

A GUIDE TO ONLINE GAMBLING IN INDIA

Applicable laws
and policies

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APPLICABLE AND RELATED LAWS

1. The Public Gambling Act ^[1]
2. The Foreign Exchange Management Act ^[2]
3. The Information Technology Act ^[3]
4. Maharashtra Prevention of Gambling Act ^[4]
5. The Telangana State Gaming Act ^[5]
6. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act ^[6]
7. The Sikkim Online Gaming (Regulation) Act ^[7]
8. The Goa, Daman and Diu Public Gambling Act ^[8]
9. The Meghalaya Regulation of Gaming Act ^[9]
10. The Prevention of Money Laundering Act ^[10]
11. The Payment and Settlement Systems Act ^[11]



DEFINITIONS

According to most Gaming laws, gambling is understood to mean 'the act of wagering or betting' for money or money's worth. Generally, however, under most Gaming laws "gambling" does not include (i) wagering or betting upon a horse-race or dog-race, unless a wager or bet is made under certain circumstances; or (ii) lotteries.

GENERAL POSITION

Generally, in India, gambling is a state-level governance issue in India, so the legality of various betting and gaming activities depends on which state you are in.

However, a few central laws also affect gambling, both online and in-person. One of them is the Public Gambling Act. States such as Sikkim, Nagaland and Goa allow gambling through casinos in a highly regulated manner, while the majority of states prohibit gambling in any form. Nevertheless, the Public Gaming Act makes no reference to online gambling.



ONLINE GAMBLING

In India, there are no specific laws governing online gambling. Nagaland, Sikkim and Meghalaya are the States that explicitly allow online gambling. While the Sikkim Online Gaming (Regulation) Act (as it stands after the Amendments) restricts the offering and playing of "online games and sports games" to the physical premises of gaming parlours through intra-net gaming terminals within the territory of the State.

On the other hand, the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act (the "Nagaland Act"), seeks to provide for the application of licences obtained thereunder pan-India.

Explanation to Section 2 (1) of the Nagaland Act states that: "Once a license has been obtained under this act, wagering or betting on online 'games of skill' or making profit by providing a medium for playing 'games of skill' shall not amount to gambling so long as they are being provided to players and are being accessed by players operating from territories where 'games of skill' are exempted from the ambit of gambling."

At the other extreme is the Telangana State Gaming Act which was enacted in order to implement a "policy of zero tolerance towards gambling which has a significant adverse impact on the financial condition and wellbeing of the general public". Accordingly, the Telangana State Gaming Act seeks to explicitly prohibit all forms of gambling, both online and offline.

Section 2 (2) of the Nagaland Act defines the term "territory" for the purposes thereof as "any territory in India in which 'games of skill' are permitted and are recognised as being exempt from the ambit of 'gambling'."

Accordingly, a conjoint reading of above may imply that the Nagaland Act, while being consistent with Article 246 of the Constitution of India^[12], also provides that a license obtained there under may be used to offer games of skill throughout the country, provided that such games are exempted by the States in which they are so offered under their respective laws.

FANTASY SPORTS

It can be argued that certain versions of fantasy sports games in India are predominantly skill-based games. Therefore, such games are exempt from the gaming laws. The High Court of Punjab and Haryana held Dream 11's format of fantasy sport to be a game of skill in the case of *Shri Varun Gumber v UT of Chandigarh & Ors.* ("Varun Gumber Case"). After that, in *Gurdeep Singh Sachar v Union of India*^[13], the High Court of Bombay also recognized that fantasy sports were games of skill.

The Nagaland Act explicitly recognizes virtual team selection games and virtual sport fantasy league games as games of skill. In order to offer such games online in Nagaland, a license would be required.

In deciding the issue regarding the fantasy games offered on the platform of respondent no. 5, in the case of *Varun Gumber Case*, the Punjab & Haryana High Court analyzed the business model of "Dream 11" in detail and held that the game did not constitute to gambling since it was a game of skill rather than a game of chance. The Law Commission Report^[14], in paragraph 3.13 refers that fantasy games such as "fantasy football" are "gaming" rather than "betting",





POKER

It can be argued that certain variations of poker may be considered games of skill for the purpose of most gaming laws. Accordingly, such games should be allowed to be offered in most Indian states that have an exemption for games of skill.

