

Centre's new online gaming bill could open the floodgates of litigation

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Summary



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Once it becomes an Act, experts see the new online gaming bill landing up in courts even as the distinction of skill v/s chance has been done away with for real money gaming and the law-making powers of the Centre and the states on the subject are also taking centre stage.



The new bill buckets online games into three categories. | Credits: Getty Images

The new Promotion and Regulation of Online Gaming Bill, **passed by the Lok Sabha** on Wednesday, has come as a surprise to the nascent gaming industry in India. Over the past few years, while gaming companies have been litigating in various High Courts and the Supreme Court to establish a

distinction between skill versus chance to keep their business out of the 'gambling' and 'betting' tag where real money is involved, in essence the new bill not only eradicates that distinction but also intends to put a complete stop to real money gaming.

Classifications under the new bill and what it permits

The new bill buckets online games into three categories. One, 'e-sports'— which includes multi-sports events between individuals or teams, that are conducted in multiplayer formats and have a defined set of game rules, and the outcome of these games is determined by factors largely based on the skills of the players such as strategic thinking and physical dexterity. For instance, games like *Battleground Mobile India* and *Call of Duty Championships* hosted by Krafton, Indian Gaming Leagues and others. The new bill also allows games of this format to be hosted by the gaming companies, provided they register themselves with the authority/agency (under the newly passed National Sports Governance Act, 2025) which is yet to come into existence. Here, gaming companies are allowed to charge players for registration or participation to enter the sporting competition and gaming companies can also pay cash rewards, which are performance-based prize money.

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The second category comprises 'online money games', which are either skill-based, or chance-based, or both and are played by paying money or other stakes



Circle, Zupee, and WinZo.

The third is the 'online social games', where neither money nor any other payment is required to participate for games that are meant for entertainment, recreation or skill-development purposes but can charge a subscription fee or one-time access fee but not as a wager and doesn't fall under the category of either an online money game or e-sports, such as Nintendo Switch Online and PlayStation Plus, among others.

The new bill outrightly prohibits the second category. Offering, promoting, or advertising of any kind either directly or indirectly of any online money game. Further, banks, financial institutions, or persons are also barred from facilitating any financial transaction towards payments for any online money gaming service. The ban on offering money games not just covers those that operate in India but also to those companies that offer such outside of India.

While the violation under the provision of the bill would stand to attract both pecuniary and penal punishments, it also gives sweeping powers to authorities where they can enter- “any place, whether physical or digital, and search and arrest without warrant any person found therein who is reasonably suspected of having committed or of committing or of being about to commit any offence under this Act,” bypassing any procedural requirements under Bharatiya Nagarik Suraksha Sanhita, 2023.

Online gaming: a legal quagmire

Much of the legal discourse in India in the online real money gaming space has been around the distinction of skill and chance. Laws related to gambling and betting come under the purview of state governments, whereas there is still no central legislation that covers the aspect of e-sports or other forms of gaming. Even in recent years, gaming companies / associations have fought cases where games like Rummy and fantasy sports have been held as games of skill and not chance by courts, including the recent one involving Dream11 (Varun Gumber v. Union Territory of Chandigarh & Ors. In 2017), in the Punjab and Haryana High Court. Several states like Kerala, Karnataka, and Tamil Nadu, that sought to ban online games involving stakes, still have pending appeals at the Supreme Court. At the same time, the state of Sikkim gives out annually renewable licences to companies or legal businesses based in India to operate online gaming platform in lieu of fees.

While this bill completely removes the distinction of skill and chance for any consideration for games involving real money, Surbhi Kejriwal, Partner at Khaitan & Co, sees the bill receiving not only strong opposition from the gaming industry but is also sceptical whether it can withstand judicial scrutiny. “The industry will have a strong case against the constitutional validity of the Bill as the Hon’ble Supreme Court has time and again provided protection to skill-based

games involving real money under Article 19 of the Constitution of India. While the industry is not opposed to regulation, a blanket prohibition is surprising,” she said.

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With the earlier idea of a self-regulation model for the gaming industry now effectively disbanded, even internet service providers will now come under the purview of the bill, as entities providing access or hosting apps, including all app stores, YouTube, or any online or offline medium that displays advertisements. With the ban on online gaming sites outside India also a part of the bill, it's still unclear how or who would identify such sites or apps to be able to block them in India.

While the bill proposes an authority for oversight of the gaming industry, it also gives such an authority arbitrary powers to recognise, categorise and register online games and determine what category each one falls under, either on the receipt of an application from online game firms or on a suo motu basis.

Vaibhav Parikh, Partner in-charge of Mergers & Acquisitions and Private Equity Practice at Nishith Desai Associates, sees the fundamental question of who has the power to enact laws for chance-based online games becoming a moot point in any litigation arising out of this new bill. “There are gaming laws in each of the states and some like Goa and Sikkim permitting them specifically. For instance, Sikkim has permitted online gaming with specific laws pertaining to it. Now the question really is, ‘if power is with the state to enact such laws, whether online or offline gaming, does the Centre even have the power to pass this bill?’ In my mind, that's a question mark. I think for skill-based or e-sports, the Centre may have power, but for the other category, I'm not so sure. Again, that's something which we will need to argue in the courts,” he says.

Apart from the legality, the sweeping power given to authorities under the bill also raises an alarm. Even mere grounds of suspicion of aiding and abetting are enough to arrest any individual with offences being non-bailable, Parikh adds, could also lead to misuse of the provisions.

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