INDIAN JOURNAL OF LEGAL REVIEW [IJLR – IF SCORE – 7.58]

VOLUME 6 AND ISSUE 8 OF 2026

APIS – 3920 - 0001 *(and)* ISSN - 2583-2344

Published by

Institute of Legal Education

https://iledu.in

BEYOND THE GAMBLING SHADOW: RETHINKING THE LEGAL STATUS OF PROFESSIONAL E-SPORTS IN INDIA THROUGH A SUI GENERIS REGULATORY FRAMEWORK

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BEST CITATION – NAMIT GUPTA**,** BEYOND THE GAMBLING SHADOW: RETHINKING THE LEGAL STATUS OF PROFESSIONAL E-SPORTS IN INDIA THROUGH A SUI GENERIS REGULATORY FRAMEWORK, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR),* 6 (8) OF 2026, PG. 327-335, APIS – 3920 – 0001 & ISSN - 2583-2344. DOI - https://doi.org/10.65393/IJLRV6I832

ABSTRACT

India's professional e-sports industry — commanding over 500 million gamers and generating billions in annual revenue — remains ensnared in a nineteenth-century gambling law framework never designed to regulate it. This paper critically examines the structural mismatch between the Public Gambling Act, 1867's 'Skill vs. Chance' Predominance Test and the cognitive, psychomotor, and strategic demands of modern competitive e-sports. Drawing on doctrinal analysis of landmark Indian jurisprudence — from State of Bombay v. R.M.D. Chamarbaugwala (1957) to the contested Promotion and Regulation of Online Gaming Act, 2025 (PROGA) — and a comparative survey of governance models in South Korea, Germany, and France, this paper argues that the continued application of gambling law to competitive e-sports constitutes a 'category error' that suppresses constitutional rights, denies player welfare protections, and undermines India's geopolitical interests in the global digital economy. The paper proposes the adoption of a sui generis 'Code of Conduct' framework anchored in a dedicated E-Sports Act, establishing a National E-Sports Governing Authority (NEGA) with statutory powers over tournament licensing, player welfare standards, and integrity enforcement. This framework is argued to be not merely desirable but constitutionally required under Articles 14, 19(1)(g), and 21 of the Constitution of India.

Keywords: E-sports regulation, Skill vs. Chance doctrine, Public Gambling Act 1867, PROGA 2025, sui generis framework, player welfare, NEGA, Indian gaming jurisprudence, competitive gaming, sports law.

I. INTRODUCTION

The spectacle of professional competitive gaming — tens of thousands of fans filling stadiums, global prize pools exceeding millions of dollars, and careers built on years of disciplined practice — presents a sharp and growing contradiction with the legal framework that governs it in India. A professional Valorant player who executes 300 precise mouse-clicks per minute, coordinates real-time strategy with four teammates, and maintains peak cognitive performance under extreme competitive pressure is, in the eyes of India's prevailing gaming legislation, engaged in an activity legally analogous to placing a bet on a roulette wheel.

This contradiction is not a peripheral regulatory curiosity. It has immediate, material consequences. It exposes tournament organisers to prosecution risk under the Public Gambling Act, 1867 (PGA). It denies professional players the contractual protections, labour rights, and social security benefits available to athletes in formally recognised sports. It deters

institutional investment and international sponsorship. And it threatens — through the sweeping provisions of the Promotion and Regulation of Online Gaming Act, 2025 (PROGA) — to criminalise the very prize-pool tournaments through which India's competitive e-sports ecosystem commercially operates.

This paper proceeds in five parts. Part II traces the evolution and doctrinal limits of the 'Skill vs. Chance' framework as applied to e-sports. Part III identifies the structural harms produced by the current regulatory vacuum: contractual precarity, the Publisher's Monopoly, and the integrity crisis. Part IV conducts a comparative analysis of governance models from South Korea, Germany, and France, extracting transferable principles. Part V proposes the essential architecture of a sui generis Code of Conduct for Indian e-sports. Part VI concludes by situating the proposed framework within India's broader constitutional commitments and geopolitical interests.

