

EXPLAINER

EDITION I

# GAMING LAWS IN INDIA

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# VISION



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‘Explainer’ is an initiative under the ASK SLPRR project, which is our flagship platform for providing comprehensive and easy-to-understand information about various laws in the Sports industry. Explainer’s primary aim is to analyse the key laws that are applicable in this industry, break them down, and finally present the same in a concise format for the relevant stakeholders.

The present edition of Explainer is about Gaming Laws in India - Gaming has been a part of the Indian culture since ages, and is currently witnessing a paradigm shift with the proliferation of the Internet, more specifically, online gaming models. Accordingly, this explainer explains the legal framework governing the Gaming industry in India. From outright bans to restrictive amendments, the recent years have witnessed a slew of laws being passed, especially concerning online gaming. The Judiciary too has played a key role in this area. While the age old debate about what forms of gaming are legal and what aren’t continues, we can’t deny that Indians love to gamble.

With this in background and online gaming scenario being like a cat on a hot tin roof currently, it is imperative for the stakeholders to have a thorough understanding of the applicable laws. India lacks a dedicated techno-legal framework; however, there are a plethora of laws which interplay with the gaming industry. Various stakeholders have been identified in this explainer and the relevant concerns have been discussed. The information has been presented in FAQ format so as to make these complex laws accessible to everyone. For simplicity, the words ‘Gaming’ and ‘Gambling’ have been used interchangeably.

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# GAMING COMPANIES/ INVESTORS

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## 1.1 DO YOUR GAMES REQUIRE A LICENCE?

Gaming Companies may or may not need a licence to offer their games, according to the type of product and the medium it is offered through. State wise regulations differ from each other but have broadly the same types of laws with certain exceptions.

### A. Skill based games (poker, rummy, etc.)

Games of skill are excluded under most Gaming Enactments. India does not have a licensing regime for skill-based games at the central level.

Certain versions of fantasy sports games can be argued to be preponderantly skill-based games in the Indian context. Accordingly, such games can be treated as exempted under the Gaming Enactments. The High Court of Punjab and Haryana held Dream 11's format of fantasy sport to be a game of skill in the landmark case of *Varun Gumber v. UT of Chandigarh*. Thereafter, the High Court of Bombay also recognised that the same format of fantasy sport was a game of skill in *Gurdeep Singh Sachar v. Union of India*. The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2016 expressly recognises virtual team selection games and virtual sport fantasy league games as games of skill.

However, a licence is required in the states of Nagaland, Meghalaya and Sikkim to provide skill games online including but not limited to poker, rummy and virtual sports fantasy league games.

### B. Betting

Most Indian states prohibit betting on games of chance. The two exceptions are the physical and licensed casinos that can operate in certain states and horse betting under certain conditions

**B.1. Casinos:** For the states of Goa and Sikkim and the Union Territory of Daman and Diu, a company can operate a physical casino with a licence. For offshore casino products, such as on cruise ships, a licence is required and is available under the Goa Act.

**B.2. Horse betting:** Betting on physical horse races is subject to the conditions respective race clubs may impose and also subject to the terms of the licence issued by the state government.

### C. Lotteries

Licences are required for lotteries in India. State governments nominate a corporate or an individual through an agreement to function as the "distributor or selling agent". This nominated party has the exclusive authority to sell tickets in the participating states. Only these state-authorised parties can sell lottery tickets.

# GAMING COMPANIES/ INVESTORS

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## **D. Social Gaming**

Social gaming refers to those games in which no prize is offered. No licence is required for engaging in these games in the majority of the states of India.

## **E. Offshore betting companies**

Indian gambling laws do not allow sports betting companies or betting sites in India to be operated from within the country. However, there is no such law for the companies outside India. Companies like Betaway allowed users to place online bets on all kinds of sports by obtaining licences from off-shore tax havens such as Curacao, Malta, and the Virgin Islands, which are not prohibited in India as long as they adhere to the Foreign Exchange Management Act (FEMA) rules and deal in the Indian currency.

## **1.2 WHAT ARE THE DIFFERENT TYPES OF LICENCES?**

I. Casino licences are issued to operators conducting gambling activities in five-star hotels and offshore vessels. The Goa Gambling Regulation Act grants licences to operators offering “games of electronic amusement/slot machines” in five-star hotels both in Goa as well as Daman and Diu.

