it various complications such as tax implications, etc. Further, this paper also aims at establishing a relationship between online gaming and cyber laws in India. It tries to discover a scope for the development of provisions in the IT Act, of 2000 concerning e-sports for imposing a penalty on gaming companies if they do not handle game users' data appropriately and, penalize gamers who use back tools, bugs, etc. This paper is written majorly based on doctrinal research.

Keywords: *online gaming, it act, tax implications, central regime, gaming industry.*

INTRODUCTION: WHAT IS E-SPORTS?

E-sports, in full simply means electronic sports which are video games played by gamers or e-sport athletes at a competitive level. It involves the use of skill and ability which may be physical and mental in a virtual environment. E-sports can be contested through electronic devices such as PC, mobile, consoles, etc. E-sports includes video games that are on augmented and virtual reality platforms. Some of the games played in e-sports include Battle Royale games such as Call of Duty (COD), PUBG, etc. The matches of these games are streamed live during events on different viewing platforms with commentary as in other field sports. But it must be noted that e-sports does not include betting, gambling, poker, etc.

RECOGNITION OF E-SPORTS

E-sports is considered to be a sport and has received sporting recognition from the International Olympic Committee (IOC) which along with the Commonwealth Games and the Olympic Council of Asia (OCA), is the supreme body for sports.¹ E-sports has been a medal sport around the globe for quite some time now and India has participated in such events and won it as well in the recent past. Countries such as Korea, Finland, Italy, Brazil, and many more have recognized e-sports as a regular sport.² With the internationalization of e-sports, it is sure that this field will soon be at a boom in the market. A studious person is off late termed a nerd, whereas an e-sport player is called an athlete as it comes under the ambit of sports. In the US, e-sports is recognized as an official sport, and the US government grants visas to professional e-sports players to encourage them. Further, universities in the US also assist by providing athletic scholarships to e-sports players.³ E-sports is pushing towards becoming a profession soon with the growing number of players in the field.

¹ 'Esports' (*Esports Federation of India*) <<https://esportsfederation.in/>> accessed 17 January 2023

² *Ibid*

³ *Ibid*

GAMING IN INDIA

Gaming in India has been a growing market in the recent past. The gaming industry in India currently stands at 1.8 billion dollars (\$1.8 bn) with about 303 million mobile gamers in India.⁴ The CAGR of the industry between 2017-2020 has come out to be 38%.⁵ In terms of downloading gaming applications, India is the largest market for mobile gaming. The revenues from the gaming industry have seen an astonishing rise in recent times. India has around 6,00,000 e-sports players and 1,00,000 e-sports teams.⁶ The gaming industry is sure and soon to expect exponential expansion.

The origin of the Indian gaming market dates back to when Tekken, an arcade coin-based game was played in gaming parlours to the evolution to handheld console games such as Nintendo followed by PlayStation and Xbox. About 60% of the nation's gamers are under the age of 25. The number of gamers in India has seen a substantive increase growing from 250 million to 400 million. The Covid-19 pandemic saw a spike in the number of game users. The pandemic saw people taking gaming as a form of escapism and entertainment. Gaming in India long has been seen through a negative vision, as harmful to children and that children must only focus on academics. But in today's modern world, this is no more the truth. The trends have changed and so has the perception. India has produced three gaming unicorns so far, namely Game 24x7, Dream11, and Mobile Premier League. India currently has the largest fantasy sports market with a whopping 130 million user base. The major investors in the Indian gaming industry include EA Sports, MPL, Ludo King, and Dream 11. Gaming is now seen as a possible career in India and may soon gain the title of a profession adding to its dignity. Some of the recent government initiatives include:

- A National Animation, Visual Effects, Gaming and Comic (AVGC) Centre of Excellence in collaboration with IIT Bombay was set up in April 2022;