II. THE 'SKILL VS. CHANCE' DOCTRINE AND ITS DOCTRINAL FAILURE

A. The Foundational Framework

Indian gaming law rests on a binary constructed by courts rather than by Parliament. The Public Gambling Act, 1867 — a colonial statute conceived to suppress 'common gaming houses' — criminalises games of chance while exempting 'games of mere skill' under Section 12, without defining either term. The task of definition fell entirely to the judiciary, which developed the 'Predominance Test' or 'Preponderance of Skill' doctrine over seven decades of litigation.The foundational precedent is State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699, in which the Supreme Court held that a competition where success depends to a 'substantial degree' on skill constitutes a legitimate commercial activity protected by Article 19(1)(g) of the Constitution, while 'gambling' — defined as staking value on an outcome determined purely by chance — is extra-commercium and outside constitutional protection. The Court deliberately chose 'substantial' over 'exclusive' skill, acknowledging that virtually all human endeavour involves some element of contingency.The doctrine was refined in State of Andhra Pradesh v. K. Satyanarayana, AIR 1968 SC 825, which protected Rummy as a skill-based game despite its random initial card deal, and in Dr. K.R. Lakshmanan v. State of Tamil Nadu, (1996) 2 SCC 226, which extended constitutional protection to horse-race wagering on the basis that trainers' and jockeys' physical skills materially determine outcomes. Together, these decisions established that the Predominance Test asks which factor — skill or chance — most determines the competitive result, and that even predominantly skill-based activities may involve incidental chance without losing their constitutional protection.

B. The Category Error: Why the Doctrine Fails E-Sports

The application of this doctrinal framework to professional competitive e-sports commits what Gilbert Ryle famously termed a 'category error' — the logical mistake of treating an entity as belonging to a class it does not occupy. The Predominance Test was calibrated for card games, racetracks, and billiard halls. Its central inquiry — is the outcome more determined by skill or by chance? — is perfectly adequate for these contexts. It is structurally inadequate for competitive e-sports for three distinct reasons.

First, the Test cannot account for psychomotor skill. A professional e-sports player in a title like Counter-Strike: Global Offensive or Battlegrounds Mobile India must execute fine motor movements with sub-millimetre precision within temporal windows of 50-100 milliseconds, sustain 'Actions Per Minute' rates of 250-400 (requiring coordinated motor-neural processes developed through thousands of hours of deliberate practice), and maintain peak perceptual responsiveness while processing multiple simultaneous information streams. A 2023 joint study by the Indian Statistical Institute (ISI) Kolkata and IIT Delhi found that in over 95% of professional-level competitive matches, the

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winning team could be predicted with statistical significance from prior performance metrics — a finding that demonstrates, empirically, the preponderance of skill. The Predominance Test has no vocabulary for quantifying or crediting this form of athletic expertise.

Second, the doctrine is vulnerable to what this paper terms 'Reward-Based Reclassification': the practice of characterising any e-sports event that offers a prize pool as gambling, because of the presence of monetary reward rather than because of the nature of the activity. This is the 'backward reasoning' error that Chamarbaugwala itself was designed to prevent — the Supreme Court explicitly stated that the presence of monetary reward does not determine the character of an activity as gambling; the determining factor is whether the outcome is governed by skill or chance. Applied consistently, Chamarbaugwala's own reasoning would protect a Valorant tournament prize pool as categorically distinct from gambling winnings. Courts and regulators who classify prize-pool tournaments as gambling are applying the doctrine in a manner directly contrary to its own foundational reasoning.

Third, the Predominance Test has been compounded — rather than resolved — by the most recent legislative intervention. PROGA's Section 4 imposes a nationwide ban on all 'Online Money Games' (OMGs), defined as any online game where a player pays something of value to participate and may receive a prize. The language is sweeping enough to encompass e-sports tournaments with entry fees and prize pools — the very structure through which professional e-sports operates. While PROGA formally recognises 'Competitive E-Sports' as a distinct category of 'Regulated Sport' in another section, it provides no explicit exclusion of certified e-sports tournaments from the OMG ban, creating a 'regulatory scissors effect': the statute simultaneously elevates e-sports' legal status and threatens to criminalise the tournaments that constitute its commercial core. The constitutional challenge to PROGA — currently pending before the Supreme Court in All India Gaming Federation v. Union of India, W.P. (Civil) No. 1143 of 2025 — adds a federalism dimension: the OMG ban arguably exceeds Parliament's legislative competence, since 'betting and gambling' is a State List subject (Entry 34), and competitive e-sports tournaments, properly classified, do not constitute 'betting and gambling' under the Chamarbaugwala doctrine. This is a new constitutional argument that has not been fully articulated in prior academic literature and has significant implications for the pending litigation.

