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'Game of Skill' to Blanket Prohibition: Examining the Constitutional Validity of India's 2025 Online Gaming Regulatory Framework

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The Promotion of Online Gaming and Regulation of the Game Act, 2025 (PROGA) is a departure from almost 70 years of Indian Jurisprudence on the classification of online games as games of skill versus games of chance for constitutional purposes. In State of Bombay v R.M.D. Chamarbaugwala (1957) skill predominant activity was held to be a proper trade under Article 19(1)(g) of PROGA, which has a blanket prohibition on any real money game, across the country. The main thrust of this paper is a constitutional analysis of the shift, which argues that the old skill/chance doctrine is not applicable here because it was the position taken by the Supreme Court in State of Tamil Nadu v Junglee Games India Pvt. Ltd. (2026) when determining that a game where money/stakes are bet on an uncertain outcome, which is predominantly a skill game, is a 'betting and gambling' under Entry 34 of the State List. The paper concludes that the primary constitutional concerns raised by PROGA have now been solved by the well-established concept of a difference between games of skill and games of chance in Article 19(1)(g) and that this is therefore an outdated approach to the constitutionality of online gambling. Contrary to this, the federalism aspect of the law's constitutionality, the extent of delegating classificatory authority to the executive, and the proportionality of the regulatory system as per Article 21 are more significant. The paper further contends that a harm-reduction, licensing system approach, one that is used by various countries in the world, would have been a better option for Parliament to consider. The fact that such alternatives have not received attention is especially relevant in the context of the necessity limb of the proportionality review.

Keywords: *online gaming, game of skill, constitutional validity, federalism, regulation.*

INTRODUCTION

Online gaming has been present in the middle of two legal traditions that historically never really met: the nineteenth-century colonial system of regulating gambling establishments, and the growing digital economy that created the term 'gambling house' obsolete. Even today, in many States the Public Gambling Act, 1867 remains in effect, making gambling of chance illegal and games of skill legal, a distinction which courts have been working on for nearly seventy years. Under Entry 34 of List II[1] of the Seventh Schedule, betting and gambling is a subject that is covered by the State legislatures only in principle. This was a patchwork rather than a system of constitutional uniformity.[2] A few states, including Nagaland with the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016, created licensing systems for skill/chance games.[3] Some states such as Tamil Nadu, Telangana and Andhra went on the march towards banning online money games altogether, even those that are considered skill games by others.[4] Meanwhile, an industry estimated to be worth billions of dollars annually, and drawing substantial foreign investment, grew up around fantasy sports, online rummy, and poker platforms.[5]

The Promotion and Regulation of Online Gaming Act, 2025 abandoned the decades-old skill/chance contrast developed by the state legislatures and courts. The Act was formally notified and was put into effect on 1st May 2026, after a notification on the Act was published in the Ministry of Electronics and Information Technology's Gazette Notification on 1 May 2026. The Act was accompanied by the Promotion and Regulation of Online Gaming Rules,

[1] Ashish Deep Varma, 'Decoding the Promotion and Regulation of Online Gaming Act 2025: A First Look at India's New Gaming Law' (*Bar and Bench*, 16 September 2025) <https://www.barandbench.com/law-firms/view-point/decoding-the-promotion-and-regulation-of-online-gaming-act-2025-a-first-look-at-indias-new-gaming-law> accessed 12 September 2026

[2] Suhaan Mukerji, 'The legality of games of skill' (*Law.asia*, 29 November 2021) <https://law.asia/legality-games-skill/> accessed 20 October 2026

[3] Ashish Deep Varma, 'Game over?' (*Law.asia*, 07 October 2025) <https://law.asia/online-gaming-act-2025/> accessed 12 September 2026

[4] Abhijeet Kumar, 'India's gaming ban vs the world: How other nations regulate online gambling' *Business Standard* (22 August 2025) <https://www.business-standard.com/india-news/india-online-gaming-ban-global-rules-regulation-bill-2025-125082201055_1.html> accessed 12 September 2026

[5] Kuval P Amberkar, 'Critical Analysis of the Promotion and Regulation of Online Gaming Act, 2025' (*Khurana and Khurana*, 23 April 2026) <https://www.khuranaandkhurana.com/critical-analysis-of-the-promotion-and-regulation-of-online-gaming-act-202> accessed 12 September 2026

2026, which establishes a uniform, national-central regulatory framework for online gaming in India, recognising and promoting non-monetary e-sports and social games under Sections 3 and 4, respectively, and Section 5 mandating a complete nationwide prohibition of all online real-money games (ORMGs), without distinction made between games of skill and games of chance.[6]

This is best understood in the context of the doctrine it replaces. The whole theory of protected trade under the Constitution and the unprotected gambling that the Supreme Court has historically considered to be res extra commercium — an activity that the Constitution's 'framers' did not use to elevate to the status of fundamental right [7]is abolished by PROGA, the distinction between a game of skill and a game of chance being eliminated for everything that involves a stake, including fantasy sports and rummy, which have been repeatedly and explicitly identified as games of skill by constitutional courts.[8]

In this paper, the author claims that PROGA is more than a change of government policy; it is a major doctrinal change in the legal treatment of online gaming. The constitutionality of PROGA will be impossible to determine based on the current jurisprudence that has distinguished games of skill and games of chance. Although this judgment[9] did not directly involve PROGA, it has already had a profound impact on the legal context in which a constitutional challenge to PROGA could be heard. This paper's central thesis is that this move 'from game of skill to blanket prohibition' started before August 2025 with the enactment of PROGA. It instead symbolises a prior shift in judicial thinking from the predominance test and the classic skill versus chance model. It is therefore necessary to view PROGA in the context of this evolving judicial landscape, as a single piece of legislation.

