



## Dawn of Online Gaming Regulations in India

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### Introduction

With the ever-increasing and undeniable popularity of online gaming in India, the Government finally (and, thankfully) seems to have started taking some interest in regulating the sector as opposed to simply imposing blanket bans. As Sevenjackpots stated in an earlier article,<sup>1</sup> the present day technologies of VPN and cryptocurrencies enable players to play online games irrespective of the existence of a blanket ban. Blanket bans only serve to re-direct the users in India to foreign casinos and gaming service providers, which not only moves the activity underground but also exposes them to cyber-security and other risks and denies the Government the opportunity to levy appropriate taxes.

Thus far, this flourishing industry has been mired in regulatory uncertainty. The current legal regime is highly fragmented and archaic, with contrasting laws across different states that lend to confusion – both for service providers and users.

Whilst the focus of the Government's policy so far in relation to online gaming was merely on taxation (much like its policy on crypto assets), given the exponential increase in the number of gamers, there is a pressing need for regulation of the sector, such as ensuring user safety (i.e. putting in place guidelines and standards for privacy, fraud prevention, appropriate KYC procedures and payment mechanisms), customer support and overall ease of doing business (regulatory certainty, proper collection of taxes and perhaps even a nodal agency to administer the policy).<sup>2</sup>

In this paper, we discuss some of the recent updates in the online gaming sector.

### The Online Gaming (Regulation) Bill, 2022

Recently, the Online Gaming (Regulation) Bill, 2022 (the **Gaming Bill**) was introduced in the Lok Sabha as a private member's bill. This bill attempts to achieve the dual purpose of introducing a regulatory regime for online gaming and ensuring that the online gaming platform is not misused for fraudulent activities.

In a welcome change, the Gaming Bill deviates from the current practice of classifying games as “games of chance” or “games of skill”. The bill also provides for setting up of an Online Gaming Commission (constituted by the central Government) with the objective of overseeing the functioning of online gaming websites and taking steps to curb illegal online gaming. This commission is also

<sup>1</sup> <https://www.sevenjackpots.com/stop-whatever-you-are-doing-india-just-announced-a-new-gaming-bill/>

<sup>2</sup> <https://www.sevenjackpots.com/indian-gambling-regulation/>

envisaged as the authority for granting licences for online gaming websites and installation and operation of online gaming servers and for regulating the activity.

However, the bill is not without its flaws since it fails to draw a distinction between casual online games and real money based online games. It also does not seek to address certain key aspects like KYC norms, data protection and age verification of players. These shortcomings underscore the need for collaboration between lawmakers and industry experts in drafting legislation that is appropriate and recognises practical realities of the market.

Since the Gaming Bill has been introduced as a private member's bill, we are sceptical of this bill being enacted as law (similar to another private member's bill – the Sports (Online Gaming and Prevention of Fraud) Bill, 2018 – which was introduced in the Lok Sabha in 2018 and lapsed thereafter). Nonetheless, the fact that this industry has received the attention of at least some central legislators is encouraging.

### **Inter-ministerial Panel on Online Gaming**

Reports suggest that the Government has formed an inter-ministerial panel to draft regulations for online gaming and identify the nodal authority to regulate the gaming sector.<sup>3</sup> The objective of the panel, reportedly, is to investigate various aspects “*to promote online gaming and frame regulatory mechanisms for the segment, protection of gamers and ease of doing business, among others*”. The seven-member panel includes secretaries of home affairs, revenue, industries and internal trade, electronics and IT, information and broadcasting, sports and Niti Aayog.

Whilst we will have to wait to see this panel's approach and recommendations on these matters, we feel *cautiously* optimistic that the wholistic mandate of the panel, particularly on aspects such as “ease of doing business” signals a shift in the Government's stance – from a strictly moralistic one to that of an enabler of online gaming (with adequate safeguards in place, of course).

### **Animation, Visual effects, Gaming and Comics Task Force**

The Finance Minister of India recently announced constitution of the Animation, Visual Effects, Gaming and Comics (**AVGC**) Promotion Task Force (the **Task Force**) in the Union Budget 2022-23. The Task Force has been asked to recommend ways to realise and build domestic capacity for serving Indian markets and the global demand, and to promote the AVGC sector in the country under the aegis of Ministry of Information and Broadcasting. The Task Force is headed by the Secretary of Ministry of Information and Broadcasting and has participation from the central and state Governments and industry experts.<sup>4</sup> The Task Force has been asked to, *inter alia*, formulate a national AVGC policy and recommend incentives to attract foreign direct investment in the AVGC sector. It will be interesting to consider the Task Force's recommendations and their interplay (to the extent these pertain to online gaming) with the recommendations of the inter-ministerial panel.

### **Rajasthan Virtual Online Sports (Regulation) Bill, 2022**

In addition to the movement at the central level, there have also been some scattered updates across different states. For instance, the Government of Rajasthan recently released the draft Rajasthan Virtual Online Sports (Regulation) Bill, 2022 (the **Rajasthan Bill**) for public comments.

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<https://www.businessworld.in/article/Government-Forms-Inter-ministerial-Panel-To-Regulate-Online-Gaming/27-05-2022-430383/>

4 <https://pib.gov.in/PressReleasePage.aspx?PRID=1814698>

Notably, the Rajasthan Bill applies to the “esports” (which is being hotly contested by the esports industry), “fantasy sports” and derived formats, but does not extend to other online games. This bill envisages a licensing regime and provides for setting up of a Rajasthan Virtual Online Gaming Commission that is tasked with, among other things, recommending conditions for licences, recognising “self-regulatory organisations”, and issuing advisories, caution notices and recommendations to self-regulatory organisations. This bill also expressly provides that any advisories / recommendations to be issued by the commission will first be released for comments from the relevant stakeholders. In the same vein, the Government is currently in the process of inviting and reviewing public comments and holding stakeholder consultations to fine-tune the bill.

### **Proposed Changes to the GST Rates**

Reports suggest that the Group of Ministers, which had been constituted in May 2021 with a view to reviewing matters related to taxation of casinos, race courses and online gaming, has submitted its report to the Ministry of Finance and has recommended an increased rate of goods and services tax (**GST**) on online gaming companies - from 18% to 28%. In addition, the quantum on which GST will be levied is proposed to be 'gross gaming revenue' and not 'per transaction' or on 'every betting amount'. We currently await further clarity on these changes.

### **Conclusion**

The recent trends in the online gaming sector in India, both at the central and state levels allude to the Government’s intention to create a cohesive set of regulations on online gaming. Whilst shaping these regulations to ensure a balance between user safety and ease of doing business for gaming companies will require greater collaboration among the various stakeholders, we believe that these legislative initiatives are a much desired step in the right direction.

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#### **Uday Walia**

*Partner*

[uday.walia@touchstonepartners.com](mailto:uday.walia@touchstonepartners.com)

#### **Surbhi Soni**

*Senior Associate*

[surbhi.soni@touchstonepartners.com](mailto:surbhi.soni@touchstonepartners.com)

#### **Suyashi Mishra**

*Associate*

[suyashi.mishra@touchstonepartners.com](mailto:suyashi.mishra@touchstonepartners.com)