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CONSTITUTIONAL CHALLENGES IN REGULATING ONLINE GAMING AND DIGITAL TRANSACTIONS IN INDIA

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ABSTRACT

India's digital landscape has shifted faster than its laws. In just a decade, online gaming went from a niche hobby to a multi-thousand-crore industry, while digital payment platforms quietly wired hundreds of millions of Indians into an always-on financial network. These two forces met in a legal no-man's land – one where a colonial-era gambling law, a constitution drafted before computers existed, and a patchwork of contradictory state rules were the only tools available to regulators. This paper traces that story. It looks at how the industry grew, what problems surfaced, which laws were tried, and how fundamental rights constrain what the government can actually do. It ends by proposing practical ways out of the current deadlock – without sacrificing either consumer protection or constitutional principle.

Keywords: Online gaming, digital transactions, PROGA 2025, Public Gambling Act, money laundering, constitutional law, skill vs. chance, gaming addiction, data privacy, federalism.

1. INTRODUCTION

Walk into any tea shop in Chennai or a hostel room in Pune and you will likely find at least one person staring at a phone screen, either playing an online game or completing a UPI transfer. This is not an exaggeration. India has quietly become one of the largest digital gaming markets in the world, and the numbers are striking. The online gaming industry was projected to touch ₹23,000 crore by 2025, and the UPI platform crossed 13 billion transactions in a single month in 2024.

What is remarkable, though, is not the growth itself – it is how this growth happened against the backdrop of a legal system designed for a completely different era. The

main law regulating gambling in India was written in 1867, when the British were still in charge and the most sophisticated form of gaming was a card game in a back-room gambling house. The Constitution, enacted in 1950, assumed that gambling would always happen within the physical boundaries of a state. Neither anticipated a future where a player in Hyderabad could, in seconds, deposit money into a gaming platform registered in Sikkim, playing a game designed by a company in Bengaluru, using UPI, which the Reserve Bank of India regulates from Delhi.

This paper tries to understand the constitutional tangle that has resulted from this mismatch. It covers the historical roots of

gaming law in India, the specific challenges that have emerged, the various laws that have been applied or enacted, the fundamental rights that bear on the issue, and the realistic options available to resolve it.

2. HISTORY AND REGULATORY BACKGROUND

2.1 Where It All Began: The 1867 Act

The Public Gambling Act of 1867 was not really written with any vision for the future. It had one simple goal: to shut down the gambling dens that the British colonial administration found disruptive. Section 3 of the Act made it an offence to operate or be found in a common gaming house, with penalties of a fine or a short jail term. Section 12, however, carved out an important exception – games of skill were not covered by the Act. This distinction, borrowed from Victorian-era English law, was intended for things like billiards or chess. Nobody, of course, imagined it would one day be applied to rummy played on a smartphone.

Yet that is exactly what happened. The skill-versus-chance line drawn in 1867 became the fault line along which all future court battles in Indian gaming law were fought. Courts have spent decades trying to figure out which games fall on which side, with wildly inconsistent results.

2.2 The Constitutional Arrangement of 1950

When India became a republic in 1950, gambling regulation was placed firmly in the hands of state governments. Under Entry 34 of List II of the Seventh Schedule, each state has the power to legislate on gambling and betting.⁹⁰ Parliament can tax such activities but cannot directly regulate them. This arrangement made sense in 1950, when gambling meant a physical establishment inside a state's borders, and enforcement was a matter of policemen walking into rooms. The internet made geography irrelevant, but the constitutional text did not change.

2.3 The 2016–2018 Turning Point

The launch of UPI by the National Payments Corporation of India in April 2016 was, in hindsight, the moment that transformed Indian online gaming. Before UPI, putting money into a gaming account was clunky and slow. After UPI, it took seconds. The effect on gaming was immediate. By 2018, platforms like Dream11 were seeing rapid growth, and venture capital flowed in heavily – the sector received over \$2.75 billion in investments between 2020 and 2022. Gaming was no longer a hobby; it was an industry, and it was processing crores of rupees every day through a nationally regulated payment channel while remaining subject only to fragmented state laws.