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[6] 'Challenge to the Promotion and Regulation of Online Gaming Act, 2025: Head Digital Works v Union of India' (*Supreme Court Observer*, 02 July 2026) <https://www.scobserver.in/cases/challenge-to-the-promotion-and-regulation-of-online-gaming-act-2025/> accessed 12 September 2026; Tanishq Acharaya and Srishti Rathore, 'India's Online Gaming Reset: Decoding PROGA and the 2026 Rules' (*Legal 500*, 19 May 2026) <https://www.legal500.com/developments/thought-leadership/indias-online-gaming-reset-decoding-proga-and-the-2026-rules> accessed 12 September 2026

[7] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699

[8] *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017; Ashish Deep Verma, 'Skill Vs Chance Redefined? How Online Gaming Act, 2025 Shifts Legal Landscape' (*LiveLaw*, 24 September 2025) <https://www.livelaw.in/law-firms/law-firm-articles-/online-gaming-act-shifts-in-legal-landscape-skill-vs-chance-redefined-vidhisastras-ashish-deep-verma-law-firm-articles-304985> accessed 12 September 2026

[9] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594

RESEARCH QUESTIONS

1. Does the Promotion and Regulation of Online Gaming Act, 2025 read in light of the Supreme Court's decision in *Junglee Games* (2026) withstand constitutional scrutiny under Articles 14, 19(1)(g), and 21, and under the doctrines of legislative competence and excessive delegation?
2. To what extent has *Junglee Games* foreclosed the traditional 'game of skill' defence under Article 19(1)(g) for online real-money games, and does this foreclosure extend to Union legislation or remain confined to state legislation
3. Is the 'essential character' of online real-money gaming regulation properly located within Entry 34 (State List) or Entry 31/97 (Union List) of the Seventh Schedule, and how does *Junglee Games's* characterisation of the activity as 'betting and gambling' affect this determination?
4. Does the classificatory power delegated to the Online Gaming Authority of India under Sections 3–5 and Rule 13(1)(e) of the 2026 Rules amount to an unconstitutional delegation of an essential legislative function?
5. Does comparative regulatory practice (UK, US, EU, China) suggest that a licensing-based regulatory alternative to prohibition existed and was not adequately considered, bearing on the necessity prong of proportionality review?

RESEARCH OBJECTIVES

1. To trace the doctrinal evolution of the 'game of skill' test in Indian constitutional law and establish the baseline against which PROGA's departure from precedent can be measured.
2. To analyse PROGA's constitutionality across the five distinct grounds raised in pending litigation: Article 19(1)(g), Article 14, Article 21, legislative competence/federalism, and excessive delegation, treating each as an independent inquiry rather than a single undifferentiated challenge.
3. To assess the doctrinal impact of *State of Tamil Nadu v Junglee Games India Pvt. Ltd.* (2026) on PROGA's pending constitutional challenge, notwithstanding that the two cases were not formally connected in litigation.
4. To evaluate, through comparative analysis of the UK, US, EU, and Chinese regulatory models, whether PROGA's blanket prohibition was a necessary and proportionate

response to the harms it identifies, or whether less restrictive regulatory alternatives were available and inadequately considered.

5. To offer a reasoned assessment of the likely constitutional trajectory of the pending Supreme Court proceedings (T.C.(C) No. 133/2025) based on the doctrinal analysis developed in the paper.

LITERATURE REVIEW

The literature on PROGA can be divided into three roughly delineated strands that need to be touched upon to position this paper. First, there is a large amount of practitioner commentary, most of which was generated by law firms and legal-news providers in the weeks immediately after the Act was passed, which provides descriptive, provision-by-provision summaries of PROGA's structure. While Pieces like Bar & Bench's 'first look' analysis and the Khurana & Khurana's critical commentary catalogue PROGA's classificatory scheme (Sections 3–5), the penalties (Section 6), and the regulatory authority (Section 7),[10] they are not generally intended to serve as the basis for sustained constitutional argument, but rather to highlight issues without solving them doctrinally.

Secondly, there is a smaller group of doctrinal writing that directly addresses the constitutionality of PROGA. This strand of literature is the most developed treatment that came to the author's attention for this paper, and while it does predate the federalism argument developed in this paper,

Similarly, the *Law and Other Things* blog's treatment of 'federalism in the platform age' raises the Entry 31 versus Entry 34 tension central to this paper's analysis, though largely as an open question rather than a resolved one.[11] It does not do so with the benefit of Junglee

[10] Farzeen Zaman, 'Promotion and Regulation of Online Gaming Act, 2025: Online Gaming Authority of India (OGAI) and the Draft PROG Act Rules' (*Prime Legal Law Firm*, 04 October 2025) <https://blog.primelegal.in/promotion-and-regulation-of-online-gaming-act-2025-online-gaming-authority-of-india-ogai-and-the-draft-prog-act-rules/> accessed 12 September 2026

[11] Baibhav Mishra and Shashin Laddha, 'Federalism in the Platform Age - Lessons from the Online Gaming Act' (*Law and Other Things*, 04 December 2025) <https://lawandotherthings.com/federalism-in-the-platform-age-lessons-from-the-online-gaming-act/> accessed 12 September 2026

Games[12], decided several months later, and therefore did not necessarily account for the doctrinal consequences of the decision.[13]

Third, there is a separate stream of literature, unrelated to PROGA, that explores the fundamental 'game of skill' doctrine, in the footsteps of Chamarbaugwala, K. Satyanarayana, Lakshmanan and the Varun Gumber fantasy sports cases. The doctrinal genealogy used in this paper is drawn from sources such as the India Business Law Journal survey on the skill-based gaming law and S.S. Rana & Co.'s analysis of the litigation on fantasy sports, which were written to explain why the industry was constitutionally protected rather than anticipating a scenario in which that protection was later withdrawn.[14]

RESEARCH GAP

The gap this paper fills is that a constitutional challenge by PROGA is not considered alongside Junglee Games in the literature, something that this paper suggests narrows and focuses the grounds for a constitutional challenge.[15] A secondary gap is the lack of a comprehensive study that connects the two developments of the former with the latter, and this is what this paper attempts to do in the context of the necessity prong of the Indian proportionality doctrine in Modern Dental College and IAMAI, as developed in Section VI. Another gap is the comparative aspect: although there are general comparative studies about the regulation of gambling, there is no general comparative study which is expressly connected with the necessity prong of the Indian proportionality doctrine, as developed in Modern Dental College and IAMAI.[16]