## **1.3 WHERE DO YOU APPLY FOR A LICENCE? WHAT ARE THE REQUIREMENTS, PROCEDURE, FEE AND TIME TAKEN TO OBTAIN ONE?**

The annual licence fee for a land-based casino in a five-star hotel ranges from INR 10 Cr to 40 Cr depending on the area of the casino. The annual licence fee for offshore casinos ranges from INR 25 Cr to 40 Cr depending on the offshore vessel passenger capacity. These fees are subject to annual increases.

Commissioner of Police, or the District Magistrate or the Sub-divisional magistrate if its a physical gaming premise.

## **1.4 WHAT IS THE SCOPE OF GROWTH OF THE INDUSTRY IN THE COMING FUTURE?**

The market value of India's gaming industry was around INR 90 billion in financial year 2020. This was estimated to go up to over INR 143 billion by 2022.[1] The industry has been evolving at a rapid pace in the country, and analysts predict over 40,000 new job opportunities by 2022.[1] Online gaming will touch 500 million users by 2025 in India.[2]

[1] India - Value of the gaming industry 2007-2022 Statista.

[2] EY – FICCI Report - Playing By New Rules – India's Media & Entertainment Sector Reboots in 2020.

# GAMING COMPANIES/ INVESTORS

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## 1.5 WHAT ARE THE FINANCIAL OBLIGATIONS AND ISSUES FACED BY GAMING COMPANIES?



### TAXES

Under the Goods and Services Tax Act, gaming platforms are required to pay GST as they qualify as ‘suppliers’ of services.

When a user pays a fee to participate in a match on a gaming platform, part of the fee is deposited in a prize pool out of which the winnings are paid, and a part is charged by the platform as a service fee, which form its gross gaming revenue or GGR. Currently, 18% GST is levied on gross gaming revenue (GGR), which is the margin between the amount wagered and the amount won by users.

The GST Council constituted a Group of Ministers (GoM) with the objective to make recommendations for capacity-based taxation and for casinos, race courses and particularly online gaming. The GoM submitted its report to the Centre on May 20th, 2022. The report itself is not yet in the public domain, but the 2 major decisions are:

- Increase the rate of GST levied on online gaming companies from 18% to 28%; and
- A blanket 28% GST to be charged on the overall revenue of a gaming company, which includes prize pools of tournaments.

Although not formally adopted, these proposed changes in essence will increase the tax liability of gaming companies by 3-4 times due to the increase in the rate as well as the total amount taxable. It will require more transparency about financial records from the operators as well.

# GAMING COMPANIES/ INVESTORS

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## **CORPORATE SOCIAL RESPONSIBILITY**

Certain state rules such as the Nagaland Gaming Rules impose qualitative social responsibility requirements that the operators must follow when offering games of skill in the state – for instance, games for stakes can only be played by those above the age of 18 years.

As other state governments such as UP employ their law commissions to draft gaming policies, CSR obligations may be quantified in future enactments. The sheer size of the industry in terms of revenue generation will attract high taxes and imposition of large caps on social responsibility contributions, and gaming companies should allocate substantial portions of their revenue for these expenses.



## **USE OF DIGITAL WALLETES AND ASSOCIATED RISKS**

FEMA's prohibitions are now being bypassed with the use of digital wallets as intermediaries, and most users in India use third party services like GPay and PayTM to transfer the amount in their domestic currency.

The concern is the lack of RBI directions on due diligence, transparency or any kind of guidelines regarding the use of such wallets instead of bank transfers. Another aspect is that internet companies often sell user data to third party advertisers, and the lack of rules on sharing of users' wallet information is also a region of concern.



## **FOREIGN EXCHANGE MANAGEMENT ACT, 1999 (FEMA)**

FEMA provides a list of foreign transactions which are prohibited. Betting on sports matches through an overseas mobile app, which requires the participation fee/betting amount to be paid in foreign currencies are prohibited under Section 5 of FEMA read with the Current Account Rules, 2000.



# GAMING COMPANIES/ INVESTORS

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## PERMITTING CRYPTOCURRENCIES

Despite facing financial disruptions through state bans and tax changes, Indian gaming companies have refrained from opting for cryptocurrencies as a mode of payment, even though some off-shore entities allow it.