III. THE REGULATORY VACUUM: THREE STRUCTURAL HARMS

A. The 'Wild West' of Player Contracts

Professional e-sports players in India operate without any mandatory contractual protections. Unlike cricketers governed by BCCI's standardised contracts, or footballers covered by the All India Football Federation's Player Status and Transfer Regulations, professional e-sports players are typically classified as 'independent contractors' by their team organisations — a classification that, while legally inaccurate given the degree of control organisations exercise over players' professional lives, insulates organisations from the obligations of the Code on Wages 2019, the Code on Social Security 2020, and the Industrial Disputes Act 1947.

Standard Indian e-sports player contracts contain provisions that courts in comparable jurisdictions have characterised as unconscionable: unilateral variation clauses allowing organisations to alter salary and role without consent; sweeping IP assignment clauses vesting the player's streaming content and social media brand in the organisation; non-compete clauses prohibiting competition for periods of up to two years post-termination without compensation; and mandatory arbitration clauses with organisation-selected arbitrators that prevent the development of a public body of protective case law. The Supreme Court's unconscionability doctrine, articulated in Central Inland Water Transport Corporation v.

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Brojo Nath Ganguly, (1986) 3 SCC 156, provides an existing legal basis for challenging these clauses — but without an institutional enforcement mechanism, individual players rarely have the resources or knowledge to invoke it.

The minor player problem compounds this. India's e-sports talent pipeline includes players who achieve professional-level skill in their early teens, but Section 11 of the Indian Contract Act, 1872 renders contracts with minors void ab initio — creating a legal void where neither the player's nor the organisation's contractual obligations are enforceable, leaving young players particularly exposed to exploitation without any institutional safeguard.

B. The Publisher's Monopoly

E-sports is uniquely distinguished from all existing models of sports regulation by the absolute intellectual property ownership that game publishers hold over the 'sport' itself. The game of football is not owned by FIFA; the rules of cricket are maintained by the MCC as custodian but belong to no one. In e-sports, by contrast, the game of Valorant — India's leading competitive shooter — is owned entirely by Riot Games (a subsidiary of China's Tencent Holdings), protected by copyright, trade secret, trademark, and EULA. Every tournament, broadcast, streaming event, or educational programme involving Valorant requires Riot Games' express licence.

This creates what the literature terms the 'Publisher's Gambit': a power dynamic in which the publisher holds a unilateral veto over every structural decision in the competitive ecosystem — which tournaments may be held, what prize structures are permitted, what gameplay changes alter the competitive environment, and when competitive support for the game may be terminated entirely. The Competition Act, 2002 and its 2023 amendment provide a potential regulatory check through Section 4's abuse of dominance prohibition, and the Competition Commission of India has demonstrated, in cases against Google and Apple, a willingness to assert jurisdiction over foreign digital platforms with appreciable adverse effects on competition in India — precedent that is directly applicable to e-sports publishers.

C. The Integrity Crisis

Competitive integrity — the assurance that outcomes are determined by skill and effort, not by extraneous manipulation — is the foundational premise that distinguishes e-sports from gambling in the legal sense. Its violation therefore does not merely harm the industry commercially; it undermines the constitutional argument for the industry's protection. The Indian e-sports ecosystem faces three distinct integrity threats: mechanical doping (software cheats including aim-bots and wallhacks), pharmacological doping (cognitive enhancers including Adderall, beta-blockers, and modafinil), and match-fixing facilitated by offshore illegal betting operators.

None of these threats is addressed by an enforceable regulatory framework. Publishers operate private technological anti-cheat systems (Riot's Vanguard, Valve's VAC) that function without any due process protections — players may be banned by automated systems without notice, without an opportunity to respond, and without any right of appeal to an independent adjudicator. This violates the audi alteram partem principle of natural justice that Indian administrative law requires of any body exercising quasi-judicial functions. India's National Anti-Doping Agency has no jurisdiction over e-sports. And the Bharatiya Nyaya Sanhita 2023's provisions on cheating and criminal conspiracy provide no match-fixing-specific enforcement mechanism that is practically usable in the e-sports context.

IV. COMPARATIVE ANALYSIS: GOVERNANCE MODELS AND TRANSFERABLE PRINCIPLES

Three international models merit comparative attention, each offering distinct lessons for India's regulatory design.

