Harnessing the Potential of Online Gaming in India

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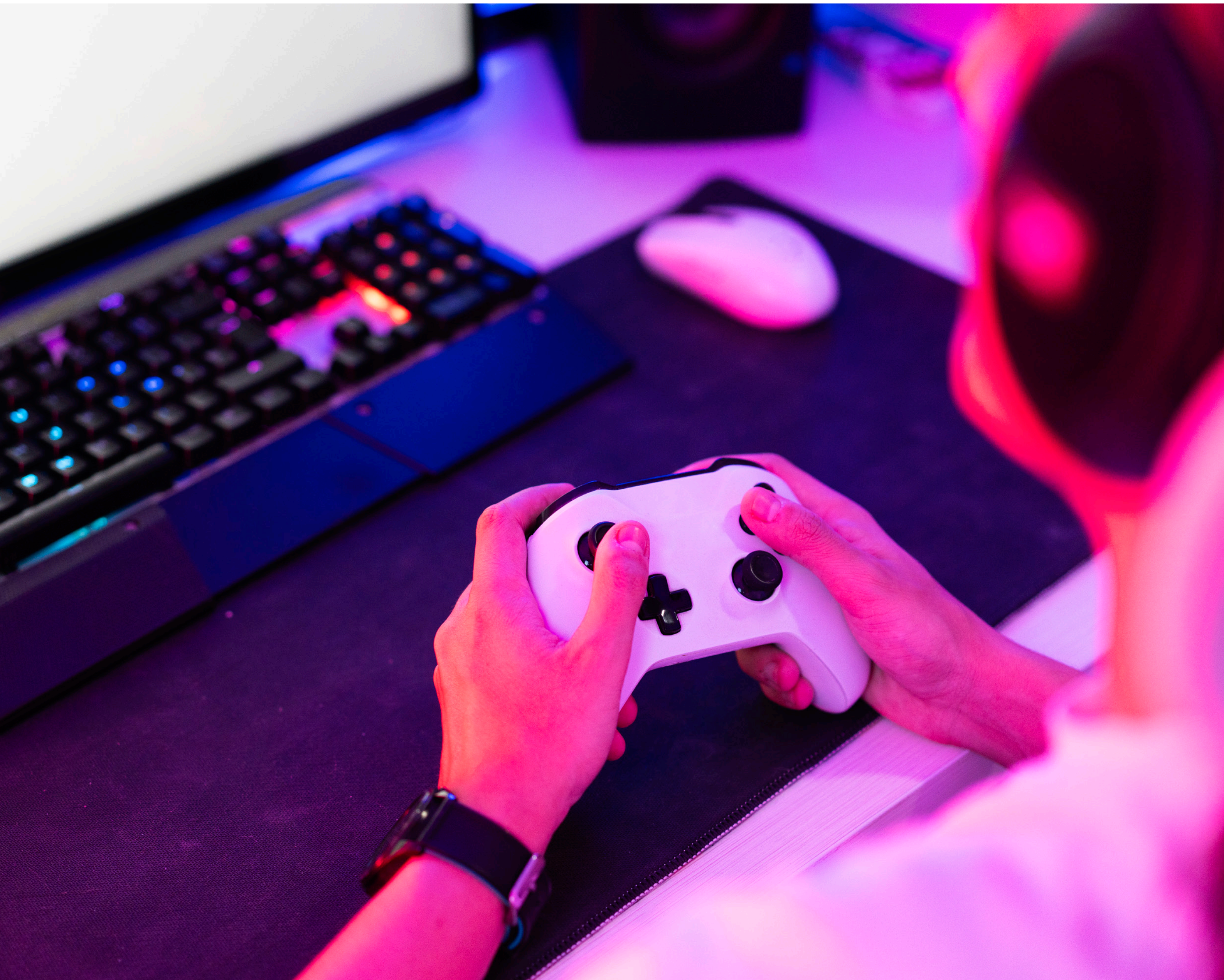

Abstract

India's online gaming sector is rapidly growing, surpassing other emerging digital sectors in the country. It contributes to GST revenue, creates jobs, and attracts FDI. The sector also promotes ancillary sectors, contributing indirectly to the economy. However, concerns persist around harms such as addiction, financial crimes like money laundering, and implications to national security. Regulatory uncertainty continues to hinder the sector's growth potential. This report examines the market structure of online gaming in India, its spillover effects, and the related regulatory challenges that need to be addressed. It offers recommendations on the ways by which the sector can unleash its potential.