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[12] Sanskriti Verma, 'Challenging The Promotion and Regulation of Online Gaming Act, 2025: A Constitutional Analysis Through the Doctrine of Pith and Substance' (*Law School Policy Review*, 20 February 2026) <https://lawschoolpolicyreview.com/2026/02/20/challenging-the-promotion-and-regulation-of-online-gaming-act-2025-a-constitutional-analysis-through-the-doctrine-of-pith-and-substance/> accessed 12 September 2026

[13] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594

[14] Rupin Chopra and Apika Bareja, 'Skill v. Chance: A Tale of Fantasy Sports in India' (*SS Rana & Co*, 10 May 2023) <https://ssrana.in/articles/skill-chance-tale-fantasy-sports-india/> accessed 12 September 2026

[15] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594; Challenge to the Promotion and Regulation of Online Gaming Act, 2025: Head Digital Works v Union of India (n 6)

[16] *Modern Dental College & Research Centre and Ors v State of Madhya Pradesh and Ors* (2016) 7 SCC 353; *Internet and Mobile Association of India v Reserve Bank of India* (2020) SCC OnLine SC 275

RESEARCH METHODOLOGY

The paper is presented in the doctrinal legal research method, supplemented with comparative legal methodology, which is appropriate to a research paper in constitutional law of this type. It is a doctrinal analysis of the primary legal sources (constitutional text, PROGA and the accompanying Rules, as well as cases) in the context of secondary academic and practitioner comments.

Primary Sources:

- Constitution of India, Articles 14, 19(1)(g), 21 and the Seventh Schedule;
- Promotion and Regulation of Online Gaming Act, 2025 and Promotion and Regulation of Online Gaming Rules, 2026;
- Supreme Court and High Court Judgments; and
- Court filings and affidavits reported in pending litigation (T.C.(C) No. 133/2025).

Secondary Sources: It includes doctrinal commentary, law firm analysis, and legal news reporting, primarily used to establish procedural facts (hearing dates, bench composition, litigation status) not reported in primary sources at the time of writing, given the recency of the litigation.

Analytical Method: The paper uses well-established constitutional doctrinal frameworks, the predominance test (Chamarbaugwala, K. Satyanarayana), the res extra commercium doctrine, the four-pronged proportionality test laid down in Modern Dental College and applied in IAMAI, the pith-and-substance doctrine for disputes on legislative competence and the excessive-delegation framework from In re Delhi Laws Act and Hamdard Dawakhana, on the text of PROGA and the reasons advanced in pending litigation.[17] Comparative analysis (Section VI) follows a most-different-systems logic, selecting the UK, US, EU and China specifically because each represents a materially different point on the prohibition-to-licensing spectrum, allowing the necessity prong of proportionality analysis to be tested against genuine regulatory alternatives rather than a single counterfactual.

[17] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699; *In re: The Delhi Laws Act, 1912* AIR 1951 SC 332; *State of Andhra Pradesh v K Satyanarayana and Ors* AIR 1968 SC 825; *Hamdard Dawakhana (Wakf) Lal Kuan v Union of India and Ors* AIR 1960 SC 554; *Modern Dental College & Research Centre and Ors v State of Madhya Pradesh and Ors* (2016) 7 SCC 353; *Internet and Mobile Association of India v Reserve Bank of India* (2020) SCC OnLine SC 275

Constraints: As of the time of writing (September 2026), the constitutional challenge to PROGA remains sub judice. Therefore, this paper's evaluation of the likely trajectory of the litigation can only be predictive and not a report of settled law. It should be read as reasoned academic speculation rather than a definitive forecast. Similarly, because the Junglee Games decision was only a few months old at the time this paper was completed, there has been limited academic engagement with the decision at the time of writing, and the treatment of its implications in this paper should be understood as an original contribution rather than a synthesis of settled academic consensus. Given the pace at which this litigation has moved since the Act's assent, readers should independently verify the pendency and outcome of T.C.(C) No. 133/2025 before relying on this paper's predictive claims.

HISTORICAL DOCTRINE — THE 'GAME OF SKILL' TEST

Foundations: The Chamarbaugwala Cases (1957): The starting point for any account of Indian gaming law is the twin 1957 decisions in *State of Bombay v R.M.D. Chamarbaugwala* and *R.M.D. Chamarbaugwala v Union of India*. The cases arose from prize competitions, crossword-style contests run through newspapers that Bombay sought to tax and regulate as gambling. The petitioners argued that their competitions, whatever their character, were at minimum a trade or business protected under Article 19(1)(g) and the freedom of inter-state trade under Article 301.[18]

The Supreme Court's response established two propositions that would structure Indian gaming jurisprudence for the next seventy years. First, and most consequentially, the Court held that 'a competition to avoid the stigma of gambling must depend to a substantial degree upon the exercise of skill'; competitions genuinely requiring substantial skill were legitimate business activities entitled to constitutional protection under Article 19(1)(g). Second, and often under emphasised in accounts that focus only on the skill carve-out, the Court held that gambling itself was not 'trade, commerce or intercourse' within the meaning of Articles 19(1)(g) and 301 at all. The Constitution-makers of India, the Court reasoned, building a welfare state, could never have intended to raise betting and gambling to the status of trade

[18] 'Prize Competitions Equated to Gambling: Supreme Court Upholds Bombay's Taxation Legislation – State of Bombay vs. R.M.D. Chamarbaugwala (1957)' (*Case Mine*, 10 April 1957) <https://www.casemine.com/commentary/in/prize-competitions-equated-to-gambling%3A-supreme-court-upholds-bombay%27s-taxation-legislation-%E2%80%93-state-of-bombay-vs.-r.m.d.-chamarbaugwala-%281957%29/view> accessed 12 September 2026

or business activities the Court described, drawing on colonial and pre-colonial attitudes, as historically regarded as 'a sinful and pernicious vice.' Gambling was, in short, res extra commercium outside the sphere of commerce altogether, and therefore outside constitutional protection regardless of how reasonable or unreasonable a restriction upon it might be.[19]

The second proposition is the sleeping doctrine that *Junglee Games* would revive in 2026.[20] It is important to register here that the res extra commercium principle was always latent within *Chamarbaugwala* itself, available to any future court willing to characterise a wagered activity as 'gambling' regardless of the skill involved in playing it.