This is because of a variety of factors:

- The proposed crypto-regulation bill, which is yet to be introduced in the Lok Sabha, addresses the validity of crypto-currencies as assets and not modes of payment. Therefore, the blockchain sector is more concerned with lobbying for the same, rather than regulating them as legal tender.
- Crypto buyers in India cannot keep coins in their own wallet. In the United States, where cryptocurrencies are used for payments, a crypto coin is kept in a virtual personal wallet and can be used freely for payments. But in India, the exchanges hold the crypto coins in their own universal wallet, and they need to be “traded” similar to stocks instead of using them freely as cash.
- The government is not likely to encourage the use of cryptocurrencies for payment anytime soon as there is no framework in place to regulate them like bank transactions.

More importantly, with all the legal issues gaming companies currently face, with states already having banned them on several occasions, the companies are hesitant to do anything that puts them on the wrong side of the existing legal framework. Instead of taking the easy way of adopting popular crypto currencies for payment, they are likely to wait till a proper legal framework is established.



# GAMING COMPANIES/ INVESTORS

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## **PREVENTION OF MONEY LAUNDERING ACT, 2002 (PMLA)**

Online skill gaming is likely to be brought within the purview of the PMLA in an attempt to curb money laundering. State governments like Telangana, the Finance ministry and the RBI have all called for such a move since money trails in online skill gaming companies are not regulated. Large sums of money – in lakhs – change hands through these gaming apps without any KYC check. There is also no prohibition on foreign investment in the real money gaming sector, with 3 companies currently valued at above \$1 billion.

If online gaming is brought under the PMLA, gaming operators:

- Will become reporting entities such as banks, financial institutions, and intermediaries, and will be required to verify the identity of the customers by use of aadhaar authentication, passport, or any other valid identity document.
- Will be required to maintain details of transactions and implement enhanced due diligence for each transaction.
- Will have to file a Suspicious Transaction Report for any transaction above Rs 50,000.



## **THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007**

The Payment and Settlement Systems Act, 2007 enables the RBI to regulate, supervise and lay down policies involving payments in India. It is the major framework under which all digital payments are regulated, including bank transfers, NEFTs, IMPs, ECS Debit and Credit and UPI payments. Due to the use of virtual payment wallets on online gaming apps, the majority of payments are undertaken under the system provided by the 2007 Act. Permitting crypto for payments, regulating the use of domestic or foreign currency by off-shore entities offering services in India, etc. are all modifications of rules that are laid down under this act.

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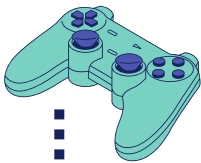
## **THE BLACK MONEY (UNDISCLOSED FOREIGN INCOME AND ASSETS) AND IMPOSITION OF TAX ACT, 2015**

The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 provides for tax and penalty of 120 per cent and a jail term of up to 10 years for holding undisclosed foreign assets. It offers a 90-day compliance window to escape the harsh punishment by declaring the assets and paying 60 per cent tax and penalty at the end of every financial year.

Persons using e-wallets or virtual cards and earning money through online gaming or poker hosted by websites in foreign countries will be required to disclose such income under the black money compliance window.

# GAMING COMPANIES/ INVESTORS

## 1.6 WHAT ARE THE COMMON LEGAL ISSUES FACED BY GAMING COMPANIES?



### GAME OF SKILL V. GAME OF CHANCE DEBATE

Indian jurisprudence has maintained that a game of skill is different from gambling, but disagreements between businesses and government authorities are still common. Certain versions of fantasy sports games can be argued to be preponderantly skill-based games in the Indian context. Accordingly, such games can be treated as exempted under the Gaming Enactments.

The High Court of Punjab and Haryana held Dream 11's format of fantasy sport to be a game of skill in the landmark case of Varun Gumber v. UT of Chandigarh. Thereafter, the High Court of Bombay also recognised that the same format of fantasy sport was a game of skill in Gurdeep Singh Sachar v. Union of India.

Sikkim, Nagaland and Meghalaya have enacted regulations which expressly recognise virtual team selection games and virtual sport fantasy league games as games of skill.

Therefore, playing games of skill (online or offline) is judicially protected and cannot be viewed as gambling or gaming activities.