In certain Indian states, poker is specifically recognized as a game of skill in the following instances:

- Under the West Bengal Gambling and Prize Competitions Act[15], poker has been specifically excluded from the definition of "gambling";
- the Nagaland Act categorized poker as a game of skill; and
- the Karnataka High Court has also held that a licence is not required under the Karnataka Police Act[16], when Poker is played as a game of skill.

However, the High Court of Gujarat held that poker is a game of chance and a gambling activity. Accordingly, poker is currently prohibited in Gujarat. However, an appeal has been filed against this order and is pending.

GAME OF SKILLS

In absence of specific gambling laws, the Indian judiciary through various precedents has laid down that online gambling involving game of skills is allowed in India while gambling with a pure game of chance are considered illegal. Furthermore, there is a clear distinction between games of skill and games of chance. Sport, including cricket, is a game of skill. A game of skill is any game in which the player is able to improve their chances of success by learning about the game. Many Indian states consider games of chance to be illegal.

The Hon'ble Supreme Court of India has consistently held that games of skill are distinguishable from gambling and are protected under Article 19(1) (g) of the Constitution of India. The Hon'ble Supreme Court of India in the case of State of Bombay Vs. R.M.D. Chamarbaugwala & Anr.[17], also ruled that competitions requiring substantial skill are not gambling activities and are qualified for protection under Article 19(1) (g) of the Constitution of India.

THE FOREIGN EXCHANGE MANAGEMENT ACT

Furthermore, under the Foreign Exchange Management Act, read with the Foreign Exchange Management (Current Account Transaction) Rules^[18], the following transactions are prohibited:

- remittance out of lottery winnings;
- remittance of income from racing/riding, etc, or any other hobby; and
- remittance for the purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes, etc.

ANTI-MONEY LAUNDERING

The Prevention of Money Laundering Act^[19] ("PMLA") prohibits money laundering in India. The PMLA also applies to entities engaged in the activities of playing games for cash or goods (including casinos). Such entities are classified as "reporting entities" under the PMLA. To comply with the anti-money laundering requirements under Section 12 of the PMLA, reporting entities must maintain records of transactions and documents proving the identity of their clients.

SANCTIONS

In addition to the penalties, there are no additional sanctions in the gaming. Most of the gaming enactments are archaic and were carried out before the internet became popular. These fines and prohibitions have been enforced over a period of time in brick and mortar gaming establishments. Online gaming has only been in existence for a few years, so there is not a sufficient record of enforcement from which to draw conclusions.

Despite the fact that certain cases are pending in the courts, not all are reported in the public domain. It is evident from the latest information available and the public records that most cases are being heard and resolved during the trial process. As online gaming sites have become increasingly popular, authorities have become more active over time.

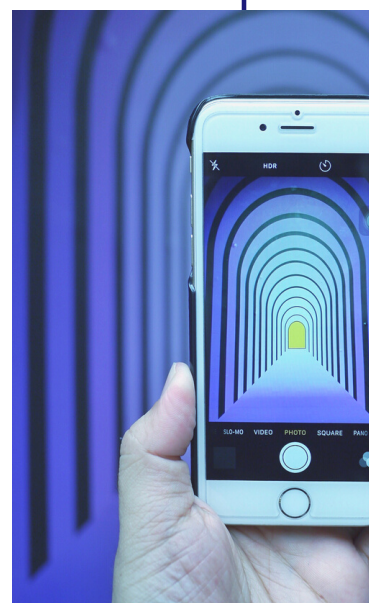
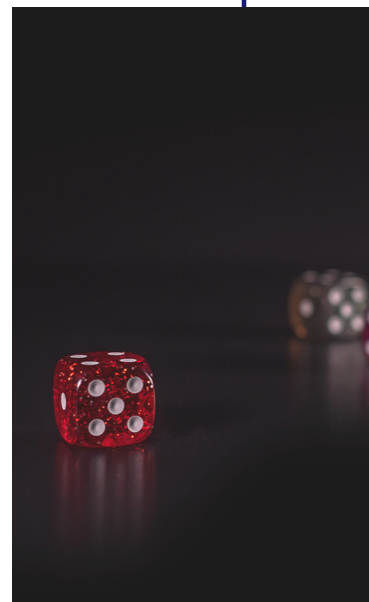
LICENSING AND COMPLIANCE (STATES)

Online gambling or betting in India may be prohibited if the business is not conducted in accordance with the applicable laws. Although offshore companies and/or other companies based outside of India are not subject to this prohibition, so long as they are:

- (i) based outside of India; and
- (ii) comply with applicable laws such as the Foreign Exchange Management Act.