Attribution: Basu Chandola, *Harnessing the Potential of Online Gaming in India*, December 2024, Observer Research Foundation.

Introduction

India's online gaming sector has transformed over the last decade to become an economic powerhouse, driven by smartphone ownership, enhanced internet connectivity, a growing youth population, and localised gaming content. It recorded a 28-percent Compound Annual Growth Rate (CAGR) between FY20 and FY23 and is estimated to be valued at INR 33,243 crore by FY28,[1] supporting India's ambitions for a US$1-trillion (approx. INR 83,93,565 crore) digital economy.[a]

Despite its popularity among current users, online gaming faces certain stigmas in India that impact public opinion, investments, growth, talent development, and innovation. Regulatory uncertainty and misconceptions equating online gaming with betting and gambling further limit its progress.[2] Without an enabling regulatory framework, the sector's potential remains unrealised. This report provides an overview of the online gaming sector, discusses the concerns and opportunities, and assesses the role of regulation in promoting the growth of the sector.

a Prime Minister Narendra Modi, in his Independence Day speech in August 2024, recognised the importance of the online gaming sector and emphasised that India could lead the world of gaming and make a global impact. See: https://www.narendramodi.in/text-of-prime-minister-shri-narendra-modis-address-from-the-ramparts-of-red-fort-on-the-occasion-of-78th-independence-day-585108.

Online Gaming in India's Economy

With its growth, the online gaming sector could contribute to India's goal of growing a US$1-trillion digital economy. It reached INR16,428 crore in FY23 and is projected to grow up to INR 33,243 crore by FY28.[3] Unlike the global market, India's online gaming sector focuses on domestic needs and preferences due to high domestic consumption. It is one of the highest growing sectors within the media and entertainment (M&E) sector[4] and is the fourth largest segment in M&E.[5]

The online gaming industry's contribution to the digital economy is notable, with a projected CAGR of 15 percent by FY28, surpassing other emerging sectors within the digital economy.[6] For instance, the Augmented Reality (AR) and Virtual Reality (VR) segment is expected to achieve a CAGR of 9.74 percent from 2024 to 2029,[7] while the robotics sector is projected to grow at a CAGR of 12.18 percent by 2028.[8]

FDI in Online Gaming

The online gaming sector is permitted to have 100-percent Foreign Direct Investment (FDI) through the automatic route within the Electronic System and IT & BPM sectors,[9] provided the investment is in a game of skill, or non- rewarding games of chance.[10] In August 2024, the Department for Promotion of Industry and Internal Trade sought views to distinguish between these categories for FDI purposes.[11] In the last five years, gaming companies raised US$2.8 billion (approx. INR 23,440 crore) from domestic and global investors, amounting to 3 percent of total startup funding in India.[12] Reports indicate that FDI in the online gaming sector exceeds US$2.7 billion (approx. INR 22,680 crore) in the country.[13]

Increased FDI inflow can contribute to the US$1-trillion digital economy target, serving as a catalyst for industry growth by bringing in capital and positive ripple effects in various sectors.[14] However, reports suggest that FDI inflows have reduced since the 2023 increase in the Goods and Services Tax (GST) rate to 28 percent, with deals dropping from 72 in FY22 to 15 in FY24.[15] This decline can be attributed to uncertainties around taxation and the subsequent litigations.[16]

Job Creation

The online gaming sector is boosting job creation and economic development, having generated about 50,000 to 80,000 roles and expected to generate over 250,000 more direct and indirect jobs in the next decade.[17] These jobs include developers, programmers, testers, artists, and customer support required for developing immersive game plays. Similar demand for skilled professionals will also rise in advertising and cybersecurity across the value chain. The sector's expansion promotes opportunities in creative technologies, such as software, graphics, illustrations, UI/UX, 3D, and animation. High-value talent is attracted to these roles, aiding retention in the country, while low-skill jobs, such as guards and drivers, will also increase as the sector expands.

Reports suggest a 3,360-percent increase in the female workforce in the online gaming sector from 2018 to 2023.[18] This shift reflects women's growing presence in diverse roles including game development, designing, graphics, animation, and data analytics.