2.4 States Pull in Different Directions

The states did not respond uniformly. Andhra Pradesh, Telangana, and Tamil Nadu moved quickly to ban online gaming altogether, including skill-based games. Tamil Nadu's Gaming and Police Laws (Amendment) Act of 2021 was challenged almost immediately, and the Madras High Court struck it down, holding that skill-based games enjoy constitutional protection.⁹¹ Sikkim and Nagaland went the other way, creating licensing frameworks that permitted certain forms of online gaming. Goa maintained its traditional tolerance for land-based casinos. The result was a map where the same game was legal in one state and a criminal offence in the next, with no sensible way for either users or businesses to navigate it.

3. KEY CHALLENGES AND ISSUES

3.1 Gaming Addiction Among Young People

Perhaps the most human cost of this unregulated growth has been addiction. The World Health Organization formally recognised Gaming Disorder as a health condition in 2018.⁹² In India, the consequences have been visible and sometimes tragic – reports of young people losing their savings, dropping out of education, or falling into debt over real-money games. The platforms themselves, designed by

⁹⁰Constitution of India 1950, Seventh Schedule, List II, Entry 34.

⁹¹Junglee Games India Pvt Ltd v State of Tamil Nadu (2021) Madras HC.

⁹²World Health Organization, ICD-11: Gaming Disorder (2018).

teams of engineers whose job is to maximise engagement, are built to be difficult to stop. Many use features borrowed from gambling psychology: variable rewards, social pressure, and time-limited offers that push players to spend more.

Before PROGA 2025, there was no national framework specifically addressing gaming addiction. No mandatory spending caps, no required cooling-off periods, no self-exclusion registry. A teenager with a UPI-linked account and a smartphone had full, unrestricted access to real-money gaming platforms at any hour.

3.2 Financial Confusion and Consumer Harm

A less-discussed but serious problem is the financial illiteracy that platforms sometimes exploit. Many users – particularly those from smaller towns who are new to digital finance – do not fully understand how these platforms work. They may not realise that the 'entry fee' to a contest is a sunk cost, that withdrawals are subject to fees and conditions, or that the probability of winning is designed to favour the platform. Depositing money through UPI takes one tap; understanding what happens to it takes considerably more.

3.3 Money Laundering and Financial Crime

Online gaming platforms have proven attractive for money laundering because large sums can be moved through them with a veneer of legitimacy. Money deposited, 'lost' in a game, and received by another player can look, on paper, like ordinary gaming transactions. The Enforcement Directorate flagged several major platforms for investigation, and the Gameskraft case – in which a show-cause notice was issued demanding ₹21,000 crore in unpaid GST, based on alleged wagers of over ₹77,000 crore between 2017 and 2022 – gave a sense of the scale involved.⁹³ The Prevention of Money Laundering Act technically applies, but gaming-

specific financial monitoring mechanisms were essentially nonexistent before 2025.

3.4 The Centre–State Deadlock

The constitutional arrangement has created a genuine governance problem. Gambling is a state subject, so states have the authority but lack the infrastructure to police digital platforms operating across their borders. The Centre has the infrastructure – through the RBI's oversight of UPI – but lacks the constitutional authority to directly regulate gambling. The result is that millions of high-value transactions pass through a nationally regulated payment system every day for purposes that neither the Centre nor the states can effectively govern.

3.5 The Impossible Skill-vs-Chance Line

Courts have been wrestling with the skill-versus-chance question since the Supreme Court's landmark decisions in Chamarbaugwala⁹⁴ and Lakshmanan.⁹⁵ Those cases were about competitions and horse racing, respectively – activities where the skill element was relatively clear. Modern online games are different. An algorithm determines card distribution. A random number generator decides which tiles a player receives. Human strategy matters, but so does luck, and the balance between them changes from game to game, session to session, player to player. No consistent judicial test has emerged to handle this complexity, and the uncertainty has made it impossible for businesses to plan and for consumers to know what is legal.

3.6 Tax Disputes at Constitutional Scale

The GST dispute added another layer of conflict. For years, skill-based games were taxed at 18% and chance-based games at 28%, reflecting the judicial distinction. In July 2023, the GST Council resolved to apply 28% on the full face value of all bets, regardless of

⁹³Enforcement Directorate, Press Release on Gameskraft Investigation (2022).