State Laws:

- The state of Meghalaya has a licensing regime for virtual sports fantasy league games under the Meghalaya Regulation of Gaming Act. As a result of this act, operators may need to obtain a license to offer online games of chance (like keno and wheel of fortune) throughout the state. The licenses under this act, however, are issued to entities based in India.
- The state of Sikkim has introduced the Sikkim Online Gaming (Regulation) Act^[20] under which licenses may need to be obtained for conducting online gambling in India. In this act, it is not mentioned whether a foreign entity can apply for a license.
- The state of Goa and union territories of Daman and Diu regulates gambling under the Goa, Daman and Diu Public Gambling Act^[21]. This act does not mention about online gambling.
- The state of Nagaland requires operators to obtain licenses for games of skill conducted online under the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act^[22].



COMPLIANCES WITH RELEVANT LAWS

Depending on the state, there is still some ambiguity regarding the law about online games (non-skill). Increasingly, states are reevaluating their positions regarding online gaming as business models gain traction. Attempts are being made by the central government and respective state governments to resolve conflicts, if any, so that the online gaming industry can grow in India. Although, the following laws may not have mandatory implications, however it is recommended that they be adhered to following laws.



The Information Technology Act

Under the Intermediary Guidelines and Digital Media Ethics Code) Rules[23], prohibit intermediaries from hosting, displaying, uploading, modifying, publishing, transmitting, storing, updating or sharing information related to or encouraging money laundering or gambling or that is otherwise inconsistent with or contrary to law. Offshore based (and/or, other non-Indian) operators may have their websites blocked by governmental authorities and/or by court orders in accordance with the provisions Information Technology Act and related regulations.

The Consumer Protection (E-Commerce) Rules[24]:

The Consumer Protection (E-Commerce) Rules cast certain duties on e-commerce entities including establishing a grievance redressal mechanism, publishing the contact information of the customer care and grievance officer, and appointing a nodal person to ensure compliance with the law provisions. There are no strict compliance requirements for companies based outside India and/or other non-Indian countries.

The Payment and Settlement Systems Act:

The Payment and Settlement Systems Act (the "PSS") does not cover foreign payment service providers providing such services to offshore merchants. Foreign gaming operators that use domestic payment services providers need to comply with the provisions of the PSS. The PSS does not prohibit foreign entities from operating a payment system in India.

The Prevention of Money Laundering Act:

The Prevention of Money Laundering Act (the "PMLA") governs laws relating to prevention of money laundering activities in India.

In accordance with section 12 of the PMLA, reporting entities need to comply with certain obligations of maintaining records of transactions and report them. According to section 2 (wa) of the PMLA "reporting entity" means a banking company, financial institution, intermediary or a person carrying on a designated business or profession. The term "person carrying on a designated business or profession" includes a person carrying on activities for playing games of chance for cash or kind.

The Foreign Exchange Management Act

Offshore -based (and/or, other non-Indian) companies should accept rupee transactions (may be by using geolocation software) to determine the user's location. The transactions beginning in India should be conducted in Indian rupees. The operators may also accept electronic wallet payments instead of credit or debit cards. The online gaming companies are generally prohibited from accepting credit card deposits in other currencies in accordance with India's Foreign Exchange laws.

The remittance facilities in foreign currencies are permitted under the Foreign Exchange Management Act read with the Foreign Exchange Management (Current Account Transactions) Rules[25] (the "Current Account Rules"). The Reserve Bank of India has also issued the Master Direction No. 8/2015 on 'Other Remittance Facilities' (the "Master Directions")[26] which consolidates policies regarding remittances and withdrawals in foreign currencies including the use of international debit and credit cards.

Schedule I of the Current Account Rules provides a list of transactions which are prohibited. This list includes.

- remittance out of lottery winnings;
- remittance of income from racing/riding, etc. or any other hobby; and
- remittance for purchase of lottery tickets, banned / proscribed magazines, football pools, sweepstakes, etc.

In addition, the Master Directions also restrict remittances for participation in lottery like schemes such as money circulation schemes or remittances for purposes of securing prizes.

