

# GAMING SECTOR IN INDIA



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# Introduction

Gaming plays an important role in peoples' life as it holds great entertainment value. Though gambling and skill-based games both can be the form of gaming. In India, the history of Gaming can be traced back to time immemorial even India's oldest mythological text "The Ramayan" and "The Mahabharata" talks about gambling.

Online Gambling originated in the year 1994, when the Free Trade and Processing Zone Act, 1994 was passed to regulate online gambling by the Caribbean Nation of Barbuda and Antigua.



The World's first online casino "InterCasino" was launched in the year 1996 and in 1998, the first internet Poker room was launched which led to the immense popularity for online gambling.

The introduction of advanced technology and digitalization to the gaming industry led to modern online gaming platforms. Considering India's population and access to smartphones and the internet the gaming sector is becoming the fastest growing sector. The popularity for online gaming among youth is rapidly growing but this sector had to fight various legal battles as there is not any structured gaming law in India.

# Types of Gaming and Gambling Industry

## Physical Gambling and Betting



Under the Constitution of India, the state legislature has been given the authority to make specific laws on 'Gambling and betting'. There are many states like Uttar Pradesh, Madhya Pradesh and Delhi adopted the Public Gambling Act, 1867.

## Online Gambling



Online Gambling is basically similar to physical gambling the only difference is that it takes place on a virtual platform. Players in online gambling do betting via virtual platforms and pay or receive money online through credit cards, debit cards, or online banking.

## Casino



Casino Products are considered games "predominantly of chance" and hence are prohibited under most gaming regulations. The Gambling Laws of Goa, Daman & Diu and Sikkim legalize gambling a certain extent in five-star hotels after licensing.

## Bingo



Bingo, by definition, is a game of chance or luck, as a player has no power over which numbers are drawn so it is subject to gambling regulations and may be considered illegal. Although, as bingo games are typically played for entertainment purposes rather than as a means of making money,

## Skill Games



Under gaming laws, skill games are specifically exempted and courts have acknowledged skill games as a legal, constitutionally protected commercial activity.

## Poker



Poker has been expressly recognized as a "Game of Skill" by gaming laws and courts in many states. As in the West Bengal Gambling and Prize Competitions Act, 1957 explicitly excluded Poker from the "Gaming and Gambling" definition and also the High Court held that playing poker is not a crime or subject to police harassment.

## Horse Race



The gambling laws in India kept horse racing in a distinct category. The Hon'ble Supreme Court in the case of K R Lakshmanan vs State of Tamil Nadu held that Horse Race Betting falls in the category of Game of skill as the fitness and competence of the horse and jockey could be rationally analysed by a person who is betting.

## Fantasy Sports



In the Indian context, it may be claimed that some variations of fantasy sports games are primarily skill-based activities. As a result, some games may be considered exempt under gaming laws.

## Lotteries



In India, Lottery law prohibits private lotteries as the law only permits the state government to operate lotteries subject to the rules and regulations. The Constitution of India, states that lotteries come under the legislative jurisdiction of the central government and so state governments must follow the requirements outlined in the Lottery Laws.

## Social/Casual Gaming



Social/Casual Games are basically those online games in which there is no monetary loss or gain included thus they doesn't come under the purview of gambling. The goal of these games is not betting or gambling.



# Important Judicial Precedents

In *RMD Chamarbaugwala vs. Union of India*, the Hon'ble Supreme Court established a clear distinction between games of skill and games of chance holding that games requiring a certain degree of skill wouldn't be regarded as gambling. Court defined skill game as "The competitions where success depends on a substantial degree of skill are not 'gambling' and despite there being an element of chance if a game is preponderantly a game of skill it would nevertheless be a game of mere skill" as a result, the games of skills were exempted from the definition of gambling and are not illegal.

The Hon'ble Supreme Court in *State of Andhra Pradesh v K. Satyanarayana & Ors* While deciding whether Rummy was a game of skill or chance argued that it needed players to remember cards and hold and discard them, showing a high level of talent.



The Hon'ble Supreme Court in *Dr K.R. Lakshmanan vs. State of Tamil Nadu*, acknowledged that horse racing was a skill-based game thus doesn't fall within the definition of gambling. The three-judge panel went on to rule that a horse's success is not just dependent on chance.

# Key Authorities and Legislations

Under the Indian Constitution, legislative functions are separated between the centre and the states. The Constitution allows each state to make its own laws on "betting and gambling" within its own area in its Seventh Schedule. Several states, like Uttar Pradesh, Madhya Pradesh and Delhi, have adopted the Public Gambling Act, 1867, colonial-era legislation still in effect. Some governments have also made their own state changes to the Public Gambling Act.

As part of their gaming laws, some states have passed their own legislation to control gambling and gaming within their jurisdiction. The Public Gambling Act serves as the foundation for the majority of these, however with the required changes. Most Gaming Laws are pre-internet regulations that outlaw gambling operations solely in physical facilities known as "common gaming houses."