### ADVERTISING STANDARDS OF INDIA'S ONLINE GAMING REGULATIONS

The government permits licensees to advertise online games, provided they comply with the following:

- Advertisements must provide the online gaming operator's website address.
- Advertisements should not be directed to any individual who is below 18 years of age.
- Advertisements should not be directed at any jurisdiction where online gaming is prohibited.
- Advertisements should not be offensive or indecent.
- Advertisements should be based on facts.

# GAMING COMPANIES/ INVESTORS



## CONSUMER PROTECTION LAWS

The Consumer Protection Act, 2019 along with the Consumer Protection (E-Commerce) Rules, 2020 protect users of all goods and services bought or sold over a digital or electronic network, including digital products from all forms of unfair trade practices across all models of e-commerce.

Even an e-commerce entity which is not established in India, but systematically offers goods or services to consumers in India, that is, off-shore betting companies are covered under the act and have to adhere to consumer protection regulations set for online gaming, and are also answerable for consumer redressal forums in India.



## TELECOMMUNICATION REGULATIONS

TRAI's Telecom Commercial Communications Customer Preference Regulations, 2010 prohibit unsolicited commercial communications from online gaming companies to users. The rules can be construed to prevent gaming companies forcing their "addictive" product to users.

## TAXES

KPMG in a July 2021 report stated that the Indian gaming industry was worth about \$1.7 billion and is expected to grow to more than \$3.7 billion by 2025. A substantial increase in taxes such as the one being contemplated by the GST Council could potentially slow down the growth of this industry.

The proposed increase in GST fails to make a distinction between games of chance and games of skills. These blanket regulations club gambling activities such as those of horse racing and casinos, which are usually restricted to the upper economic strata, with skill-based online gaming whose participants come from more diverse economic backgrounds. Both activities cannot be taxed in the highest slab due to this inherent difference. Accordingly, higher taxation and regulations are likely to discourage the skill-based gaming sector unless the rules are amended.

Given that the globally accepted taxation rate of online games is between 8-15%, increase in GST will lead to a shift of users to offshore entities.



# THE GOVERNMENT

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## 2.1. WHAT ARE THE CURRENT LEGISLATIONS GOVERNING GAMING AND BETTING?

“Betting and Gambling” is a part of the State subject list under the 7th Schedule of the

Constitution of India, 1950. Each state government holds the exclusive power to enact its own laws on this subject for its own jurisdiction. As a result, gaming laws in India are fragmented and differ from region to region. Several states like Uttar Pradesh, Madhya Pradesh and Delhi adopted the The Public Gambling Act, 1867, a colonial-era statute, with some states making their own amendments to it. Other states have chosen to update this statute and insert certain safeguards relevant to them, but they are still largely modelled on the 1867 Act.

3 North Eastern states have already enacted a licensing regime for online gaming due to the popularity of those platforms in the region:

- Sikkim Online Gaming (Regulation) Act, 2008
- Nagaland Prohibition Of Gambling And Promotion And Regulation Of Online Games Of Skill Act. 2015
- Meghalaya Regulation of Gaming Act, 2021.

## 2.2 WHAT ARE THE MAJOR SHORTCOMINGS OF THESE ACTS? WHICH PARTS NEED TO BE UPDATED?

The major loophole created by using such an outdated piece of legislation is that it only prohibits gambling activities in physical “gaming houses.” It has no mention of internet based or online gaming and betting.

The entire online gaming industry has no specific regulations addressing its issues simply because of how old the laws are. The major needs of online gaming that need to be addressed by updated rules are:

- A central licensing regime with an independent regulator who will grant license to operate and register eligible operators.
- Providing clarity and uniformity in the meaning, definition and scope of games of skill, games of chance throughout the country,
- Identify permissible activities and conditionalities for each type of online game such as fantasy team building, rummy, poker etc..
- Mechanism to ensure discontinuation of unlawful apps and websites.
- Provide protection to users through KYC Norms and protect their privacy and security by limiting the personal data the online operators can share with others.

# THE GOVERNMENT

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- Mechanism to ensure secure and tamper proof gaming platforms where no cheating occurs.
- Mechanism to detect fraudulent gaming, hacking, etc. with the authority to rectify such situations.
- Protection of children and age verification mechanisms.
- Maintenance of transaction details for transparency.
- Ensuring advertisements are appropriate according to the Advertising Standard Council of India's specific guidelines for online gaming e.g. by addressing addiction and the risks of losing money.

Curbs imposed one after another by State governments had caused substantial losses to online gaming companies, besides discouraging the industry to set up in a particular region.