A person who participates in real money online games or betting on sports league matches through an overseas mobile app may require to pay the participation fee and betting amount in foreign currencies. Such transactions would fall under the list of prohibited transactions as set out in Schedule I of the Current Account Rules read with the restricted transactions under the Master Directions.

Taxation

Goods and Services Tax ("GST") is applicable at a rate of 28% on games of chance, and the skill gaming industry pays 18% GST on the commission or Gross Gaming Revenue ("GGR") (i.e., the fee charged by online gaming operators). Under the Income Tax Act, tax of 30% is required to be deducted before paying income from winnings above INR 10,000. However, there is uncertainty over whether international gaming platforms are taxed.

Residents of India who deposit money into an online gambling account in a currency other than Indian rupees could be considered to be exchanging currencies unlawfully.



OVERSEAS JURISDICTION

Legal doctrine - Principle of comity

Indian courts apply common law and favour the principle of comity (such as respect given by the local/domestic courts to foreign courts exercising jurisdiction over them) rather than overzealous exercise of their jurisdiction's laws. As a result, if the facts and circumstances indicate that a foreign court has jurisdiction, Indian courts are reluctant to intervene and usually direct aggrieved parties to seek redress there. This is regardless of whether a foreign court has previously heard the case. Indian courts do follow the doctrine of "Real and substantial connection" and adhere to similar approaches in a few cases. Although, there are a few exceptions to this pattern as below:

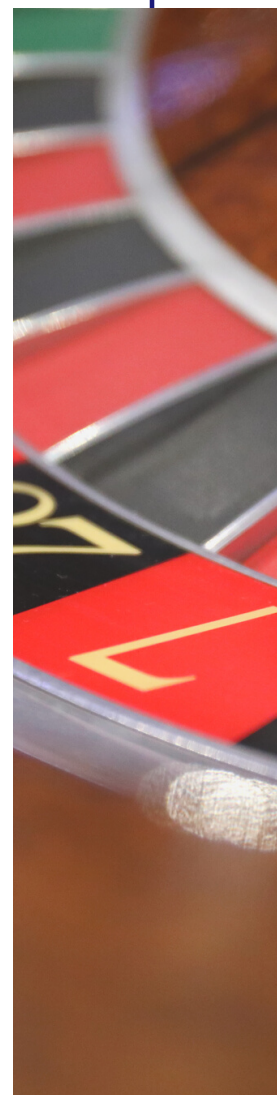
- **Jurisdiction in personam**

In *British India Steam Navigation Co. Ltd. v Shanmughavilas Cashew Industries*[27] matter, the Supreme Court approved Cheshire and North's *Private International Law* (11th edition) on submission to jurisdiction in personam. In this regard, it was held that an appearance by a foreign defendant solely to protest that the Indian court lacks jurisdiction would not constitute submission.

In addition, if the foreign defendant in question does not object to the exercise of jurisdiction in personam but instead contests the case on its merits, it is assumed that the foreign defendant has submitted to the jurisdiction of Indian courts. However, even by submission, the parties cannot confer jurisdiction on the court to conduct proceedings that are not within its jurisdiction.

- **Anti-suit and anti-arbitration injunctions**

In appropriate cases Indian courts may issue anti-suit injunctions as well as anti-arbitration injunctions. As part of these injunctions, a court may orders a party not to pursue a suit before a foreign court or restrain arbitration proceedings.



Principles of grant

In *Oil and Natural Gas Commission v Western Company of North America*^[28] matter, the Supreme Court held that Indian courts could grant anti-suit and anti-arbitration injunctions if either:

- It is necessary or expedient to do so; and/or
- It is required by justice.

The Supreme Court also observed that it would be unfair to refuse the grant an injunction, if an action before a foreign court is found to be oppressive under the circumstances. The Supreme Court added, however, that the power to grant anti-suit injunctions should only be exercised when it would be failing in its duty otherwise.

In *Casio India Co. Limited v. Ashita Tele Systems Pvt. Limited*^[29] matter, the court held that it had to be examined whether the Defendant's activities "have a sufficient connection with the forum state (India); whether the cause of action arises from the Defendant's activities within the forum; and whether the exercise of jurisdiction is reasonable."

Accordingly, Indian courts in various precedents laid down that the fact that the website of a defendant can be accessed from India is sufficient to invoke the territorial jurisdiction of Indian Courts.