GST Collection

The GST revenue from online gaming has increased by 412 percent, reaching INR 6,909 crore in the six months between October 2023 and March 2024.[19] This increase follows the 2023 GST rates increase to 28 percent, which previously saw monthly collection around INR 225 crore. As online gaming continues to grow, there can be an increase in revenue collection from the industry.

Understanding the Online Gaming Market

Before delving into the regulatory aspects, opportunities and challenges of the online gaming sector in India, it is important to understand its structure, the value chain, market segmentation, and current consumer trends in the country.

The Online Gaming Value Chain

The online gaming value chain consists of five stages: development; publishing; monetisation; distribution; and consumption (see Figure 1).

Figure 1: Online Gaming Value Chain

Development	Publishing	Monetisation	Distribution	Consumption
Development of fame from vision to concept	• Managing • Funding • Producing • Marketing • Distribution • Licensing	• Intermediation between publishers and advertisers • In app purchase • Real money gaming	Marketplace and platforms for distribution	End user

Source: Author's own[20]

The value chain may include other elements depending on the complexity of the games and the respective revenue models. Other stakeholders include device manufacturers, operating systems, internet service providers, and ancillary services providers.[21]

Segmentation of the Online Gaming Market

The online gaming sector is segmented by device, genre of games, and revenue model, which may often overlap. A key classification is the hardware such as consoles, personal computer, and mobile phone. India, a mobile-first gaming market, leads globally in mobile game downloads,[22] with mobile gaming accounting for 77.9 percent of the industry's revenue in the country.[23]

Consumer Trends in the Online Gaming Sector

India's online gaming market has over 444.4 million users, including 138 million paying gamers,[24] with 41 percent of them female.[25] In 2023 alone, Indians downloaded over 9.5 billion gaming apps, making it the world's largest gaming market.[26] Growth drivers in this sector include a large young population, affordable data, increase in smartphone coverage, growing digital comfort, and the rise of fintech solutions.

Global Market for Different Types of Games

The current growth in online gaming is a global phenomenon, with the sector's CAGR at 11.2 percent, expected to grow from US$96 billion (approx. INR 8,05,946 crore) in 2023 to US$276 billion (approx. INR 23,17,129 crore) by 2033.[27] Mobile-based games have the largest market, with a share of 51 percent.[28] A 2022 report suggests that around 54 percent of the gamers were from Asia-Pacific, 16 percent were from the Middle East and Africa, 13 percent were from Europe, 10 percent were from Latin America, and 7 percent were from North America.[29] The report also suggests that browser PC games have 1 percent market share, while console games, downloaded/boxed PC games and mobile games had 28 percent, 21 percent, and 50 percent, respectively. Thus, mobile gaming leads the industry, generating US$107.3 billion (approx. INR 9,00,825 crore) from App store spending alone.[30]

SWOT Analysis of India's Online Gaming Industry

Figure 2: SWOT Analysis of the Online Gaming Sector in India

Strengths

- High-growth potential & high revenue
- Development of local content
- Investment and Job creation
- Cross sectoral and spillover effects
- Global reach

Weaknesses

- Lack of skilled talent
- High technological and platform costs
- High compliance costs

Opportunities

- Huge population
- Affordable Internet
- Easy accessibility to smartphones
- Support India's US$1-trillion digital economy goal

Threats

- National security and integrity risks
- Addiction and user harms
- Uncertain regulatory framework
- Unfavourable taxing provisions
- Low investor confidence

Source: Author's own

The Cross-Sectoral Spillover Impact of Online Gaming

Over the past two decades, India has witnessed a digital transformation, becoming one of the largest and fastest growing markets with over 700 million internet users.[31] The country aims to achieve a US$300-billion electronics industry and a US$1-trillion digital economy by 2025-2026,[32] contributing 18 to 23 percent of the nominal GDP.[33]

With its growth potential, the online gaming sector is poised to boost India's US$1-trillion digital economy goal, driving FDI, tax revenues, employment, and the expansion of ancillary industries like fintech, Web 3.0, AR, and cybersecurity. Studies suggest that the online gaming sector's growth stimulates ancillary industries.[34] A US-based study noted that a rise in online gaming boosted the market for dynamic in-gaming advertising.[35] Similarly, in Sweden, online gaming growth positively correlated with increased online advertising, driven by substantial investments from gaming companies.[36]

Online gaming growth accelerates the demand for complementary products and drives faster development.[37] Technological advancements and innovations in the gaming sector benefit other economic sectors such as media, healthcare, manufacturing, and automotive.[38] Investments in specialised human capital and research and development (R&D) in the gaming sector positively impact the country's growth.