For instance, the fantasy sports unicorn **Mobile Premier League** (MPL) had shifted its registered office from Karnataka to Delhi, a few weeks after the Karnataka Government's ban on the same. Karnataka accounts for roughly 10-12% of the turnover of gaming startups. After the Karnataka High Court judgement in *All India Gaming Federation v. The State of Karnataka & Ors* (WP 18703/2021), these startups have some measure of relief and might spend more to make up for the losses.

Differing judgements from various high courts regarding legislations leads to confusion, and business pockets.

## 2.3 WHAT PROPOSED BILLS/AMENDMENTS ARE CURRENTLY BEING DISCUSSED?



There are two draft Central bills: the **National Sports Development Bill** and the **Prevention of Sporting Fraud Bill** which have been tabled for discussion since 2013.

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The Madras High Court in **Junglee Games India Pvt. Ltd. v. State of Tamil Nadu** on 3 August 2021, struck down the Tamil Nadu Gaming and Police Law (Amendment) Act, 2021, in its entirety, which sought to ban online games of skill played for money with stakes.



# THE GOVERNMENT

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The Uttar Pradesh State Law Commission submitted a draft report titled **Uttar Pradesh Public Gaming (Prevention) Bill**, prepared under the chairmanship of Justice A.N. Mittal, to the State Government in June 2021. The bill proposes prohibiting public gambling, including online gambling and various forms of betting, and putting them in the category of non-bailable offences, with a INR 5,000 rupee per violation.

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The Kerala High Court, in its decision dated 27 September 2021 in **Head Digital Works Private Limited and Ors v. State of Kerala**, declared the ban on “online rummy when played for stakes” as being *arbitrary, illegal and violative of fundamental rights* under articles 14 and 19(1)(g) of the Constitution.

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The Karnataka High Court, in **All India Gaming Federation v. The State of Karnataka & Ors**, struck down amendments to the Karnataka Police Act on 13 February 2022, which banned all online gambling and skill-based gaming platforms. The court ruled that such a ban was-

- Violative of the fundamental rights of trade and commerce (Article 19), liberty and privacy (Article 21), speech and expression (Article 19).
  - Manifestly arbitrary and irrational insofar as it did not distinguish between two different categories of games, i.e. games of skill and chance.
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The **Sports (Online Gaming and Prevention of Fraud) Bill, 2018** was earlier introduced as a private members bill by Dr Shashi Tharoor in the Lok Sabha, in December 2018, which was a comprehensive draft covering within its ambit sports fraud and betting, too. However, the Sports Bill lapsed with the dissolution of Parliament, prior to general elections in 2019 and was not reintroduced thereafter.





# THE GOVERNMENT

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**The Online Gaming (Regulation) Bill, 2022 was introduced in the Lok Sabha on 1 April 2022, for introducing a regulatory regime for online gaming:**



- The Bill addresses all forms of online gaming, irrespective of whether it is a game of skill or chance, played for stakes or not.
- It seeks to establish a central regulatory body called the Online Gaming Commission (Commission), with powers to oversee the functioning of online gaming websites and take measures to curb illegal online gaming.

However, the Bill also has many shortcomings:

- It fails to draw a distinction between casual gaming and real money gaming platforms.
- There is only mention of a central regulatory authority, but no state-wise body for gaming, which is a state subject. It will be difficult for the central body to enforce directions in case state authority disagrees.
- The licensing regime proposed is very different from the one currently in place for real money games passed by a few North-Eastern states. This will lead to confusion and problems of re-licensing in that region.
- The Bill also fails to address issues mostly related to consumer protection like KYC norms, customer grievance mechanisms, data protection of the users and societal issues such as loss of earning and addiction.

# THE GOVERNMENT

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## 2.4 WHAT OTHER REFORMS OR LAWS NEED TO BE BROUGHT INTO ACTION?



### GRIEVANCE REDRESSAL MECHANISM

Ensure setting up tiered grievance redressal mechanism which involves co-regulation by industry operators at base level, self-regulatory organisation at an industry-wide level and a Gaming Commission that shall act as the adjudicatory authority.

### AMENDMENTS TO OTHER REGULATIONS

- a.** Bringing betting and gambling as a part of scheduled offences under the Prevention of Money Laundering Act, 2002. Although the same has been discussed on various occasions, it has not been brought about.
- b.** RBI Notifications to provide guidance to Banks and payment system providers to provide for due diligence, tax requirements and reporting of suspicious transactions.