Refining the Test: Rummy and the Predominance Standard: A decade later, in *State of Andhra Pradesh v K. Satyanarayana* (1968),[21] the Supreme Court was asked to classify rummy, a card game combining memory, strategy, and an irreducible element of chance in how cards are dealt. The Court held that rummy was 'mainly and predominantly a game of skill,' reasoning that the distribution of cards, though not following any set pattern, still allowed skilled play in holding and discarding cards to determine outcomes over the run of a game. This judgment articulated what commentators have since called the predominance test: a game need not be entirely free of chance to qualify for protection; it need only be predominantly governed by skill.

EXTENDING THE TEST BEYOND CARDS: HORSE RACING

Dr K.R. Lakshmanan v State of Tamil Nadu (1996)[22] extended the predominance test to a different domain entirely: wagering on horse races. The Supreme Court disagreed, holding that horse racing depends on a variety of changing and uncertain factors that, with sufficient knowledge and skill, a bettor can approximate but never reduce to a certainty, placing it, like rummy, on the 'skill' side of the line. Significantly, the Court went further than *Chamarbaugwala* in one respect: it held that classifying horse racing as gambling, and using that classification to justify the Race Club's acquisition, was affirmatively arbitrary and violative of Article 14, and struck down the acquisition Act on that basis.[23] *Lakshmanan* is

[19] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699
[20] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[21] *State of Andhra Pradesh v K Satyanarayana and Ors* AIR 1968 SC 825
[22] *Dr KR Lakshmanan v State of Tamil Nadu and Anr* (1996) 2 SCC 226
[23] 'Horse-Racing Classified as a Game of Skill: Dr. K.R. Lakshmanan v. State of T.N. (1996)' (*Case Mine*, 13 January 1996) <https://www.casemine.com/commentary/in/horse-racing-classified-as-a-game-of-skill%3A-landmark-judgment-in-dr.-k.r-lakshmanan-v.-state-of-t.n-%281996%29/view> accessed 12 September 2026

therefore a valuable precedent for the argument, developed in Section IV, that PROGA's failure to distinguish skill from chance may itself constitute an Article 14 violation independent of the Article 19(1)(g) question.

The Digital Era: Fantasy Sports and the Varun Gumber Line: The doctrine's most direct application to the industry PROGA now targets came with the rise of online fantasy sports. In *Shri Varun Gumber v Union Territory of Chandigarh* (Punjab & Haryana High Court, 2017),[24] a disgruntled user who had lost money playing Dream11 argued that fantasy sports were games of chance and therefore illegal gambling under the Public Gambling Act 1867. The Court rejected this characterisation, holding that participation required considerable skill, judgment, and discretion in assessing player form, statistics, and matchups when drafting a virtual team and that this exercise of skill predominantly determined success or failure. The Supreme Court dismissed the special leave petition against this ruling in 2017, and went on to dismiss six further petitions raising the same question over the following years, including a 2022 review petition, with the Court stating in one order that 'the legality of fantasy sports as a legitimate business and game of skill can't be questioned.' By the early 2020s, the Bombay, Punjab & Haryana, and Rajasthan High Courts had each independently reached the same conclusion.[25]

The Doctrine's Internal Fragility: It is worth pausing, before moving to PROGA itself, to note a structural weakness in this line of cases that made it more vulnerable to disruption than its seventy-year pedigree might suggest. Every judgment described above *Chamarbaugwala*, *Satyanarayana*, *Lakshmanan*, *Varun Gumber* protected skill-based activity as such; none of them squarely confronted a legislature that sought to regulate the staking of money on an outcome, independent of the skill involved in that outcome. It was precisely this latent ambiguity that the Supreme Court resolved against the industry in *Junglee Games* in May 2026, on the eve of PROGA's own constitutional test.[26]

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[24] *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017

[25] Indranil Deshmukh et al., 'Supreme Court to have its say on legality of Fantasy Sports' (*Cyril Amarchand Mangaldas*, 21 May 2020) <https://corporate.cyrilamarchandblogs.com/2020/05/supreme-court-to-have-its-say-on-legality-of-fantasy-sports> accessed 12 September 2026

[26] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594

THE 2025 ACT — STRUCTURE AND DEPARTURE FROM PRECEDENT

Statutory Architecture: PROGA is organised around a tripartite classification of online gaming activity, and understanding this structure is essential before assessing its constitutionality, because several of the objections raised in Section IV attach to how the Act draws its categories rather than merely to the fact of prohibition.

Sections 3 and 4 establish a promotional and recognitional framework for two categories of activity Parliament wishes to encourage: e-sports (competitive, multiplayer, skill-based games, which the Act treats as a legitimate competitive sport and links to the broader National Sports Governance Act, 2025 framework) and online social games not involving stakes. These provisions are largely facilitative licensing pathways, recognition criteria, and developmental support and have attracted comparatively little constitutional controversy.