A Finnish study titled 'The Digital Games Industry and its Direct and Indirect Impact on the Economy'[39] noted that the gaming industry's economic contribution extends beyond direct impact on GDP. The sector stimulates demand for complementary products, including processors, content, devices, and broadband internet access, driving sales and accelerating related technology development. Additionally, heavy investments in specialised human capital and R&D foster innovation, benefiting other sectors.[b] Gaming companies often pioneer new working methods and creative practices that influence other industries. For example, rapid development cycles and innovative organisational models in gaming are adopted by other sectors to boost innovation. Furthermore, creative professionals from the gaming industry frequently transition into other fields, bringing new techniques and ideas that contribute to broader economic and social innovation.

Another study, titled 'The Economic Impacts of Video Game Technology Spillover',[40] assessed how video game technologies contribute to non-game sectors in the United Kingdom and select Nordic economies. Table 1 outlines the impact of these spillovers in 2021.

Table 1: Economic and Fiscal Impacts of Video Game Technology Spillover in Other Sectors in UK and Nordic Economies

Metric	Unit	UK	Norway	Sweden	Denmark	Finland
Employment	Jobs (units)	9,900	1.670	1,710	1,100	890
Output[c]	GBP (million)	1,330	700	270	190	130
GDP	GBP (million)	760	570	140	120	60
Labour Income[d]	GBP (million)	380	100	80	50	30
Government Revenue	GBP (million)	350	180	70	40	30

Source: Author's own, based on data from The Economic Impacts of Video Game Technology Spillover[41]

b The impact is also evident in the cultural and creative sectors.

c 'Output' is the value of all transactions occurring throughout an economy.

d 'Labour income' is defined as the sum of all wages and salaries, the cash-equivalent value of other compensation for employees, and earnings.

The study found that sectors like healthcare, audiovisual media, manufacturing, and real estate have adopted innovations from game developers, such as game engines, VR, AR, rendering software, controllers, and haptic feedback to enhance products and improve their business operations. Across these regions, energy extraction, information technology, and machinery manufacturing experienced the most notable impact from game technology spillover.

The growth of the online gaming sector can have cross-sectoral impacts beyond entertainment, boosting the performance of complimentary and supplementary sectors[42] including fintech, data analytics, the creator economy, and cybersecurity. This illustrates its integral role in the broader digital transformation.

Fintech and Financial Services

The growth of India's online gaming sector is fuelled by efficient and secure payment solutions, which also benefited from the growth of the online gaming ecosystem. Online gaming is a prominent use case for digital payments in the country.[43] One leading Indian online gaming platform processes over 4 billion micro-transactions monthly, accounting for at least one out of every 300 Unified Payments Interface (UPI) transactions in the country.[44] Further, over 20 percent of players make their first-ever digital payment on this platform.

The synergy between online gaming and fintech creates a dynamic ecosystem where both sectors benefit from each other's expansion. As online gaming flourishes, it will stimulate further growth and advancements in fintech, leading to innovative payment solutions and contributing to the broader digital economy.

Data Analytics

Online gaming platforms generate player data to identify patterns and preferences, enhance game performance, and improve consumer experience.[45] Furthermore, platforms employ analytics for fraud detection and revenue optimisation. With the growth, new use cases and innovations in data analytics emerge, creating refined tools and techniques that benefit both gaming and other data-dependent industries.

Creator Economy

The booming content creator economy highlights the ripple effects of the online gaming ecosystem. Over the past decade, India's gaming sector has evolved into a billion-dollar powerhouse, driven by the rise of gaming content creators. According to the *India Gaming Report 2024,* around 300,000 creators and streamers in India reach over 600 million users.[46] This growth is reshaping market dynamics, with its impact extending well beyond game sales. Leading gaming creators can earn over US$1 million annually (approx. INR 8 crore) from brand endorsements and monetising content on platforms like YouTube and Instagram.[47] Additionally, the high demand for quality gaming content has also generated ancillary job opportunities in production, editing, and graphic design.