⁹⁴RMD Chamarbaugwala v Union of India AIR 1957 SC 628.

⁹⁵K R Lakshmanan v State of Tamil Nadu (1996) 2 SCC 226.

classification.⁹⁶ This triggered retrospective demands that, in some cases, exceeded the total lifetime revenue of the platforms. The deeper constitutional question – whether Parliament can use taxation to suppress an activity that the Constitution assigns to state regulation – remains unanswered.

4. LAWS AND REGULATIONS

4.1 The Public Gambling Act, 1867

Still in force across most Indian states, this colonial-era law bans common gaming houses and punishes those found in them. Its skill-game exemption under Section 12 remains the foundation on which every court challenge to gaming bans has been built. It was never designed for digital environments and has no provisions for online platforms, digital payments, or cross-border regulation.

4.2 State Gaming Laws

Each state has responded in its own way. Tamil Nadu's Prohibition of Online Gambling and Regulation of Online Games Act, 2022 survived a constitutional challenge in *Play Games 24x7*⁹⁷ because it used proportionate restrictions – time limits and KYC requirements – rather than an outright ban. Sikkim and Nagaland created licensing frameworks. Telangana maintained a broad prohibition. This patchwork means compliance is genuinely difficult for platforms operating nationally.

4.3 The IT Act, 2000 and the 2023 Rules

MeitY's April 2023 amendments to the IT Intermediary Rules created a category of 'Online Real Money Game' and required platforms to obtain certification from Self-Regulatory Bodies.⁹⁸ The framework collapsed within a year when MeitY found that industry-funded bodies could not be treated as genuinely independent. The rules technically remain in force but have

no enforcement machinery – a regulatory ghost.

4.4 Payment and Settlement Systems Act, 2007

The PSS Act gives the RBI authority over India's payment infrastructure, including UPI.⁹⁹ The RBI can suspend or restrict payment services, but the Act is silent on gambling-specific transactions. Payment regulators and gaming regulators operate in separate silos, with no statutory mechanism for coordination.

4.5 Prevention of Money Laundering Act, 2002

The PMLA criminalises money laundering and allows investigative agencies to attach proceeds of crime. Several gaming platforms have faced PMLA proceedings. However, the Act is not designed around gaming and provides no specific guidance on transaction monitoring thresholds, reporting obligations, or KYC requirements specific to gaming platforms.

4.6 PROGA 2025 – The Current Law

Enacted in August 2025 and signed into law on August 22, the Promotion and Regulation of Online Gaming Act effectively prohibits all real-money online gaming in India. Section 5 makes operating or facilitating such games a non-bailable offence carrying up to five years in jail and a ₹10 lakh fine; Section 7 makes participation punishable with a year in prison.¹⁰⁰ E-sports and games without monetary stakes are permitted. Gaming companies challenged PROGA before multiple High Courts almost immediately, and in September 2025 the Supreme Court consolidated all challenges for a three-judge bench hearing scheduled for January 2026.¹⁰¹

5. RIGHTS AND PATHS TO RESOLUTION

5.1 The Fundamental Rights That Are at Stake

⁹⁶GST Council, 50th Meeting Resolution (July 2023) – 28% GST on online gaming.

⁹⁷*Play Games 24x7 Pvt Ltd v State of Tamil Nadu* (2025) Madras HC.

⁹⁸IT (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023, Rule 4A.

⁹⁹Payment and Settlement Systems Act 2007, s 4 and s 18.

¹⁰⁰Promotion and Regulation of Online Gaming Act 2025, ss 5 and 7.

¹⁰¹Supreme Court of India, Order consolidating PROGA challenges (8 September 2025).

Three provisions of Part III of the Constitution are directly engaged.¹⁰²

Article 19(1)(g) protects the right of every citizen to carry on any occupation, trade, or business. The Supreme Court has repeatedly held that operating a skill-based gaming business falls within this protection. A total prohibition – rather than a regulation – must meet a high constitutional threshold: the restriction must be reasonable, and must be in the interest of the general public. A blanket ban that does not consider whether lighter-touch regulation could achieve the same objective is unlikely to survive judicial scrutiny.