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South Korea's Korean e-Sports Association (KeSPA), established in 2000 under the Korean Sports Promotion Act, represents the world's first — and most mature — national e-sports governing body with statutory authority. KeSPA's effectiveness derives from four elements: its grounding in parliamentary legislation (rather than industry consensus), a mandatory player registration system with minimum welfare standards as a precondition for tournament participation, a player dispute tribunal with appeals to the independent Korean Sports Arbitration Committee, and an anti-doping programme in partnership with the Korea Anti-Doping Agency. KeSPA's central lesson is that statutory foundation — not voluntary self-regulation — is the precondition for effective governance. Its central cautionary tale is the 2010 KeSPA-Blizzard dispute over StarCraft broadcasting rights, which exposed the irreducible vulnerability of a state-authorised governing body whose jurisdiction is premised on a privately-owned game IP: no governance framework is complete without formal publisher partnership agreements.

Germany's approach resolves a different — but for India equally fundamental — question: whether e-sports constitutes 'sport' for regulatory purposes. The German Olympic Sports Confederation's 2022 partial recognition of 'virtual sports' (simulations of physical Olympic disciplines), and the Federal Foreign Office's administrative practice of granting e-sports players residence permits as professional athletes under the Aufenthaltsgesetz, demonstrates that administrative recognition can function as a bridge to full legislative recognition. India's Ministry of Youth Affairs and Sports' December 2022 notification recognising e-sports as a 'multi-sport event' is an analogous administrative act — valuable as a political signal but insufficient as a governance foundation. The German model suggests that India can leverage this administrative foundation to extend athlete welfare benefits and visa protections to e-sports players by executive order, creating momentum for more comprehensive legislative action.

France enacted the most directly transferable model: Law No. 2016-1321 for a Digital Republic, which created the statutory category of 'professional video game player,' providing minimum welfare protections irrespective of labour law classification. The Fédération Française du Jeu Vidéo (FFJV) operates a co-governance model — publishers provide game IP licences and technical support; the FFJV provides regulatory oversight and player protection — that converts the publisher-governance conflict from a zero-sum struggle into a positive-sum partnership. The 2023 legislative reforms extending minimum contract duration, mandating professional indemnity insurance, and creating a statutory transfer window demonstrate the model's capacity for progressive welfare evolution over time. For India, the FFJV's co-governance architecture — and the sui generis 'professional video game player' category — is the most immediately transferable insight.

Five convergent principles emerge from this comparative exercise: the necessity of statutory authority for enforceable governance; the imperative of co-governance with publishers to manage IP monopoly risk; the value of graduated, progressively strengthening welfare standards; the indispensability of mandatory — not voluntary — integrity infrastructure; and the importance of integrating the governance framework's dispute resolution function with the national public justice system.

V. THE SUI GENERIS CODE OF CONDUCT: ESSENTIAL ARCHITECTURE

A. Statutory Foundation: The E-Sports Act

The proposed Code of Conduct requires, as its foundational element, a dedicated E-Sports Act of Parliament — or, alternatively, a substantive

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amendment to the National Sports Development Code of India, 2011. The Act would accomplish four essential legislative objectives. First, it would establish a statutory definition of 'Competitive E-Sports' as a multi-player video game competition in which outcomes are determined primarily by the cognitive skill, psychomotor ability, and strategic decision-making of participants, without dependence on any randomised financial mechanism — directly addressing the category error and providing the definitional foundation for the exclusion of certified e-sports tournaments from PROGA's money game ban. Second, it would establish the National E-Sports Governing Authority (NEGA) as a statutory body with regulatory powers over tournament licensing, player welfare standards, and competitive integrity. Third, it would create the sui generis 'digital athlete' category for professional e-sports players, entitling them to welfare protections modelled on — but adapted from — those available to traditional sports athletes. Fourth, it would establish a Sports Disputes Resolution Panel (SDRP) as a statutory arbitral tribunal for e-sports disputes, with awards enforceable as civil court decrees under Section 36 of the Arbitration and Conciliation Act, 1996.

B. NEGA: Institutional Design

NEGA's governance structure would consist of five principal bodies. A Board of Directors of twelve members, composed of independent directors (majority), player representatives elected by registered professionals, team organisation representatives, publisher representatives via the Publisher Council, and an ex officio government representative. A Publisher Council — a formal consultative body through which publishers engage with NEGA's regulatory process, and through which they provide Regulatory Framework Licences (non-exclusive, royalty-free licences for NEGA-sanctioned use of their game IP) in exchange for representation in regulatory deliberations. An E-Sports Integrity Unit (ESIU) with operational independence from the Board, investigating software cheating, pharmacological doping, and match manipulation, and adjudicating violations through an Integrity Tribunal. A Player Welfare Office administering the Mandatory Player Contract Standard (MPCS) and the Junior Player Framework (JPF). And the Sports Disputes Resolution Panel (SDRP), providing ninety-day resolution of contractual, IP, and eligibility disputes with appeal to the High Courts under Article 226.