Cybersecurity

With the growth of the online gaming sector, cyberattacks have risen, with over 75 percent of Indian gamers reporting attacks on their account in a 2021 survey.[48] This highlights the urgent need for enhanced security measures to guard against data breaches, fraud, and cyber-attacks. The surge in demand is accelerating the development of sophisticated cybersecurity solutions, including advanced fraud detection systems, robust data protection technologies, and improved threat detection capabilities.

Enhancement of Technologies

Gaming is driving the advancement in technologies such as Artificial Intelligence (AI), AR, VR, and cloud computing. As the number of gamers and the time spent on online gaming increases, there is demand for more immersive and personalised experiences, accelerating innovation in these fields. Gaming is also accelerating blockchain technology's development, offering immutability and security essential for online gaming. Common use cases include improving security within the gaming industry, enhanced possession of in-game asset, and improved cryptocurrency payments. This demand for more secure and transparent solutions further spurs blockchain advancement.

Crucial Concerns

Addiction and Other Harms

Studies suggest that 6 to 15 percent of gamers tend to exhibit addiction symptoms.[49] Due to its seriousness, 'Gaming disorder' was included in the 11th edition of the International Classification of Diseases (ICD-11) as a clinically significant syndrome.[50] With the growth of the online gaming industry, instilling responsible gaming principles and providing support for vulnerable demographics, especially children, is essential. Excessive spending on gaming can lead to financial risks, including debt.

The Ministry of Home Affairs (MHA) Cyber Wing's Indian Cybercrime Coordination Centre, acknowledging the concerns around online gaming-related harms, has issued safety advice.[51] Some states have signed Memorandum of Understanding with gaming industry bodies to promote responsible gaming.[52]

Data Security and Confidentiality

Online games collect data from players, including their personal details and financial information, raising concerns around identity theft and data leakage. Reports suggest sensitive data leaks from several Indian online gaming platforms earlier this year.[53] Effective security measures, such as periodic system updates, robust code enforcement techniques, and intrusion detection systems, are essential to prevent cyber-attacks.

Off-shore Betting

Off-shore betting poses challenges for India, threatening both individual customers and national security. The 2021 Global Report on Corruption in Sport by the United Nations Office on Drugs and Crime (UNODC) estimates the value of the illegal betting market at approximately US$350 billion, while the illegal gambling market is around US$1.7 trillion.[54] Additionally, certain offshore online gambling operators are collecting US$12 billion annually from users in India,[55] which is causing losses to the national exchequer of at least US$2.5 billion per annum in GST alone.[56]

In India, despite regulatory constraints, the illegal betting market is estimated to receive around US$100 billion in deposits annually,[57] evading taxes and violating union and state laws, including those on content regulation, foreign exchange, money laundering, and consumer protection.[58] Over the last year, GST authorities have notified Ministry of Electronics and Information Technology, Government of India (MeitY) about more than 170 non-compliant offshore gaming platforms and requested their blocking.[59]

In September 2024, the Directorate General of GST Intelligence reported that 658 offshore online gaming were not registered and evading taxes.[60] These illegal websites use deceptive advertising tactics, enticing unsuspecting users with exaggerated promises. In 2023-24, the online gambling sector accounted for 1,311 incidents reported to the Ministry of Information and Broadcasting (MIB).[61] Minors face heightened risks, as many websites neglect KYC or age verification checks,[62] enabling access to inappropriate content and unlawful activities.

These entities are difficult to shut down as they are established outside the country and use mirror links to target Indian users. The proliferation of these illegal platforms exposes users to financial fraud, as they are not able to distinguish them from legitimate, safe online games.

Money laundering and Fraud

Online gaming can facilitate money laundering and other financial crimes, with criminal funds diverted through in-game trades or currencies. The Enforcement Directorate is investigating, for example, Mahadev app, which has been linked to crime proceeds of INR 6,000 crore.[63]

National Security Risks

The 59th Report of the Parliamentary Standing Committee on Finance noted that illegal betting applications can pose national security risks, such as using opaque payment routes, misusing the Liberalised Remittance Scheme (LRS), financing criminal activities, compromising cybersecurity. Reports suggest that UPI deposits for Casumo (a Maltese online casino and sportsbook services company), are credited to an account under 'JeBasket', registered as a wholesale grocery company in Ludhiana, Punjab.[64]

Investigations by the Central Board of Indirect Taxes and Customs have found that individuals and offshore entities have misdeclared foreign exchange transactions under LRS to place bets on offshore betting platforms.[65]

Regulation of Online Games Globally

A number of jurisdictions worldwide distinguish between games of chance and games of skill, with developed jurisprudence to identify them. Table 2 expands on the concepts of *games of chance* and *games of skills* as developed in these jurisdictions.