Article 21 protects life and personal liberty, which Indian courts have interpreted broadly to include the right to privacy. Online gaming platforms handle sensitive personal and financial data. Any monitoring of gaming transactions by the state – however well-intentioned – must follow due process and must not be disproportionate to the harm it seeks to prevent.

Article 14 demands equality before the law. A regime that criminalises rummy on a phone app while permitting rummy in a licensed club, or that bans skill games while allowing lotteries run by state governments, will face serious questions about arbitrary classification.

5.2 The Right to Predictable Law

Beyond individual rights, there is a systemic issue: citizens and businesses are entitled to a legal environment that is reasonably certain and consistent. The current situation – where the same activity may be legal, regulated, or criminal depending on which state you are in, which court last ruled, and whether a notification has been issued – is not a functioning legal framework. It is a lottery.

5.3 What Can Actually Be Done

The constitutional deadlock is real but not insoluble. Several concrete steps could move things forward.

First and most immediately, the Supreme Court's pending decisions on both the Gameskraft GST batch and the PROGA constitutionality challenges will establish whether Parliament has the power to ban gaming through central law, whether skill-based games are constitutionally protected under Article 19(1)(g), and where the limits of GST on gaming transactions lie. These decisions cannot come soon enough.

Second, the Centre and the states should use the Inter-State Council or a similar forum to draft a Model Online Gaming Act. This model legislation – which states could adopt and adapt – would define skill games using a technology-neutral test, set minimum consumer protection standards, create a licensing system, and build coordination between the RBI and state gaming regulators into its architecture.

Third, India should consider establishing an independent national gaming regulator, along the lines of the UK Gambling Commission¹⁰³ or Malta's Gaming Authority. Such a body could be constituted under Parliament's residuary powers in Entry 97 of List I, or through an inter-state agreement under Article 252 of the Constitution, so as not to directly trespass on Entry 34 of List II.

Fourth, the RBI, MeitY, and state regulators need a shared data-sharing protocol so that suspicious transaction patterns in gaming can be identified and acted on in real time. This would address money laundering concerns far more effectively than a prohibition that simply moves activity to unmonitored, unregistered channels.

Fifth, any future regulation should include player protection measures that are proportionate and rights-respecting:

¹⁰²Constitution of India 1950, Arts 14, 19(1)(g) and 21.

¹⁰³Gambling Act 2005 (UK), s 1 and Schedule 1 (Gambling Commission mandate).

mandatory spending limits, a national self-exclusion register, age-verification requirements that actually work, and a right for users to access their own transaction data. These are not novel ideas – they are standard features of regulated gaming markets in other jurisdictions.

6. CONCLUSION

India's story with online gaming is, at its core, a story about a legal system caught off guard by technology. The foundations – a colonial gambling law and a mid-century constitution were simply not built for a world in which a teenager in Coimbatore can lose a month's pocket money in an hour on a platform registered in Sikkim and paid for through a Delhi-regulated payment network.

The problems that have emerged are serious. Addiction, financial exploitation, money laundering, a constitutional tug-of-war between states and the Centre, an unworkable distinction between skill and chance, and a GST dispute of staggering proportions these are not abstract legal puzzles. They affect real people, real businesses, and real public finances. India's response so far has lurched between inaction, overreach, and outright prohibition. PROGA 2025 is the latest and most dramatic example of the last of these. Whether it survives constitutional scrutiny is, as of this writing, genuinely uncertain. What seems more certain is that banning something does not make it go away, particularly when it can be accessed through a phone and paid for instantly. Prohibition without enforcement just creates an unregulated underground market, which is worse for consumers, worse for tax collection, and worse for law enforcement than a properly regulated one.

The way forward is not complicated in principle, even if it is politically and legally difficult. India needs a clear national framework, built through genuine cooperation between the Centre and the states, that tells players, operators, regulators, and courts what the rules are. It needs a regulator with real authority, real

expertise, and real independence. And it needs those rules to be grounded in the Constitution respecting fundamental rights while genuinely addressing the harms that unregulated gaming has caused. Other countries have done this. The UK, Malta, and several US states have shown that it is possible to run a legal, taxed, and reasonably safe online gaming market. India has the institutional capacity to do the same. What has been missing, so far, is the will to build a proper system rather than simply banning the problem away.



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