EXTRATERRITORIAL JURISDICTION - THE INFORMATION TECHNOLOGY ACT 2000

In India, the Information Technology Act, 2000 has extraterritorial jurisdiction over cyber (computer) crimes. Additionally, personal jurisdiction has also been exercised in several international cases involving the internet, and the court asserted personal jurisdiction based on the nature of the 'gambling operations' website and the intent to solicit business from residents of the other states.

In addition to the Information Technology Act, 2000 governing the whole of India, its provisions also apply to any offence or contravention committed outside the territorial jurisdiction of the country.

In order to invoke its extra-territorial operation, such an offence or contravention should involve a computer, computer system or computer network located in India. Thus, extraterritorial provisions having a nexus with Indian interests are considered intra-vires and valid.

In addition, several online gambling sites are located offshore (i.e., outside the jurisdiction of India), making enforcement actions would be difficult, but not impossible. Enforcement issues pertaining to existing laws are a specific area of concern, especially when websites are hosted and operated from outside India, making it difficult for Indian authorities to give directions regarding shutting them down, or limiting their access.

Foreign exchange laws prohibit gambling remittances outside of India for gambling, but the primary liability would be on the primary malfeasor, rather than the intermediary.

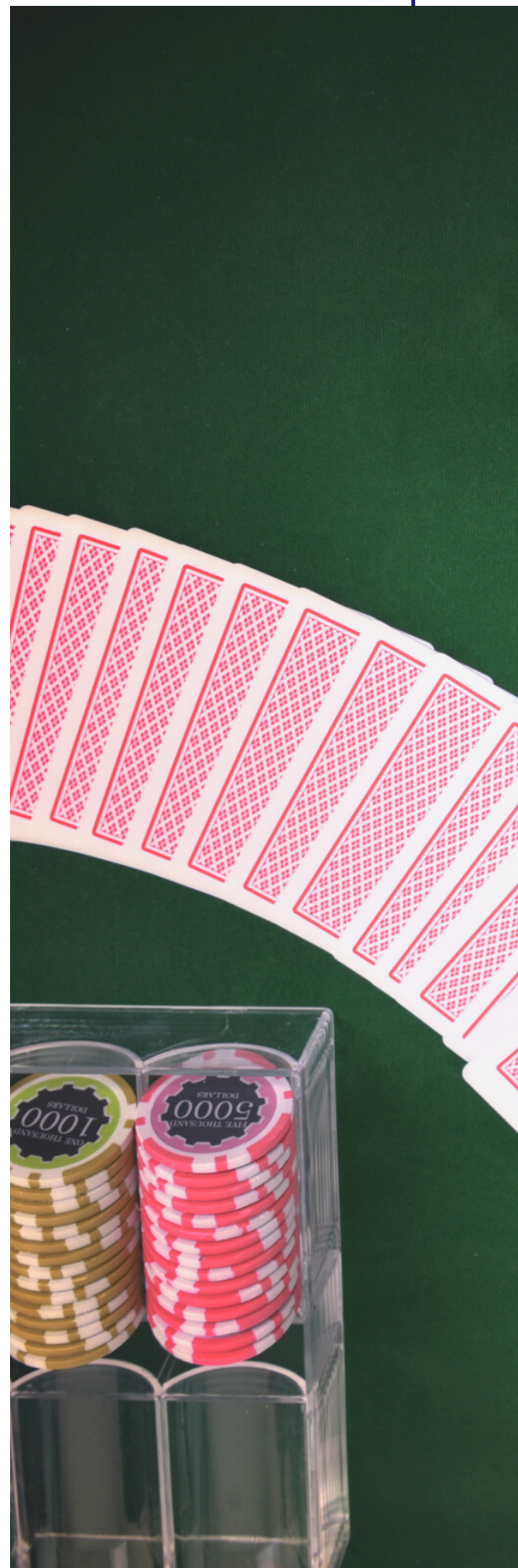
As an extension of this position, offshore betting and gambling websites should also be subject to the Information Technology Act. Despite this, enforcement actions cannot be taken due to the lack of a nodal department to identify and report rogue offshore gambling websites. Following are some cases involving extra territorial jurisdiction:

In *(India TV) Independent News Service Pvt. Limited v. India Broadcast Live Llc & Ors*[30], Plaintiff filed a suit against defendant for permanently restraining the defendant from the use of the mark. The Defendant questioned the jurisdiction of the court as they claimed that they were American entities and do not reside or work for gain in India. In realising the incompetency of the traditional jurisdictional rules, the court referred to the American court's jurisdiction rules.