Table 2: Review of Select Jurisdictions

Country	Games of chance and Games of skills
UK	The UK's Gambling Act 2005 legalises and regulates gambling,[66] including gaming, betting, and lotteries. 'Gaming' means playing a game of chance for a prize, which may involve elements of both chance and skills,[67] or a chance element that can be eliminated by superlative skills. However, if the element of chance is negligible, as in chess (where it only affects the choice of white or black).[68] Further, the game of chance does not include a sport.
Singapore	The Gambling Control Act 2022 defines gambling as betting, engaging in gaming activity, and participating in a lottery. Gaming includes playing a game of chance for a prize; or playing a gaming machine. A 'game of chance' may involve both an element of chance and skill; a game that involves an element of chance that can be eliminated by superlative skill; a game that is presented as involving an element of chance; or a game that is played with a gaming machine. Does not include any sporting event.[69]

<table>
<tr><th>Country</th><th>Games of chance and Games of skills</th></tr>
<tr><td>US</td><td>There is no overarching federal legal framework for regulating online gambling, and laws vary across states. Different states follow different tests to determine games of skill or chance, based on court decisions:[70]
Nevada follows the dominant factor test, determining the nature of a game by whether it contains an element of chance or an element of skill, but which is the dominating element.[71]
Alabama, Alaska, Hawaii, Missouri, New Jersey, New York, Oklahoma, Oregon and Washington follow the material element test,[72] assessing if chance is a material element affecting the outcome of the game, by determining: (1) the level of chance in each game; and (2) if that level of chance is high enough to be considered material in the outcome of a game.
Texas follows the ‘any chance’ test.[73] If the contest contains any element of chance, however small, wagering on such a contest is prohibited as gambling.
Wisconsin follows the ‘gambling instinct’ test, examining if an activity appeals to one’s gambling instinct, regardless of whether skill or chance dominates.[74]</td></tr>
<tr><td>Malta</td><td>The Gaming Act of 2018[75] defines ‘game of chance’ as an activity whose outcome is determined by chance, fully or predominantly, including outcomes of which is determined depending on the occurrence or outcome of one or more future events; ‘game of skill’ means an activity the outcome of which is determined by the use of skill, alone or predominantly by the use of skill, but excludes a sport event.

A detailed framework for analysing games of skill and chance considers the following criteria:[76]
Presence of random draws and their effect;
Whether any prize is involved;
Whether there is an entry/participation fee;
Whether the activity is closely associated with games of chance;
Whether skills/experience of a player significantly increase the probability of winning;
Whether skill can be acquired through training, reading literature or educational material;
Whether a rule set, or format used in the game nullifies the element of chance;
Whether the game is played against other human players, or otherwise;
Level of interaction between the players, level of interaction between the operator and the players, and level of intervention by the operator during the event, competition, or match; and
Complexity of the game, including the amount of player choices and their potential effect on the outcome, and the strategies involved.</td></tr>
</table>

Country	Games of chance and Games of skills
Germany	As per the State Treaty on Gambling, 2021, a game of chance involves paying a fee for a chance to win and the decision on the win depends wholly or mainly on chance. If a prize is determined by an uncertain occurrence or outcome of future events, then the decision on the prize would depend on chance (for example, lotteries).[77] A game will not be subject to gambling laws, if the likelihood of winning does not wholly or mainly depend on chance.
Canada	The criminal laws treat playing games of chance or games of mixed chance and skill as an offence.[78] Games of chance involve three elements: (i) consideration (i.e., money or money's worth); (ii) chance (i.e., when there is a 'systemic resort to chance', rather than just the presence of 'unpredictable' elements that can occasionally defeat skill; and (iii) an opportunity to win a prize (i.e., when there is an opportunity for players to receive more money or money's worth than they put in as entry fee).[79]

Source: Author's own, based on various open sources.

Many jurisdictions have created this distinction between games of chance and games of skill, often having detailed frameworks for differentiation. Given that Indian jurisprudence on online gaming has also evolved with this distinction, India may draw from the regulatory experiences in these countries to develop a framework that matches the global standards but also addresses specific local concerns.