⁴ 'Invest India' (National Investment Promotion and Facilitation Agency)
<[https://www.investindia.gov.in/sector/media/gaming#:~:text=The%20gaming%20industry%20is%20at,INR%20380%20bn%20by%202026.&text=India's%20percentage%20of%20new%20paying,\)%20reaching%2050%25%20in%202021](https://www.investindia.gov.in/sector/media/gaming#:~:text=The%20gaming%20industry%20is%20at,INR%20380%20bn%20by%202026.&text=India's%20percentage%20of%20new%20paying,)%20reaching%2050%25%20in%202021)> accessed 17 January 2023

⁵ *Ibid*

⁶ Invest India (n 4)

- Karnataka and Telangana have adopted AVGC policies at the state level;
- An AVGC Task Force was established by the government to maximize the sector's potential.

To give recognition to the Indian e-sports market, the Electronic Sports Federation of India, a non-profit organization was established with Section 7(2) of the Companies Act, 2013 and Rule 8 of the Companies (Incorporation) Rules, 2014 with a license under Section 8(1) of the Companies Act, 2013.⁷ The objectives of this organization are to promote, encourage, organize, educate, train, and control e-sports in India.⁸ It also aims at creating an eco-system where athletes can practice their respective sports. Further, it tries to represent, engage and regulate e-sports in India. India has been a part of various international e-sports events and has been placed as the winner in many of them. The e-sports athletes are truly making the nation proud in their way by using their skills and talent.

RECENT DEVELOPMENTS IN INDIA REGARDING THE GAMING INDUSTRY

February'21 - The Tamil Nadu government prohibited games of skills if they were played for wagers or betting.⁹

August'21 - The Tamil Nadu Gaming and Police Laws (Amendment) Act of 2021, which forbids playing online betting games like rummy and poker with stakes, was overturned by the Madras High Court.¹⁰ There have been similar developments in Kerala, Karnataka, Rajasthan, and Meghalaya as in Tamil Nadu.¹¹

December'22 - The Inter-ministerial task force came up with an online gaming framework.

⁷ Companies Act 2013

⁸ Esports (n 1)

⁹ 'TN Ordinance treat games of skill as gambling and games of chance' (*Media News 4u*)

<<https://www.medianews4u.com/tn-ordinance-treat-games-of-skill-as-gambling-and-games-of-chance-aigf/>> accessed 19 January 2023

¹⁰ 'Madras HC Tamil Nadu gaming act online gaming rummy poker' (*India Today*)

<<https://www.indiatoday.in/law/story/madras-hc-tamil-nadu-gaming-act-online-gaming-rummy-poker-1836430-2021-08-03>> accessed 19 January 2023

¹¹ *Ibid*

January'23 – MEITY released the drafting rules for online gaming.¹²

THE AVGC SECTOR

India has an impressive pool of people with skills in visual effects, gaming, and more. India also receives a substantial amount of investment from around the world, including from major corporations like Facebook, which heavily supports the Indian gaming industry.¹³ The Animation, Visual Effects, Gaming, and Comics (AVGC) industry is mostly made up of young, progressive people who easily adapt to evolving technological trends.¹⁴

In addition to offering enormous investment prospects, the AVGC sector has the potential to employ thousands of Indians. The AVGC industry in India may develop and become more equipped to lead global transformation as a result of more recent market trends including discussions about the metaverse and the digitalization of education. Additionally, because of the pandemic's popularity of online learning, the AVGC sector can expand its skills online through a variety of e-learning platforms.

THE DEBATE BETWEEN THE GAME OF SKILL AND THE GAME OF CHANCE

Game of Skill: A game of skill is based on the expertise a player holds in a particular game.¹⁵ It is based on the capabilities of an individual. It also involves the formulation of strategies, planning, and executing a planned course of action. The expertise in such games which involve the use of the skill is by way of constant practice and dedication. Further, a game of skill can't be said to be completely free of a chance component. But the skill is what mainly determines the success rate of a player. Games of skill include Fantasy Sports, Teen Patti, Chess, etc.