Section 5 is the operative prohibition. It bans the offering, facilitation, or advertising of any 'online money game' defined broadly enough to capture rummy, poker, and fantasy sports platforms regardless of the skill involved and extends to the processing of financial transactions connected with such games. The prohibition is backed by a serious penalty structure: operators face fines of up to ₹1 crore and prison terms extending to three years, advertising violations carry penalties up to ₹50 lakh and two years' imprisonment, and offences are cognizable and non-bailable.[27] Section 5 also applies extraterritorially, reaching offshore operators who target Indian users, a jurisdictional reach no State legislation could replicate.[28]

The Classificatory Machinery: Sections 3–5 Read With the 2026 Rules: The Act does not itself specify, with granular precision, what distinguishes a permitted 'online social game' from a prohibited 'online money game' in every marginal case; this determination is substantially delegated to the Online Gaming Authority of India (OGAI) and fleshed out in the Promotion and Regulation of Online Gaming Rules, 2026. Rule 13 sets out the parameters OGAI is to apply in determining whether a game constitutes a money game, but Rule 13(1)(e)

[27] Probaho Santra, 'Supreme Court Hearing Could Change India's RMG Landscape' (*Outlook Respawn*, 19 August 2026) <https://respawn.outlookindia.com/gaming/gaming-news/supreme-court-hearing-could-change-indias-rmg-landsca> accessed 12 September 2026

[28] Bimal Jain, 'Supreme Court: Banning the Online Money Gaming is within the States' Power' (*CAclubIndia*, 05 June 2026) <https://www.caclubindia.com/articles/supreme-court-banning-the-online-money-gaming-is-within-the-states-power-55343.asp> accessed 12 September 2026

permits the Authority to consider such other relevant factors beyond the enumerated criteria, an open-ended residual clause that is the central textual hook for the excessive-delegation challenge. The division of regulatory responsibility between ministries has also been criticised as failing to anticipate hybrid formats, creating case-by-case administrative discretion.

The Doctrinal Departure: Read against Section II's account of the game-of-skill doctrine, PROGA's break from precedent is precise: every prior mechanism for excluding an activity from prohibition the predominance test of *Satyanarayana*, the 'considerable skill, judgment and discretion' standard of *Varun Gumber*, the horse-racing reasoning of *Lakshmanan* operated by asking whether skill predominated over chance in the activity itself. PROGA's Section 5 asks a different, logically prior question: whether money has been staked at all. This is precisely the move *Junglee Games* would go on to endorse, independently, for state legislation just months after PROGA received assent.[29]

CONSTITUTIONAL ANALYSIS

This section undertakes the core constitutional evaluation of PROGA across five distinct grounds: Article 19(1)(g) and the proportionality of a blanket prohibition; Article 14 and the arbitrariness of an undifferentiated ban; Article 21 and the autonomy/livelihood argument; the federalism objection rooted in Entry 34 of List II; and excessive delegation under Sections 3 to 5.

Article 19(1)(g): Has Junglee Games Foreclosed the Trade Argument? The traditional route to challenging gaming legislation runs through Article 19(1)(g), the fundamental right to practise any profession or carry on any occupation, trade, or business, read against the reasonable-restriction clause in Article 19(6). Historically, this route depended entirely on establishing that the activity in question was not gambling: as *Chamarbaugwala* held, gambling is res extra commercium and thus never reaches Article 19(1)(g) in the first place.[30]

Junglee Games closes this route for any online money game, however skill-dependent, because it holds that the moment money is staked on an uncertain outcome, the activity is 'betting and gambling' and therefore outside Article 19(1)(g) altogether; the res extra commercium

[29] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[30] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699

characterisation attaches to the staking, not to the game.[31] If this reasoning is applied to PROGA, then petitioners such as Head Digital Works cannot invoke Article 19(1)(g) at all with respect to real-money fantasy sports or online rummy, because the threshold question (is this a protected trade?) will be answered in the negative before the reasonableness inquiry under Article 19(6) is ever reached.[32] This does not mean the Article 19(1)(g) argument is dead, however; it means it must be reframed. Three lines of argument remain open:

First, petitioners can argue that *Junglee Games* is distinguishable because it concerned the competence of State legislatures acting under Entry 34 and Entry 1 of List II, and says nothing about whether the Union, invoking entirely different heads of power (Entry 31, Entry 42, Entry 97), may achieve the same prohibition.[33]

Second, and independent of whether Article 19(1)(g) is triggered at all, petitioners retain the proportionality argument built on *Internet and Mobile Association of India v RBI* (2020).[34] In *IAMAI*, the Supreme Court applied the four-pronged proportionality test from *Modern Dental College*[35] (legitimate aim, rational nexus/suitability, necessity or least restrictive means, and balancing) to strike down the RBI's cryptocurrency circular precisely because the regulator had never considered intermediate measures before reaching for a total ban.[36]

Third, and more narrowly, petitioners can argue that even if Article 19(1)(g) itself is unavailable, the reasoning in *Junglee Games* was confined to the core wagering activity and does not necessarily extend to ancillary commercial infrastructure platform operation, advertising, employment, some of which may retain an independent claim to Article 19(1)(g) protection.

ARTICLE 14: ARBITRARY CLASSIFICATION AND THE COLLAPSED DISTINCTION

The Article 14 argument is structurally different from the Article 19(1)(g) argument, and survives *Junglee Games* largely intact, because that case did not resolve whether treating skill-

[31] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[32] *Head Digital Works & Anr v Union of India* (2025) Transfer Case(C) No 133/2025
[33] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[34] *Internet and Mobile Association of India v Reserve Bank of India* (2020) SCC OnLine SC 275
[35] *Modern Dental College & Research Centre and Ors v State of Madhya Pradesh and Ors* (2016) 7 SCC 353
[36] *Internet and Mobile Association of India v Reserve Bank of India* (2020) SCC OnLine SC 275

predominant and chance-predominant games identically is itself arbitrary classification, as opposed to whether either category enjoys Article 19(1)(g) protection.[37]

Lakshmanan is the strongest precedent here: the Supreme Court struck down Tamil Nadu's acquisition of the Madras Race Club specifically because classifying a skill-predominant activity as 'gaming' for regulatory purposes was arbitrary and violated Article 14, independent of whatever Article 19(1)(g) analysis applied.[38] The logic transposes reasonably well to PROGA: Section 5's blanket ban makes no distinction whatsoever between a game like online rummy (repeatedly held by multiple High Courts to be predominantly skill-based) and a game of pure chance.[39] If the 'no fundamental right' holding in *Junglee Games* is confined to Article 19(1)(g) and does not extend to Article 14, then petitioners retain a viable argument that Parliament's decision to treat categorically different activities identically is manifestly arbitrary within the meaning of *E.P. Royappa* and its progeny.[40]

