

KPMG report finds India's gaming industry is estimated at around USD 60B per year

Is India operating in a grey area?



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Online gaming has gained significant traction in the digital space in recent times. Websites such as Khelo365 and Adda52 now offer a host of traditional casino games and give individuals a chance to hit the jackpot. While the websites assure players that the platforms are 100 per cent legal and secure, the jury is still out on this issue.

According to a KPMG report, the gaming industry in India is estimated at around \$60 billion per year and the figure is expected to rise with the advent of online gaming. Under the Constitution, betting and gambling are state subjects under Entry 34 on List II of the Seventh Schedule. As a result, there are vast differences in the regulation of gaming in India.

However, there still exists a central law prohibiting gaming — The Public Gambling Act, 1867. This colonial relic had held the fort until the introduction of the Constitution, after which several states adopted similar provisions while others enacted their own.

Most state laws and the central statute exclude 'games of skill' from being categorised as acts of 'gambling'. Yet a 'game of skill' had not been

defined under these laws. This caused much confusion till the Supreme Court in State of Andhra Pradesh versus K. Satyanarayana (1968) classified Rummy as a skill-based game.

To date no other game has explicitly received such a judicial nod. Still the judgment has allowed many stakeholders to make a strong argument for the legitimacy of other games. However, a Madras High Court judgment stirred the pot once again by concluding that a 'game of skill', if organised for profit, would still amount to 'gambling'. As the appeal from the verdict in the Supreme Court was withdrawn before it could be finally decided, the legality of making a profit on such activities remains inconclusive.

"Although 'games of skill' are technically outside the regulatory space, in reality all such activities are effectively under the (regulatory) umbrella," says Nandan Kamath, principal lawyer, LawNK.

Gambling can traditionally be defined as wagering or betting for money, typically in a gambling house. The activity should also contain an element of profit or gain. Most laws penalise only gambling houses. Merely charging a sitting or gaming fee does not necessarily constitute the space as a gambling house. As most laws do not contemplate gaming in an online arena, it is unclear whether such platforms can also be categorised as gambling houses. One view is that the law should be construed to include such spaces, whereas the more traditional approach would be to interpret such provisions strictly to exclude internet-based entities.

In recent times, states such as Sikkim and Nagaland have enacted specialised online gaming laws in an attempt to legitimise the industry. In fact, an online gaming licensee in Nagaland can use this permission to access a pan-Indian market, wherever 'games of skill' are permitted. However, the Information Technology Act, 2000, prohibits internet service providers from hosting gambling websites.

Other regulatory issues include those around foreign exchange remittances of winnings from lottery, racing or other hobbies.

There is also a bar on foreign investments and foreign technology collaborations. According to Ranjana Adhikari, co-head, media entertainment and gaming practice, Nishith Desai Associates, 'games of skill' should ideally be exempted from these prohibitions. Fiscal issues such as the rate of taxation, input tax credits and place of supply rules under the upcoming GST regime are among the other concerns plaguing the sector.

The industry has called for clearer guidelines on the recognition of online platforms, a standard definition of a 'game of skill', and an internal dispute redressal mechanism to avoid rogue entities from bringing the entire industry into disrepute. In fact, the Law Commission of India has been asked to comment on the feasibility of a common law to address the present uncertainty in the gaming sector. Law Commission Chairman Balbir Singh Chauhan highlighted that the government could earn as much as \$2.6 billion per year in tax revenue.

However, there are concerns over conflicting provisions in the Contract Act, 1872, and the Directive Principles of the Constitution that may impede this process. If Maharashtra's performance at implementing its 1976 law legalising casinos can be used as a marker, the road ahead may still be long.

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