¹² 'All about Modi govt's new draft rules for online gaming – KYC to skirting 'skill vs chance' debate' (*The Print*) <<https://theprint.in/india/all-about-modi-govts-new-draft-rules-for-online-gaming-kyc-to-skirting-skill-vs-chance-debate/1297809/>> accessed 17 January 2023

¹³ Invest India (n 4)

¹⁴ *Ibid*

¹⁵ 'What are the differences between a game of skill and a game of chance?' (*Business Standard*) <https://www.business-standard.com/article/current-affairs/what-are-the-differences-between-a-game-of-skill-and-a-game-of-chance-122111400346_1.html#:~:text=What%20is%20the%20controversy%3F,paying%2028%20per%20cent%20GST> accessed 17 January 2023

Game of Chance: A game of chance is based on the major component of luck in a game. Though there might be a use of skill, a higher chance of success is determined by luck.¹⁶ It is important to note that players in this situation do not influence the outcome. Games of chance include playing cards, rolling a die, etc. Gambling and betting are considered to be illegal in India with gambling laws in place prohibiting them as they are a game of chance.

JUDICIAL DECISIONS CLARIFY THE GAME OF SKILL AND THE GAME OF CHANCE

In the case of *State of AP v K. Satyanarayana* (1968)¹⁷, the court held the game of rummy to be a game of skill. But the court also provided in its judgment that if the gambling house is making a profit from the game of rummy, then it could amount to an offence under the laws of AP. The SC also observed that a game of three cards such as flush, brag, etc. is all purely based on chance.¹⁸

The SC relied upon the above judgment in its subsequent judgments as well such as in *M.J.Sivani v State of Karnataka* (1996)¹⁹ and *Dr. K.R. Lakshmanan v State of Tamil Nadu and Anr.* (2012).²⁰

The Delhi District Court in the case of *M/s Gaussian Network Private Limited v Monica Lakhanpal*²¹ under Order 36 Rule (1) of CPC held that:

- If stakes are included, a game of skill is not gambling;
- Online games cannot be compared to actual games because playing skill games for money is only permitted in its physical form;
- It's against the law to entice customers or players with prize money;
- Gaming websites that take a cut of the winnings are also against the law because they function as online casinos.

¹⁶ *Ibid*

¹⁷ *State of AP v K Satyanarayana* (1968) AIR 825

¹⁸ *Ibid*

¹⁹ *MJ Sivani v State of Karnataka* Appeal (Civil) 4564/1995

²⁰ *Dr KR Lakshmanan v State of Tamil Nadu* (1996) AIR 1153

²¹ *M/S Gaussian Network Pvt Ltd v Monica & Anr* [2012] Suit No 32/2012

In the case of *Dominance Games Pvt. Ltd. v State of Gujarat*²², it was held that poker is a game of chance and constitutes gambling under the Gujarat Prevention of Gambling Act, of 1887. As poker has its origin in the game of Teen Patti which is a pure game of chance, wagering or betting is an inseparable part of poker and would hence invite stake.

In the case of *Manoranjithan Manamyil Mandram v State of Tamil Nadu (2005)*²³, it was held that a factual determination must be made based on the specific facts and circumstances of each case as to whether a game is judged to be one of skill or chance.

The Rajasthan High Court dismissed a writ petition filed in the form of a Public Interest Litigation in the case of *Chandresh Sankhla v State of Rajasthan*²⁴ in October 2020. The court stated that the issue of whether to consider Dream 11, a fantasy sports game, as having any element of betting or gambling is no longer Res Integra in light of the judicial dictums and orders passed by the Bombay High Court, Punjab, and Haryana High Court. To address the banning of the online game Dream11, a Special Leave Petition was submitted. However, it was disallowed, and the Rajasthan High Court's decision was maintained.²⁵

We can therefore claim that based on the aforementioned instances, the Courts have carefully assessed the level of skill required to play a particular game for it to not constitute gambling as defined by Indian gambling laws.