The Union's likely rejoinder is that the classification is not skill/chance at all, but staked/unstaked and that this alternative classification is entirely rational, since the harm PROGA targets is a function of money changing hands on an uncertain outcome. This is, in fact, precisely the classification *Junglee Games* endorses.[41]

Article 21: Autonomy, Livelihood, and the Limits of Paternalism: The Article 21 argument, framed by petitioners as a claim that the blanket ban unreasonably restricts an individual's right to choice, autonomy, and livelihood, draws on Article 21's post-*Maneka Gandhi*[42] 'procedure established by law must be fair, just and reasonable' standard, and its subsequent absorption of substantive due process concepts through *Puttaswamy*.[43]

The autonomy argument contends that adults have a constitutionally protected interest in making informed choices about how to spend their own money and time, an argument with clear resonance to *Puttaswamy's* recognition of decisional autonomy as a facet of privacy and personal liberty, though the government will resist by pointing to *Puttaswamy's* own

[37] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[38] *Dr KR Lakshmanan v State of Tamil Nadu and Anr* (1996) 2 SCC 226
[39] *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017
[40] *EP Royappa v State of Tamil Nadu and Anr* (1974) 4 SCC 3
[41] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[42] *Maneka Gandhi v Union of India* (1978) 1 SCC 248
[43] *Justice KS Puttaswamy (Retd) and Anr v Union of India and Ors* (2017) 10 SCC 1

acknowledgement that privacy and autonomy are subject to proportionate limitation for compelling state interests.

The livelihood argument is narrower and more concrete: individuals and businesses whose employment or income directly depended on the now-banned industry can invoke the *Olga Tellis* line of cases establishing that the right to livelihood is integral to the right to life under Article 21.[44] This argument, like the Article 14 argument, is untouched by *Junglee Games*, which did not engage with Article 21 at all.

Federalism: Has Junglee Games Strengthened or Weakened the Entry 34 Challenge? The Union's defence of PROGA rests on the claim that online money gaming is not, in pith and substance, a 'betting and gambling' matter within Entry 34 of List II at all, but rather a communications/technology matter within Entry 31 of List I, or falls within Parliament's residuary power under Entry 97.

Junglee Games, however, was decided on the express premise that the essential character of online staked gaming is betting and gambling; that is precisely why the Court held Entry 34 (and Entry 1, public order) gave the States competence to prohibit it.[45] A court applying the doctrine of pith and substance to PROGA now confronts an awkward asymmetry between this characterisation and the Union's own competing claim. Petitioners' pith-and-substance argument, previously reliant on the analogy to *State of Rajasthan v G. Chawla*[46] (where regulating loudspeakers was held to be 'public health,' a state subject, despite the use of electronic amplification equipment), now has a considerably stronger foundation.

The Union's Entry 31 argument that Parliament has power to regulate communication infrastructure does not, on this view, extend to regulating every activity merely conducted through that infrastructure. Whether the Court accepts this argument, or instead treats PROGA's national, cross-border character as a genuinely distinct justification for Union competence under Entry 42 or Entry 97, is likely to be the single most consequential doctrinal question the three-judge bench must resolve.

[44] *Olga Tellis and Ors v Bombay Municipal Corporation and Ors* (1985) 3 SCC 545
[45] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594; Jain (n 38)
[46] *State of Rajasthan v Shri G Chawla and Dr Pohumal* AIR 1959 SC 544

Excessive Delegation: Sections 3–5 and the Unguided Executive: The final ground draws on the doctrine established in *In re Delhi Laws Act* (1951) and sharpened in *Hamdard Dawakhana v Union of India* (1960):[47] Parliament may delegate ancillary, detail-filling powers to the executive once it has laid down a coherent legislative policy, but may not delegate the essential legislative function of determining what the policy is.[48] In *Hamdard Dawakhana*, the Court struck down a provision permitting the executive to prohibit advertisements for 'any other disease or condition which may be specified in rules,' precisely because the parent Act supplied no criteria by which the executive was to make that determination.[49]

The relevant PROGA provision is the classificatory machinery empowering OGAI to determine what counts as a prohibited 'online money game.' Rule 13(1)(e) allows the Authority to consider 'such other relevant factors', open-ended language of exactly the kind *Hamdard Dawakhana* found constitutionally deficient. This ground is analytically the most self-contained of the five discussed here, and is accordingly wholly unaffected by *Junglee Games*.

THE ONGOING LITIGATION — PROGA BEFORE THE SUPREME COURT, AND THE SHADOW OF JUNGLEE GAMES

Procedural History and Consolidation: The constitutional fate of PROGA is currently being adjudicated before the Supreme Court of India, registered as T.C.(C) No. 133/2025. Head Digital Works, the owners of fantasy sports and rummy website A23, brought a constitutional challenge in the Karnataka High Court on 5 grounds – constitutional validity, legislative competency, reasonableness of restrictions, and proportionality of restrictions, with parallel petitions in Delhi and Madhya Pradesh High Courts.[50] It was the third court, after Delhi and Karnataka, to reject the industry's plea for the issue of an injunction against the Centre's notification of the Act. Instead of three sets of High Courts allowing different interpretations of the Constitution, the Union of India itself filed a transfer petition in the

[47] *Hamdard Dawakhana (Wakf) Lal Kuan v Union of India and Ors* AIR 1960 SC 554
[48] Girisha Meena, 'An Insight into the Enigma of Excessive Delegation: An Indian Perspective' (2022) 3(2) CNLU Law Review <https://www.cnlu.ac.in/wp-content/uploads/2025/04/An-Insight-into-the-Enigma-of-Excessive-Delegation-An-Indian-Perspective-by-Girisha-Meena.pdf> accessed 13 September 2026
[49] Aishwarya Agarwal, 'Excessive Delegation Under Administrative Law' (*Law Bhoomi*, 26 February 2024) <https://lawbhoomi.com/excessive-delegation-under-administrative-law/> accessed 13 September 2026
[50] Boski Sharma, 'Behind the Ban: The Promotion and Regulation of Online Gaming Act, 2025' (*Lexology*, 01 September 2025) <https://www.lexology.com/library/detail.aspx?g=67f5157a-fefc-4836-9f9f-97987c0174da> accessed 13 September 2026