There is a licensing procedure in place for internet gaming in the states of Sikkim, Nagaland, and Meghalaya. Only online skill games are licensed in Nagaland. Meghalaya has just implemented a licensing scheme for both skill and chance games, but it has yet to implement the allied rules and regulations that offer more detailed information.

Most state laws include special exceptions for games of chance. "Mere skill" has been understood by the courts to signify games that rely heavily on talent. However, rather than establishing objective standards to separate games of skill from games of chance, Indian courts have made their decisions based on the facts and circumstances of each case. Only Nagaland and Meghalaya have licensing regimes for skill games and the Nagaland and Meghalaya Acts offer a list of recognized skill games.

# State Laws on Gaming

**Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015**

The State is now authorised to grant licences for skill games under this Act. The Act's principal goal is to prevent gambling and to regulate and promote online games of skill in Nagaland when a licence from the State Government is secured for specified online games that may be played in a legally controlled setting.

**Sikkim Online Gaming (Regulation) Act, 2008**

A person may seek a license from the State to operate a gaming establishment under this Act. The State issued the Sikkim Online Gaming (Regulation Rules, 2009) as a result of this enactment, which allows for online games after a license has been issued .

**Telangana State Gaming (Amendment) Ordinance, 2017**

The purpose of this Ordinance is to make major changes to the Telangana State Gambling Act, 1974 in order to expand its application to online gaming.

**The Meghalaya Regulation of Gaming Act, 2021**

This law enables businesses to apply for a licence to provide land-based and online games of chance including wheel of fate, roulette, and slots inside the state.





# Offences

The majority of offences and regulations under the Gaming Enactments relate to "gaming houses" or "common gaming houses." The Gaming Enactments define numerous gaming/gambling offences, the punishment for which typically falls on the following:-

- a) the owner of the gaming/common gaming house
- b) the person keeping or having charge of the gaming/common gaming house
- c) the person gambling or the person found in the common gaming house or possessing instruments or records of betting or suspected of gambling or possessing such instruments
- d) the person "assisting" in conducting the business of any common gaming house

While penalties and/or imprisonment are generally prescribed by the Gaming Enactments, each state may have its own laws governing the amount of any fine and the length of any sentence. The Public Gambling Act of 1867 imposes a punishment of INR100 or imprisonment for a time not exceeding three months for owning, keeping, or having charge of a gaming house, and a fine of INR100 or imprisonment for a term not exceeding one month for being caught in a gaming house. Offenders are also fined and imprisoned under the Bombay Prevention of Gambling Act, 1887.



# Tax

## Income Tax

According to Indian Income Tax laws, any winnings from a lottery, crossword puzzle, card game, or other game that exceed INR 10,000 must be withheld at a rate of 30% (excluding any relevant surcharge and cess). If the earnings are in cash and kind, or entirely in kind, and the cash component is inadequate to meet the withholding/tax duty on the full winnings, the payer must guarantee that the tax at the rate of 30% is cleared or paid before releasing the entire profits to the winner/payee



## Equalisation Levy

A new tax on internet services or commodities provided by offshore e-commerce firms to Indian citizens has now been introduced. This tax is 2% of the turnover tax on products or services sold to Indian residents.

## Goods and Services Tax("GST")

According to the GST rules, a 28% tax rate is applied on services like an entrance to entertainment events or access to casinos, among other things. Furthermore, games offered under direct betting models, in which players gamble against the house, constitute actionable claims. If such actionable claims involve a lottery, betting or gambling, they are considered a supply of commodities and are therefore liable to GST at 28%. (on the bet amount).

# How we can help?

The gaming sector in India is a rapidly growing industry and the legal landscape is constantly evolving. As a legal firm providing services in this sector, Our team can help to navigate the complex legal and regulatory environment by providing the following services:

- **Legal advice on the legality of gaming in India-** Our professionals can handle the legality of gaming in India. There are a number of different laws and regulations that apply to gaming and the interpretation of these laws can vary from state to state. You can help your clients understand the legal landscape and ensure that their gaming operations are compliant with the law.
- **Drafting and negotiating gaming contracts-** Gaming contracts can be complex and it is important to ensure that they are drafted in a way that protects your clients' interests. Our team can draft and negotiate gaming contracts that are fair and enforceable.
- **Advising clients on gaming compliance-** The gaming industry is subject to a number of compliance requirements, including licensing, taxation and anti-money laundering. Our team can handle these compliance requirements and help them ensure that they are in compliance with the law.
- **Research the latest legal developments in the gaming industry-** This includes keeping up with changes in the law, as well as new court decisions and regulatory rulings.
- **Stay informed about the latest trends in the gaming industry-** This includes understanding the different types of games that are popular, as well as the latest technologies that are being used in the industry.





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