REGULATION OF E-SPORTS IN INDIA

Gaming has been operating in a vacuum for quite some time. E-sports in India for a long has awaited formal regulation from the government. On 23rd December 2022, the Indian government gave official recognition to e-sports as a multi-sport event.²⁶The central government

²² *Dominance Games Private Limited. v State of Gujarat* Special Civil Application No 6903/2017

²³ *Manoranjithan Manamyil Mandram v State of Tamil Nadu* AIR (2005) Mad 261

²⁴ *Chandresh Sankhla v State of Rajasthan* Civil Writ Petition No 6653/2019

²⁵ *Ibid*

²⁶ 'Indian esports industry welcomes government recognition of esports' (*Esports Insider*, 3 January 2023)

<<https://esportsinsider.com/2023/01/india-esports-industry-government#:~:text=The%20country%20of%20India%20officially,category%20of%20multisports%20events>> accessed 17 January 2023

notified this new status of e-sports to the Allocation of Business Rules of 1961 and subsequently appointed the Ministry of Youth Affairs and Sports (MYAS) as the central ministry for e-sports in India.²⁷ The regulation is also observed to coincide with the gaming industry's request for centrally controlled and uniform regulations. Additionally, the Ministry of Electronic and Information Technology (MEITY) has included a section on 'matters relating to online gaming'.²⁸ This creates a distinction between e-sports and online gaming, indicating that they have different meanings which may include fantasy and casinos.

On 2nd January 2023, MEITY released the draft rules for online gaming in India.²⁹ The rules mandate the requirement of additional security measures and KYC processes from gaming intermediaries, but there are still jurisdictional challenges and definitional uncertainty that need to be resolved.³⁰ The IT ministry had suggested a self-regulatory organization for the online gaming industry in the proposed guidelines that were published.³¹ The organization will be in charge of certifying games and making sure that online games available in India abide by laws and regulations.

TAX IMPLICATION FOR E-SPORT ATHLETES

With the regulation of e-sports, players would be able to participate in tournaments and win prizes, and be rewarded monetarily as well. Therefore, as e-sports is regulated and is a game of skill, there can be certain low tax rates imposed on athletes who earn from gaming. This would also initiate the making of a professional ecosystem for gaming.

CAN E-SPORTS BECOME A PART OF CYBER LAWS IN INDIA?

The cyber laws in India are enshrined in the Information Technology Act (IT Act), 2000. The main aim of this act is to regulate electronic, digital, lawful, and trustworthy cyberspace. It

²⁷ Gargi Sarkar, 'Game On: IT Ministry To Oversee Online Gaming, Esports Gets Official Recognition' (*INC 42*, 27 December 2022) <<https://inc42.com/buzz/it-ministry-appointed-as-nodal-ministry-for-online-gaming-in-india/>> accessed 17 January 2023

²⁸ *Ibid*

²⁹ Invest India (n 4)

³⁰ All about Modi (n 12)

³¹ *Ibid*

provides punishments for cybercrimes such as hacking, phishing, etc. So how can cyber laws be related to e-sports? E-sports or electronic sports are played on an online platform competing against players in a multiplayer match. Every online game involves the use of AI and is a part of the metaverse. As the games are played online with the help of AI and are a part of the metaverse, they automatically become a part of cyberspace. Consequently, anything which is a part of cyberspace will come within the purview of the cyber laws in India. Hence, it can be implied that e-sports can also be brought within the ambit of the IT Act, of 2000 with the development of cyber laws.

The development in the laws can provide for punishments for e-sports athletes using hack tools to win games or cheating with the use of bugs etc. The recent regulation of e-sports in India is the first step towards creating a formal and professional ecosystem in the gaming industry with set standards and rules. The gamers may also expect penalties and punishments to be imposed on them soon for violations of the rules set by the designated authorities. It can also be noticed that there do exist certain gambling laws in India, but they are separate legislation at the moment. As online gambling and betting are also a part of cyberspace, they can be brought within the bracket of the IT Act, 2000 instead of having multiple legislations regarding the same matter.