# THE GOVERNMENT

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## ADOPT BEST INDUSTRY PRACTISES

Most countries have regulated gaming with specific legislations dealing with valicensing, taxability, valuation, etc. The UK levies a separate duty on online gaming called 'Remote Gaming Duty' (RGD) which is levied at 21% on 'profits' of the remote gaming provider and played by the UK residents. 'Profits' are the difference between the total amount received and the amount paid separately as prizes. Therefore the tax is levied on the GRR earned by the gaming companies The US levies taxes at the federal, as well as state level, where most States levy value-based tax on the GGR as well.

## COMMISSION A STATE-CONTROLLED NATIONAL SPORTING FEDERATION

Instead of letting private players such as the All India Online Gaming Federation become the representative of the gaming industry simply because of their initial reach, the Government should establish a two-tier National Sporting Federation that identifies, trains and promotes gaming talent at the state and national level.

Organising official gaming competitions for selections to a national team would also come under their control, even if there is a lack of international events for such sports. International events will continue to grow as online games are increasingly recognised as competitive sports, and India should be ready to have a skill-development program and selection procedure in place to participate at the larger stage when the time comes.



# THE GOVERNMENT

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## **2.5 WHAT ARE THE TAX LIABILITIES IMPOSED ON WINNINGS FROM GAMING?**

As per the income tax laws, any income by way of winnings from “any lottery, crossword, or any other game that exceeds INR 10,000,” is subject to a withholding tax of 30% (exclusive of applicable surcharge and cess).

Under GST laws, services by way of admission to entertainment events or access to casinos, etc, are taxable at a rate of 28%. Furthermore, GST at the rate of 28% is applicable on betting or gambling services provided by casinos on the transaction value of the betting.

If a gaming activity does not fall into the category of betting or gambling (ie, in case of a game of skill), no GST may be levied. However, GST may be levied on the consideration amount payable/collected for the supply of goods or services, or both, on a gaming platform at the rate of 18%. This again is a legal grey area that would require companies to define their product/game in such a way that it attracts lower tax slabs.

# THE PLAYERS

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## **3.1 WHAT ARE RIGHTS ENJOYED BY THE PLAYERS?**

The guidelines imposed by self-regulatory industry associations, such as the Indian Federation of Sports Gaming, the All India Gaming Federation and the Online Rummy Federation in their Skill Charters, provide for:

- Measures for player protection, such as age-gating, self-exclusion, etc.
- The operators are required to be transparent; that is, they must always disclose the rules, mechanics of all games and also the terms and conditions of the gaming platform.
- Regulating the content, duration and targeted audience of advertisements.
- Regulating funds deposited by players, maintaining a record of transactions, etc.

## **3.2 DO THE PROTECTIONS GRANTED BY IPR LAWS IN INDIA EXTEND TO ATHLETES AND GAMING COMPANIES?**

The Intellectual Property of athletes as well as gaming companies are protected under the IPR laws of India.

- The Trade Marks Act, 1999 protects registered marks such as names, logos, brands of the athlete, sporting events and each individual team or franchise.
- The Designs Act, 2000, provides protection for merchandise, equipment, footwear and apparel.

The Copyright Act, 1957 provides registration for original works, which includes broadcasting and performers' rights. Copyright also exists, with respect to sports, in recorded visual images or commentaries of sports events, and photographs of events.

## **3.3 WHAT ARE THE THE PERSONALITY RIGHTS ENJOYED BY CELEBRITIES WHO ENDORSE GAMING?**

The increase in the commercialism and consequent increase in number of high-value endorsement deals being signed by famous personalities signifies that tremendous value is attached to such endorsements. Cricketing superstars like Kohli, Dhoni, Ganguly, Kapil Dev, etc and others like Leander Paes, and Geeta Phogat are all associated with various fantasy gaming platforms. We can also see an influx of movie stars like Shah Rukh Khan and Ajay Devgn promote online rummy and poker platforms.

Personality Rights are a form of Intellectual Property Rights that are a result of an individual creating a certain image for themselves in society, which is a source for their individual identity. Personality rights include the right to publicity and merchandising rights, and individuals are allowed to monetise these rights through endorsements.