India's Experience with Regulating Online Gaming

Historical Overview

Pre-independence, gambling in India was governed by the Public Gambling Act 1857[80] (PGA) which aimed to punish public gambling and the keeping of common gaming-houses. After the adoption of the Constitution of India, states gained power to regulate betting and gambling under entry 34 and 62 of the State List, allowing them to legislate on these matters and their taxation. Many states amended the Public Gambling Act 1857,[81] which distinguishes between games of chance and games of skills, exempting games from the purview of this legislation. This distinction has been foundational in developing jurisprudence around online gaming in India.

Games of Chance and Games of Skill

India's online gaming law jurisprudence is based on the PGA, which exempts games of skill from its provisions.[82] However, the PGA does not define the term 'skill'. The Supreme Court has clarified the distinction between games of skill and games of chance as follows:[83]

- Game of skill is one where success depends principally upon the player's knowledge, training, attention, experience, and adroitness.

- Game of chance is one wherein the outcome is determined entirely or partially by luck.

The Supreme Court introduced the 'preponderance test', wherein, a 'game of skill' is one where the element of skill predominates the element of chance.[84] This rule acknowledges that no game is exclusively a game of chance or a game of skill. Accordingly, any game primarily involving skill is considered a game of skill. Subsequently, in *Varun Gumber v Union Territory of Chandigarh*,[85] the Supreme Court held that fantasy games fall under the scope of 'games of skill'.

Efforts on Regulating Online Gaming

The legislature and the executive have recognised the popularity and potential of online gaming in the country.

- In 2018, the Law Commission of India discussed the legal framework for gambling and sport betting. They recommended that Parliament legislate over online gaming, as it falls under Entry 31 of Union List.[86]

- In 2022, the MIB formed the Animation, Visual Effects, Gaming, and Comics (AVGC) Taskforce to explore the AVGC sector's potential, focusing on market access, skills, education, technology, financial viability, and diversity.[87] The report outlined strategies based on three core objectives: (1) developing world-class products in India, (2) equipping the youth with essential skills, and (3) leveraging technology and incentives to advance the sector. Recommendations included the establishment of a National AVGC policy and the creation of a National Centre of Excellence (COE). The first regional COE on Online Gaming is in Shillong, promoting regional industry growth and local talent.[88]

- Two private member bills, The Sports (Online Gaming and Prevention of Fraud) Bill, 2018 and The Online Gaming (Regulation) Bill, 2022 have been introduced in the Lok Sabha.

- Several states have enacted laws regulating or banning certain aspects of online gaming.[89]

- The Government of India plans to establish an inter-departmental committee with representatives from the Enforcement Directorate, Reserve Bank of India, and various tax and consumer affairs departments to help monitor online gaming platforms and ensure regulatory compliance.[90]

The IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

In December 2022, the "Matters relating to online gaming" were allocated to the MeitY through the Government of India (Allocation of Business) (Three Hundred and Seventieth Amendment) Rules, 2022.[91] Following the allocation, in April 2023, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021[92] (IT Rules, 2021) were introduced with the objective of defining and regulating permissible online games. These rules aim not to "police online gaming" but to "regulate one small sliver" of the market.[93]

The IT Rules aim to mitigate the negative impacts of online gaming, especially on vulnerable users, and promote responsible gaming through stringent guidelines, ensuring safety and industry accountability. They define a new category of intermediaries, i.e., an 'online gaming intermediary' (OGI),[e] assign specific obligations on them, allowing only 'permissible' online real money games in India. The Rules also establish a framework for designation of an online gaming self-regulatory body (SRB) and verification of online real money games. A permissible online game is one which is verified by SRBs as:

- Not involving wagering on any outcome;
- Being compliant with the obligations under the rules;
- The age under law at which an individual is competent to enter a contract, and
- The framework made by the SRB.

The IT Rules require intermediaries to make reasonable effort to avoid hosting online games that have not been verified as a permissible SRB. They also prohibit advertising games that are not permissible.

e Rule 2(1)(qb) of the IT Rules: 'Online gaming intermediary' means any intermediary that enables the users of its computer resource to access one or more online games.