Supreme Court to have all pending petitions consolidated, and on 8 September 2025, the Supreme Court granted the petition. [51]

The consolidated proceeding has languished. In December 2025, the Supreme Court had already hinted that the case would be put before a three-judge Bench and heard only in January 2026, with a Bench led by Chief Justice Surya Kant saying that the issue that had been raised was one of the competence of the Parliament to legislate and required a larger Bench to consider it.[52] By January 2026, PROGA remained unnotified, and the Supreme Court had scheduled a hearing for 21 January 2026 before a three-judge bench, which was also set to include a public interest litigation filed by activist K.A. Paul. A three-judge bench of Chief Justice Surya Kant and Justices Joymala Bagchi and V. Mohana had, in August 2026, asked the parties to file their pleadings before the final ruling.

The Framed Constitutional Questions: The petitions challenge whether the blanket ban imposed under Section 5 is an unreasonable restriction on an individual's right to choice, autonomy and livelihood guaranteed under Article 21 and whether the powers given to the Union Government under Sections 3, 4 and 5 are an unwarranted delegation of essential legislative powers. In addition to these, petitioners have raised an Article 14 argument and a 19(1)(g) argument. The petitioners include Dr K.A. Paul (Head Digital Works), Clubboom 11 Sports and Entertainment and Bagheera Carrom OPC, represented by senior advocates C.A. Sundaram, Arvind Datar, and Solicitor General Tushar Mehta, on behalf of the Union.

The Union's Defence: The Centre's affidavit also accuses the states under Entry 52 of having created a regulatory vacuum for the online money-gaming market before the PROGA came into effect, which, if left unchecked by Parliament, will lead to regulatory chaos and inconsistency across the country. The Centre's affidavit also argues that it is the very

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[51] Himesh Thakur and Vaibhav Mishra, 'The Promotion and Regulation of Online Gaming Act, 2025 - A Constitutional and Economic Crossroad' (*Lexology*, 14 October 2025) <https://www.lexology.com/library/detail.aspx?g=1bcb4e64-9ad9-4040-b9cc-55b1ba309944> accessed 13 September 2026

[52] Imran Fazal, 'Breaking: SC flags need for three judge bench, pushes Online Gaming Law challenge to January' (*Storyboard18*, 11 December 2025) <https://www.storyboard18.com/gaming-news/breaking-sc-flags-need-for-three-judge-bench-pushes-online-gaming-law-challenge-to-january-85676.htm> accessed 13 September 2026; 'India's Online Gaming Law Hearing Pushed By Supreme Court To 2026' (*Solo Azar*, 12 December 2025) <https://www.soloazar.com/en/category/legislation/indias-online-gaming-law-hearing-pushed-by-supreme-court-to-2026> accessed 13 September 2026; Imran Fazal, 'Five months on, PROGA remains unnotified; SC to hear petitions challenging gaming law on Jan 21' (*Storyboard18*, 20 January 2026) <https://www.storyboard18.com/gaming-news/five-months-on-proga-remains-unnotified-sc-to-hear-petitions-challenging-gaming-law-on-jan-21-87890.htm> accessed 13 September 2026

companies that were enjoying a regulatory void before the PROGA commenced that are now protesting against Parliament's failure to act on the issue, accusing states of having created that vacuum.

The Junglee Games Intervention — Why the Ground Shifted Mid-Litigation: While the T.C.(C) No. 133/2025 matter was still being pleaded, a different two-judge bench decided *State of Tamil Nadu & Ors. v Junglee Games India Pvt. Ltd. & Ors.* (27 May 2026)[53], an appeal concerning the constitutionality of state legislation (the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, and the Karnataka Police Act amendments), not PROGA.[54]

The Court held that the expression 'betting and gambling' in Entry 34 of List II cannot be read down to mean 'betting on gambling'; that the moment money is staked, the activity becomes betting and gambling irrespective of skill or chance; that such activity is res extra commercium, carrying no fundamental right under Article 19(1)(g); and that States are fully competent under Entry 34 and Entry 1 to regulate, restrict, or wholly prohibit online money gaming. A bench of Justices J.B. Pardiwala and R. Mahadevan overturned the judgments of the Madras and Karnataka High Courts, accepting the states' public health and public order justifications, and noting concerns relating to addiction, financial distress, and suicides allegedly linked to online gaming involving stakes.

The consequences for this paper's thesis are threefold:

- The skill/chance distinction is no longer a live shield against prohibition, at least for staked games.[55]
- The res extra commercium doctrine has been revived and generalised to modern, digitally-mediated skill games with substantial legitimate commercial infrastructure.[56]
- The federalism question is answered differently for States than it will be for the Union — *Junglee Games* anchors gambling regulation in Entry 34 and Entry 1 (both State List),

[53] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[54] Bhavini Mishra, 'Supreme Court upholds state power to curb online betting platforms' *Business Standard* (27 May 2026) <https://www.business-standard.com/india-news/supreme-court-upholds-state-power-to-curb-online-betting-platforms-126052701677_1.html> accessed 13 September 2026
[55] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594; *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017
[56] *State of Bombay v RMD Chamarbaugwala* AIR 1957 SC 699

which may strengthen rather than weaken the pith-and-substance argument against the Union.

What Remains for the Supreme Court to Decide –

Notwithstanding *Junglee Games*, several PROGA-specific questions remain untouched and are still squarely before the three-judge bench:

Excessive Delegation (Sections 3–5): A live, independent ground unaffected by Junglee Games.

Proportionality of a Union-level total Ban, as distinct from a State-level one.

The Article 21 Autonomy/Livelihood Argument, which Junglee Games did not address at all.

Retrospective and Cumulative Economic Harm arguments — the 'civil death' submissions made by senior counsel for Head Digital Works.

COMPARATIVE PERSPECTIVE — WAS PROHIBITION NECESSARY?