In *Super Cassettes Industries ltd. v. Myspace Inc. & another*[31], it held that, the court had jurisdiction even on the basis of the cause of action clause of Civil Procedure Code.

In *SIL Import v. Exim Aides Silk Importers*[32], it was ruled that, until there is specific legislation regarding the jurisdiction of the Indian courts with respect to Internet disputes, or unless India is a signatory to an International Treaty stating the jurisdiction of the national courts and the conditions under which may exercise that authority, the Indian courts will have to give a wide interpretation to the existing statutes, for exercising Internet disputes.

It is a legal and practical issue to apply and enforce gaming laws and Information Technology laws extraterritorially against foreign operators, but, as outlined above, there is no consensus as to how gaming laws apply to online media and may vary from state to state as well as depending on judicial pronouncements on a specific gaming law.



CONCLUSION

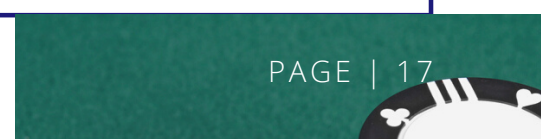
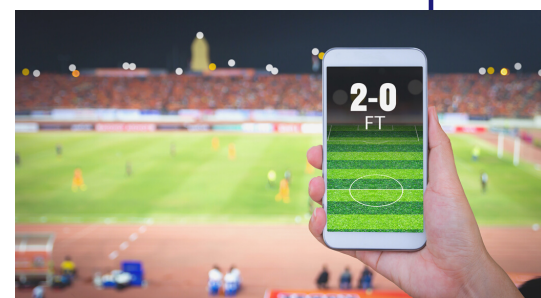
In India, there are no specific laws prohibiting online gambling, so joining sports betting and casino gaming website and depositing money is not unlawful. India has a web presence of some renowned companies registered in offshore in countries like Curacao and Malta offering online gambling and betting services to Indian customers.

A Foreign licensed company (permitted under the foreign licensing laws) with its all business operations of online gaming services located in other country such as its office(s), employee(s), computer server(s), general business conduct of online gaming services and offering online gaming services to its clients (despite being based in India) is not restricted to offer online gaming services in India (subject to the provisions referred to herein). Offshore betting sites like 1xbet etc. (appears licensed in Curacao) allows users to bet on their website from India.

In India, offshore betting websites with licenses from countries such as Curacao and Malta are not prohibited from operating as long as they adhere with the Foreign Exchange Management Act and applicable laws. Although, it is mandatory for an entity to accept payments in Indian currency and to comply with the Foreign Exchange Management Act and its related provisions.

Online betting is not unlawful in India since there are no formal laws and regulatory body, as such. India lacks a comprehensive regulatory framework for games of chance like betting,

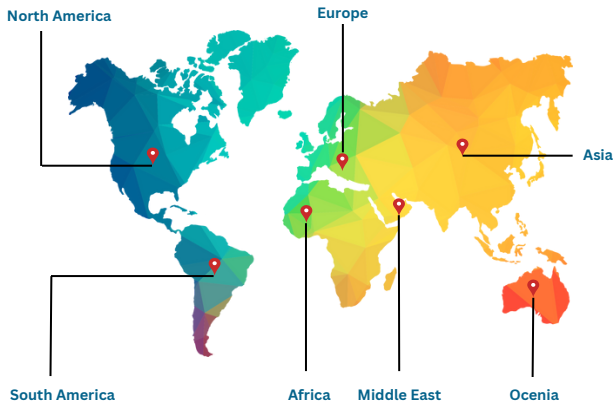
Consequently there is a scope for betting companies to structure their operations in a manner that they could avoid legal action without dividing the law. The online gambling industry usually uses an offshore license which allows money collection and operations in India. Operators should avoid their activities in states where they are explicitly prohibited or regulated.



ENDNOTES

- [1] <https://thc.nic.in/Central%20Governmental%20Acts/Public%20Gambling%20Act,%201867.pdf>
- [2] https://legislative.gov.in/sites/default/files/A1999-42_0.pdf
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