C. The Mandatory Player Contract Standard and Junior Player Framework

The MPCS would establish, as conditions of tournament licensing, minimum standards that all registered player contracts must meet: a minimum salary indexed to the National Minimum Wage; mandatory healthcare coverage including physiotherapy and mental health support; a maximum contract term of two years; a maximum non-compete period of six months post-termination with mandatory compensation; a restricted IP assignment clause distinguishing tournament footage (assigned to the organisation) from the player's personal streaming brand (retained by the player); and a mandatory grievance procedure. The JPF, applicable to players under 18, would require guardian co-signature and independent advocate countersignature, court-supervised trust accounts for prize money, and a mandatory education clause. These provisions adapt protective mechanisms from cricket's junior development framework and from the French FFJV's minimum standards to the specific circumstances of Indian e-sports.

D. Integrity Infrastructure: The ESIU and NADA Partnership

The ESIU would operate through three mechanisms. A Tournament Hardware Standard — a mandatory specification for computing equipment, network configuration, and software environment in licensed tournaments — enforced through the licence condition framework, with an independent appeal right (within 30 days) for players who receive publisher anti-cheat bans, providing the audi alteram partem protection currently absent. A

Memorandum of Understanding with NADA extending anti-doping testing jurisdiction to registered e-sports events, with an e-sports-specific Prohibited Substances List (including cognitive enhancers) and a Therapeutic Use Exemption process. And a mandatory Suspicious Activity Reporting (SAR) system for licensed organisers, allowing the ESIU to monitor irregular betting activity, compel disclosure of financial records from registered parties, and refer criminal matters to the Enforcement Directorate and state police forces.

E. Fiscal Reform: The GST Imperative

The Code of Conduct's regulatory reforms would be commercially inoperative without corresponding fiscal reform. The GST Council's imposition of 28% on the full contest value of online gaming competitions — effectively treating tournament prize pools as gambling winnings and creating GST liabilities that may exceed organiser revenue — must be addressed by a GST Council notification creating a separate tax category for 'Certified Competitive E-Sports Tournaments,' taxed on the platform's service fee rather than on the total prize pool. This reform is achievable without parliamentary legislation and would immediately restore the commercial viability of community and semi-professional tournaments, consistent with the government's own recognition of e-sports as a legitimate sporting activity.

VI. CONCLUSION: CONSTITUTIONAL IMPERATIVE AND GEOPOLITICAL OPPORTUNITY

The case for a sui generis Code of Conduct for Indian e-sports is not merely a policy preference; it is a constitutional obligation. The professional e-sports athlete who trains for 10,000 hours, earns their livelihood through competitive performance, and exercises extraordinary psychomotor and cognitive skill has a fundamental right — under Articles 19(1)(g) and 21, read with the Supreme Court's expansive interpretation in Puttaswamy — to a regulatory framework that recognises and protects their professional activity. The current framework, which subjects them to gambling law risk, denies them welfare protections, and exposes their livelihoods to PROGA's overbroad money game ban, fails this constitutional standard.

Beyond constitutional obligation, there is a strategic opportunity. India's e-sports player base of over 500 million — one of the world's largest — gives the country significant market power in the global e-sports governance architecture that it has not yet translated into regulatory or geopolitical influence. The establishment of NEGA as a credible, internationally recognised national governing body; its affiliation with the Global Esports Federation; and the development of India's expertise in e-sports integrity, player welfare, and publisher co-governance would position India not as a passive consumer of global e-sports norms, but as an active architect of them. With India's aspirations to host the 2036 Olympic Games — potentially including an e-sports component — the urgency of building this institutional infrastructure now, rather than in the decade before the Games, is self-evident.

The Code of Conduct proposed in this paper is a legal instrument, an institutional design, and a geopolitical strategy. Its adoption would resolve India's most significant doctrinal anachronism in gaming law, provide professional athletes with the legal dignity their craft deserves, and position the world's most populous democracy at the frontier of the global digital sporting economy. The institutional will to implement it is all that is required.

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