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In *ICC Development (International) Ltd. v. Arvee Enterprises* 2003, the Delhi High Court held that the right of publicity has evolved from the right of privacy and can inhere only in an individual or in any indicia of an individual's personality like their name, personality trait, signature, voice, etc.

The necessity to protect such rights of famous personalities arises when there is unauthorized use of their identities for commercial benefits, as was held in the case of *Titan Industries v. Ramkumar Jewellers* 2012, wherein the court affirmed that the identity of a famous personality cannot be used in advertising without their permission, because the right to control when, where and how their identity is used is vested with the famous personality. Therefore, the right to control commercial use of human identity is the right to publicity.

However, the corresponding legal responsibility is that the celebrities must judiciously use this platform to ensure consumers purchasing the products and services endorsed by them are not deceived or misled.

## **3.4 WHAT ARE THE REGULATIONS REGARDING CELEBRITY ENDORSEMENTS?**

- The Advertising Standard Council of India (ASCI) issued Guidelines for Celebrity Advertising in 2017 that state that advertisements featuring celebrities should not be false, misleading or unsubstantiated, and that a celebrity should conduct 'due diligence' to ensure the same. A celebrity, as under these guidelines, extends to not just actors or sportspersons but also activists, authors, doctors, and educationists. Nonetheless, these guidelines were voluntary in nature and did not subject celebrities to any liability upon non-compliance.
- The Consumer Protection Act 2019 established a Central Authority that has the power to order for the discontinuation or modification of false or misleading advertisements. Further, it also empowers the Central Authority to impose penalties on endorsers of false or misleading advertisements extending up to 10 Lakh rupees and 50 Lakh rupees for subsequent contraventions. Such an endorser can also be prohibited from making endorsements for a period of up to one year and up to three years for subsequent contraventions. Liability on the endorser would not incur if they can show that due diligence was conducted by them to verify the veracity of the claims made in the advertisement.

# THE PLAYERS

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- For online gaming, the ASCI published Real Money Gaming Guidelines in 2020 to make advertising on gaming platforms more safe and responsible. They provide for safeguards such as disclaimers to prevent such advertisements from misleading the public, especially minors.

Although these guidelines do not address the endorsers of online gaming, celebrity endorsers can be held liable under Consumer Protection Act 2019 for providing false or misleading claims for luring vulnerable persons to bet their money on online gaming platforms.

### **3.5 WHAT ARE THE REPERCUSSIONS OF A MISLEADING ENDORSEMENT?**

- The Consumer Protection Act, 2019 imposes various liabilities on the manufacturer and the endorser of misleading advertisements. The Act imposes a penalty of up to Rs.10 lakhs on the endorser in respect to the false or misleading advertisement and on every subsequent contravention imposes a penalty that could extend to Rs.50 lakhs.

Apart from such heavy penalties, the Act empowers the Consumer Protection Central Authority the power to prohibit the endorser from endorsing 'any product or service' for a period of one year which can extend to three years in case of a subsequent contravention.

The only way the endorser can avoid such liability is by proving that he/she has conducted 'due diligence' of the claims of the advertisement to verify its authenticity.

### **3.6 WHAT KIND OF DUE DILIGENCE SHOULD BE CONDUCTED BY A CELEBRITY?**

The 2017 ASCI guidelines were published to regulate celebrity advertisements in furtherance of the goal to protect consumers from misleading advertisements, and was the first notification to ask celebrities to do the necessary 'due diligence' of the claims made in these ads.

However, the regulations of FSSAI and ASCI, as well as the 2019 CPA only mention due diligence measures being conducted, and none of them provide an explanation as to what acts or procedures would amount to this 'due diligence'.

The ambiguity about the threshold of minimal diligence is dangerous as it gives the central authority absolute discretion in deciding whether the conduct of the endorser amounted to 'due diligence' or not to avoid liability. This arbitrary discretion given to the central authority can prove to be counter-effective in the enforcement of the provisions of the 2019 Act.



# MEET THE TEAM

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**GAUTAM GARG**

Researcher

*Gautam undertook the task of authoring the 'Explainer.'*

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**RIA MISHRA**

Co-founder & Editor

*Ria undertook the task of editing the content and designing the 'Explainer.'*

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**AAKASH BATRA**

Co-founder & Editor

*Aakash undertook the task of editing the content.*

# EXPLAINER

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## CONTACT US



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