

REGULATE ONLINE GAMING, DON'T PROHIBIT IT

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

The Karnataka High Court's [verdict](#) on February 14 declaring as unconstitutional certain provisions of the Karnataka Police (Amendment) Act, 2021, which prohibited and criminalised the offering and playing of online games, is the third significant judicial validation for the sector in the last seven months. This decision comes close on the heels of verdicts by the [Madras](#) and [Kerala](#) High Courts. All three High Courts have reaffirmed the Supreme Court jurisprudence that games of skill and games of chance (gambling) are two distinct legal concepts of constitutional significance, and that the former are legitimate business activities protected under our fundamental rights.

The Stare Decisis goes back to the famous Chamarbaugwala cases (*The State Of Bombay v. R.M.D. Chamarbaugwala* and *R.M.D. Chamarbaugwala v. The Union Of India*), wherein the apex court held that in any game, if the element of skill is dominant over the element of chance (a yardstick known as the preponderance test), then it is a game of skill and cannot be construed as gambling. Over the years, using this standard, the Supreme Court and various High Courts have held several games including rummy, fantasy sports, bridge, chess and horse racing to be games of skill. This position is also reflected in the Gambling Acts of most State governments, which often state: 'Nothing in this act shall apply to any game of mere skill'.

However, a few years ago, southern States started banning any game played for stakes, without making a distinction between games of skill and games of chance. Telangana, Andhra Pradesh, Tamil Nadu, Kerala and more recently Karnataka came with their respective embargoes. These decisions were appealed against, and the High Courts in the latter three States set aside the ban decisions as unconstitutional. The matters are sub judice in Telangana and Andhra Pradesh.

Despite clear precedents of the Supreme Court and the various High Courts, why did these State governments issue these bans? One persistent argument is that the Chamarbaugwala cases, which go back to the 1950s, are outdated now; that technology has progressed significantly and most games are played online. The Madras and Kerala High Courts have held that games of skill do not metamorphise into games of chance if played online. The Karnataka High Court has gone a step further and held that it is fallacious to argue that Chamarbaugwala jurisprudence needs a relook, because it has been reaffirmed by a series of Supreme Court and High Court decisions since then.

The courts have also held that the government's argument that exposure to games of skill is leading to certain social evils such as addiction and financial distress is only anecdotal. It is pertinent that the courts have objected to the total ban of the sector and have left it to the governments to effectively regulate it. The online skill gaming industry too has urged the respective State governments to regulate the sector and come out with a policy structure that is based on checks and balances. A blanket ban is not only arbitrary, but also leads to untoward situations such as proliferation of illegal syndicates.

With the judicial validation, as well as Central government in the Union Budget announcing that an Animation, Visual Effect, Gaming and Comics promotion task force will be set up, it is important that the State governments work towards introducing a reform-oriented policy structure in this sunrise sector which has immense investment, revenue-generating potential, and creates employment. The sector currently employs 40,000 people. Gaming also has

multiplier benefits to several sectors that have been identified as focus areas by the Government of India, including semiconductors, telecom, fintech and animation/graphics.

Another positive economic dimension is that the sector has received massive foreign investment. In the last five years, the online gaming sector has received around \$1,700 million in venture capital and private equity. Global investors feel confident about the sector not only because of India's favourable macro-economic and demographic indicators, but also because of unequivocal jurisprudence that differentiates games of skill from gambling. An attempt by some State governments to sidestep or ignore the judicial decisions may not only be impractical, but may also send a poor message to the international investor community about governments in India not respecting the sanctity of the judiciary. Having repeatedly won judicial validation, the online skill gaming industry and its investors hope that situation this time is different, and the sector and government can work together to create a policy structure based on principles of light touch regulation and not prohibition.

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