



ADVISORY

Advisory on Legal Status of Online Gambling in India

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LEGAL STATUS OF ONLINE GAMBLING IN INDIA

In India, to determine in whether a particular activity amounts to *gambling* we will have to understand whether a particular activity is a *game of chance or a skill*.

I. LAWS AND REGULATIONS

1. Predominantly, the Public Gambling Act of 1867 ("**PGA**") governs gambling in the country. The PGA's primary objective was to prohibit and penalize gambling activities and the operation of gaming houses. Unfortunately, the PGA lacks a precise definition of "gambling" and provides no room for the interpretation of this term, including its application to online gambling.
2. Conversely, the Ministry of Electronics and Information Technology (the "**MeitY**") introduced the IT Rules 2021 for Online Gaming (the "**IT Rules**"). These rules define "Online Gaming", as games accessible on the internet, where users make deposits with the expectation of earning winnings. While the definition does not explicitly clarify what constitutes Online Gambling, it breaks down the elements involved, including the internet, deposits, computer resources, and expectations of winning.

Notable features of the IT Rules include the establishment of:

- Self-regulatory bodies (**SRB**) to oversee online games with real money.
- Online Gaming Intermediaries (**OGI**) encompass platforms like Dream 11 and Poker Stars.
- SRB recognition by MeitY, and the verification responsibilities of SRBs for online real-money games, with specific requirements outlined in the Online Gaming Rules. Without undergoing this verification process, no entity can be classified as an OGI.

NOTE: No SRB has got nod from the MeitY, yet.

II. CASE LAWS

To gain a better understanding of these laws, it's crucial to examine significant case law decisions, particularly concerning the classification of games as games of chance or skill.

Few Case Laws on online Gambling/Gaming:

1. In ***Gameskraft Technologies Private Limited v. Directorate General of Goods and Service Tax Intelligence & Others (2023)*** (the "CASE"), the Karnataka High Court held that online rummy, being a skill-based game, should not be categorized as gambling or betting and is not taxable under the Central Goods and Services Tax Act. However, it's important to note that this decision's precedential value for other online and offline games is uncertain.

NOTE: An appeal to the Hon'ble Supreme Court of India is pending, with a hearing expected in October 2023.

2. In ***Avinash Mehrotra v. State of Rajasthan & Ors (2021)***, the Hon'ble Supreme Court upheld the Rajasthan High Court's decision that the online fantasy sports platform ***Dream11*** involves skill and does not constitute gambling.

III. STATE-SPECIFIC LEGALITY AND LAWS FOR ONLINE GAMBLING/GAMING

Sr No.	State	Legality	Remarks
1.	Telangana	Banned	Banned in 2017 under Telangana Gaming Act.
2.	Andhra Pradesh	Banned	Banned in 2020 after suicides related to online gaming
3.	Maharashtra	Can be banned	Considering amendments to address online gaming (unconfirmed).
4.	Rajasthan	Partially Banned	Draft bill regulates fantasy sports and esports; other skill games may continue.
5.	Tamil Nadu	On hold	Pending Supreme Court decision on online gaming prohibition.

6.	Kerala	On hold	Pending appeal against prohibition of "online rummy."
7.	Karnataka	On hold	Pending Supreme Court appeal against prohibition of online games.
8.	Meghalaya	Legal	Introduced licensing regime for games of skill and chance.
9.	Puducherry	Can be banned	Reports suggest considering a ban on online rummy (unconfirmed).

IV. CONCLUSION

Based on the findings above, In India, an activity involving games of chance with real currency is prohibited and under legal scrutiny in multiple states, as it amounts to gambling. States like Telangana and Andhra Pradesh have banned online gambling while others such as Maharashtra, Tamil Nadu, Kerala, and Karnataka are dealing with pending legal cases to determine their legality. In contrast, Meghalaya has introduced licensing regulations for games involving both skill and chance.

The final legal stance on online gaming awaits the resolution of pending CASE in the Hon'ble Supreme Court of India. Which will determine whether Online Gaming with real currency falls under the Gambling or Business. It will be determined with relation to Article 19(2)(g) of the Indian Constitution, and whether it concludes game of chance or game of skill.

However, activities/games primarily based on Chance with real money remain prohibited. Overall, India's legal framework for gambling with real currency is cautious, with varying regulations across states.



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