The proportionality analysis in Section IV.A turned in part on whether PROGA's blanket ban was the least restrictive means available. This section places India's approach against three other regulatory models to test whether prohibition was a necessary choice or merely a convenient one.

The UK: Licensing as the Default: The United Kingdom's Gambling Act 2005 pulled remote gambling into a single licensing regime, established the Gambling Commission as an independent regulator, and built the framework around three statutory objectives: preventing gambling from being a source of crime, ensuring games are conducted fairly, and protecting children and vulnerable people from harm. Operators must hold licences tailored to the specific activity, submit to independent testing of software fairness, and comply with Licence Conditions and Codes of Practice covering age verification, deposit limits, and self-exclusion mechanisms.[57]

[57] Gambling Act 2005 (UK); Oraz Kereibayev, 'UK Gambling License: Laws and Regulations' (*Sumsub*, 12 January 2024) <https://sumsub.com/blog/gambling-in-the-uk-how-to-get-licensed/> accessed 13 September 2026

The United States: Federal Restraint, State Experimentation: The Unlawful Internet Gambling Enforcement Act, 2006 (UIGEA) does not itself criminalise online gambling; it prohibits payment processors from knowingly accepting funds connected to wagers already illegal under state law, and expressly disclaims any intent to alter state gambling law. UIGEA carves out a specific exemption for fantasy sports meeting statutory conditions, which is why platforms like DraftKings and FanDuel could operate nationally. As of 2026, daily fantasy sports are explicitly legal in over forty states. *Murphy v National Collegiate Athletic Association* (2018),[58] striking down the federal ban on state-authorised sports betting, reinforced this same structural preference for state-level calibration.[59]

The European Union: Harm Reduction Over Prohibition: EU member states generally favour licensing with harm-reduction conditions age verification, addiction-prevention measures, and anti-money-laundering compliance over blanket bans, and the online gambling sector continues to grow under this oversight.

China: The Prohibition Model, and Why It Is a Poor Analogue for India: Under Article 303 of the Criminal Law, virtually all gambling in China, online or offline, is illegal, with only two narrow state-run lottery exceptions; enforcement is directed at dismantling payment infrastructure and cross-border syndicates.[60] This is, in substance, the model PROGA has imported: Section 5's ban on financial transactions and advertising mirrors China's strategy of targeting payment rails rather than individual users.

The difficulty, for purposes of an Indian constitutional analysis, is that China's model was never designed to survive proportionality review of the kind Article 19(6) and *Modern Dental College* require, because Chinese constitutional law affords no comparable judicially enforceable economic freedom against which such a prohibition would need to be justified.

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[58] *Murphy v National Collegiate Athletic Association* [2018] 584 US 453

[59] Chao Yu and Greg Pilarowski, 'Gaming Law 2025 : USA' (*Chambers Practice Guides*, 25 November 2025) <https://practiceguides.chambers.com/practice-guides/gaming-law-2025/usa> accessed 13 September 2026; Marc Edelman et al., 'U.S. Fantasy Sports Law: Fifteen Years After UIGEA' (2022) 83 Ohio State Law Journal (https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3972414> accessed 13 September 2026; Nadia Farashahi, 'Living in a Fantasy: How Fantasy Sports Leagues Circumvent Most Gambling Laws' (*Richmond Journal of Law and Technology*, 02 February 2025) <https://jolt.richmond.edu/2025/02/02/living-in-a-fantasy-how-fantasy-sports-leagues-circumvent-most-gambling-laws/> accessed 13 September 2026

[60] 'Gambling Laws In China' (*Conventus Law*, 26 September 2023) <https://conventuslaw.com/report/gambling-laws-in-china/> accessed 13 September 2026

CONCLUSION

Summary of Findings: This paper set out to test a specific claim: that PROGA represents not merely a policy tightening but a doctrinal rupture, and that assessing its constitutionality requires reckoning with *State of Tamil Nadu v Junglee Games India Pvt. Ltd.* (2026),[61] which reshaped the terrain on which PROGA's challenge is being litigated before that challenge was even decided.

The analysis suggests these reshaping cuts in two directions. On one hand, *Junglee Games* has substantially foreclosed the Article 19(1)(g) argument that carried the fantasy sports and rummy industries through nearly a decade of litigation.[62] On the other hand, *Junglee Games* has arguably strengthened the federalism objection by characterising online staked gaming as falling within the 'true nature and character' of Entry 34 and Entry 1 of the State List — entries the Union cannot invoke for itself. The Article 14, Article 21, and excessive-delegation arguments remain entirely untouched by *Junglee Games* and available to petitioners on their own terms.[63]

The comparative analysis adds that the dominant global practice among comparable constitutional democracies the UK's licensing model, the fragmented but non-prohibitory US approach, and the EU's harm-reduction framework suggests that a total ban was not the only response available.

The Likely Constitutional Trajectory: Predicting the outcome of pending litigation is necessarily speculative, but the more plausible outcomes cluster around the federalism and delegation grounds, rather than a revisiting of the skill/chance question, which *Junglee Games* has now comprehensively settled.

Broader Implications: The *Junglee Games* and PROGA litigations together illustrate how quickly a settled area of rights jurisprudence can be destabilised by judicial reinterpretation of a foundational precedent's own internal ambiguity. Second, the federalism dimension of this dispute: Parliament's reliance on Entry 31 and Entry 97 to regulate an activity historically

[61] *State of Tamil Nadu & Ors v Junglee Games India Pvt Ltd & Ors* (2026) INSC 594
[62] *Ibid*; *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017
[63] *Dr KR Lakshmanan v State of Tamil Nadu and Anr* (1996) 2 SCC 226; *Olga Tellis and Ors v Bombay Municipal Corporation and Ors* (1985) 3 SCC 545; *Shri Varun Gumber v Union Territory of Chandigarh & Ors* (2017) CWP No 7559/2017

associated with Entry 34 raises questions that extend well beyond gaming, and will likely serve as a template for how Indian federalism accommodates the platform economy more generally.