The MEITY has recently released the new draft rules for online gaming in India. The MEITY's proposed regulations for online gaming in India have brought up some long-standing concerns the industry has been grappling with, including the distinction between 'games of skill' and 'games of chance' and whether the Union government or the states should oversee the sector. The Draft Amendments to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021 present a ban on betting or wagering in online games.³² Though online games involving betting or wagering can be banned, there could be certain loops to accessing such games and anyone who uses such applications will have to be penalized. Therefore, as it is an illegal activity done on an online platform, it needs to be dragged into the cyber laws of the country. Hence, a provision regarding the same must be developed in the IT Act, of 2000.

³² *Ibid*

According to the draft rules, 'an online game is offered on the internet and is accessible by a user through a computer resource if he deposits with the expectation of earning winnings'.³³ An 'online gaming intermediary' means an intermediary that offers one or more than one online game (on the internet).³⁴

Additionally, with the regulation of e-sports in India, online gaming will become even more dynamic in the nation. This would require additional care on the part of the gaming companies in maintaining their gaming servers, especially those servers which are present in other countries. Further, the data of the game users of the country needs to be protected and any lapse in taking appropriate care of the data of Indian gamers must have a retrospective effect on such gaming companies. Hence, data protection also becomes important here which can again be developed under the IT Act, of 2000. There needs to be a penalty that needs to be imposed on the gaming companies for their negligence in handling data and hence providing for the same needs to be created in the IT Act, of 2000.

LEGISLATIONS THAT HAVE EXISTED IN THIS REGARD BEFORE THE REGULATION OF E-SPORTS

So far, India has been limited to two legislations regarding gaming. These are the Public Gambling Act, of 1867 (Gambling Act)³⁵, and the Prize Competitions Act, of 1955³⁶. It can be interpreted from Section 12 of the Gambling Act that its provision is confined to only games of chance. But as the act provides only for games of chance, e-sports gets exempted as it is a game of skill.³⁷

Sikkim was the first state which took a step towards regulating e-sports in India through the Sikkim Online Gaming (Regulation) Act, 2008 (Sikkim Act)³⁸. The act aimed at regulating

³³ *Ibid*

³⁴ *Ibid*

³⁵ Public Gambling Act 1867

³⁶ Prize Competitions Act 1955

³⁷ 'Regulation of Esports in India' (SCC Online Blog, 17 August 2022)

<<https://www.scconline.com/blog/post/2022/08/17/regulation-of-esports-in-india/#fn2>> accessed 17 January 2023

³⁸ Sikkim Online Gaming (Regulation) Act 2008

internet gaming and defining 'online gaming' and 'sports gaming'. Another such instance is that of Nagaland when it enacted the Nagaland Prohibition of Gambling and Regulation of Online Games of Skill Act, 2015 (Nagaland Act)³⁹. It can be observed that there have been separate and varied legislations governing online gaming in India in the past which have been territorial. But with the regulation of e-sports, online gaming can be brought under the central regime and controlled unanimously by one body.

CONCLUSION

E-sports is a growing market in India and with its regulation, it will become even more popular. But its regulation brings with it various other concerns and complications. The gaming laws in India have undergone several developments in recent years. The legislation governing online gaming at the state level needs to be dismissed and controlled centrally. There need to be provisions created for online gaming in the IT Act, of 2000 for penalizing gaming companies which do not comply with the data protection policies of India and athletes who use hack tools and cheat in e-sports. Also, a low tax rate must be imposed on gamers to make e-sports more professional. Hence, the regulation is a step in the right direction, and maintaining unanimous control seems to be a good move. Further development of cyber laws regarding online gaming would eradicate any loopholes and scope for misuse.

³⁹ Nagaland Prohibition of Gambling and Regulation of Online Games of Skills Act 2015