

GAMING AND BANNING: ON BAN ON ONLINE GAMES

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

Yet another legislative attempt to prohibit online gaming has failed under judicial scrutiny. The amendments brought to existing regulations on betting and gambling in [Karnataka have been struck down by the State's High Court](#). Last year, the Madras High Court invalidated similar amendments that targeted online rummy and poker. What is common to both cases is that the legislature assumed a paternalistic role, arguably with the laudable aim of protecting the people, especially the youth, from the temptations of online gambling. However, the resulting provisions failed to make a distinction between games of skill and games of chance, and sought to bring under the proscription all games played online, regardless of the extent to which skill was required. Further, the Karnataka High Court has rejected a key submission that it could be upheld as a 'public order' law. It referred to "the menace of cyber games" of epic proportions, and the registration of about 28,000 cases by the police in the State in the last three years. The government did have a point when it said many have taken their own lives and families ruined as a result of gaming addiction and indebtedness. However, as the court has pointed out, if the objective was to curb the menace of gambling, the government should prohibit activities that amount to gambling as such, and not the games of skill. While enacting the extreme measure, it did not consider the feasibility of regulating wagering on games of skill.

While the idea of betting and gambling conjures up the image of a 'bucket shop' associated with dingy gaming-houses frequented by hustlers, there is an element of 'information, expression and entertainment' that has constitutional protection. And gaming platforms are also a legitimate business that enjoy the freedom of trade when used for online versions of games of skill. The court has drawn attention to the fact that what such bans do is to create "a wholly new category of medium-based regulation, when chance of medium per se does not alter the true nature and content of the games". In other words, what is targeted is not the gambling part but the 'online' part. Also, the amendments contradicted a general exemption in the original law to 'games of skill' by making all online gaming punishable even if they involved skill. It is clear that an absolute embargo on games of skill involving money or stakes could not have been upheld by the court, as the line between individual freedom, both to carry on the business and to participate in it as a consumer, and state action could not have been obliterated. All legislation that assumes that sections of society require the hand of the state to guide and support them have some populist appeal. And there is an addictive element to online gaming, but that does not mean there is no individual freedom and choice at all.

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