However, the designation process of SRBs has stalled, with reports indicating that MeitY was considering taking direct control of the verification process.[94] Proposals for SRB designation were heavily dominated by gaming companies and industry associations, leading to their rejection. Additionally, MeitY was developing a framework for permitting and certifying online games involving money.[95]

The impediments in designating SRBs impacts the verification process of permissible games, effectively hindering the implementation of the IT Rules. Reports suggest that MeitY may scrap the SRBs concept and assume direct control of the verification process, creating uncertainty in the policy space and affecting the investments in the sector.[96]

Provisions for Taxation

In 2023, Sections 115BBJ and 194BA regarding 'Tax on winnings from online games' and 'Winnings from online games' were added to the Income-tax Act, 1961, imposing 30 percent income tax rate on winnings, the same as from gambling or betting. Additionally, actionable claims in online gaming are subject to a 28 percent GST rate on the full-face value of placed bets, as decided by the GST Council in 2023.[97] The Directorate General of Goods and Services Tax Intelligence (DGGI) has issued retrospective notices to some online gaming companies for wilful taxes evasion. Following the GST rate increase, monthly GST collections from online gaming surged by over 400 percent to INR 1,200 crore.[98] However, the high taxes rates raise concerns about the sector's growth and foreign investments.

Advertising-Related Efforts

A number of advisories have been issued to regulate advertising in the online gaming space:[f]

- In December 2020, the Advertising Standards Council of India implemented guidelines to prevent misleading advertisements in online gaming.[99]

- In August 2023, the MIB advised stakeholders to avoid advertisements/promotional content on betting/gambling in any form.[100]

- In March 2024, the MIB urged endorsers and social media influencers to refrain from promoting or advertising offshore online betting and gambling platforms.[101]

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f These advisories by the MIB are non-binding and have seen limited enforcement. See: https://www.storyboard18.com/how-it-works/offshore-betting-firms-dodge-mib-target-cricket-fans-through-ooh-and-discrete-channels-27435.htm

Recommendations

A stable policy environment is crucial for managing the adverse effects of gambling and betting, while maximising the potential of the online gaming sector in India. With concerns over high tax rates, constant flux of regulations, continuously evolving digital harms, and financial crimes, it is necessary to build trust in governance to attract investors and create an enabling environment. The following alternatives can foster growth in this sector:

Appointment of SRBs for Implementation of the IT Rules, 2023

The Government should expedite the implementation of IT Rules 2023, establish SRBs and define permissible games. Alternatively, the MeitY can accelerate developing the proposed alternate framework[102] to handle the verification process. Specific frameworks can be designed to determine permissible games, minimising discretionary element.

The appointment of SRBs will provide necessary flexibility, address the risks/harms and foster innovation in the industry. Additionally, SRBs can provide the expertise required to support sector growth while preventing overregulation. However, the grievance redressal available to users may remain weak, given the absence of a regulator.

Introduction of Oversight Committee for the Implementation of IT Rules 2023

An alternative regulatory model that could further strengthen the functioning of SRBs could be where the IT Rules are amended to establish an Oversight Committee comprising various stakeholders including government officials, member of civil societies, psychologists, industry representatives. This Committee would provide recommendations and guidelines for defining permissible games, which could be used by SRBs, thereby further strengthening the functioning of SRBs. This would be similar to the committee envisaged under Code of Ethics and Procedure and Safeguards in relation to Digital media under Part III of the IT Rules, ensuring non-partisan SRB operations.

By allowing the government to maintain regulatory oversight while delegating the determination to SRBs, the self-regulatory nature of this solution can enhance flexibility, address the risks/harms, and foster industry innovation. The grievance redressal available to users may improve given the involvement of an oversight committee.

Overarching Central Regulatory Authority (Gaming Commission)

Another option that may be explored for the purpose of regulation could be the establishment of a regulatory commission broadly along the lines of that in the United Kingdom, but with necessary modifications to suit the Indian context. Like the UK, India could benefit from a centralised government regulator for online gaming.[103] The centralised regulator would oversee online gaming platforms; grant, suspend and revoke licenses for online gaming websites; handle complaints against gaming entities; and address related issues. Establishing a central body would be a positive step toward standardising regulations and make the regulatory landscape clearer for the industry.[104]

A robust legislative framework with government oversight would enhance user protection; however, developing such a framework may be time-consuming, prolonging the current regulatory uncertainty for the industry

Using BIS Standards for Determining Permissibility of Games

The Bureau of Indian Standards (BIS) could establish criteria for defining skill-games. Thereafter, the SRBs (envisaged to be established under IT Rules 2023) would be required to follow these standards to classify games as ‘permissible online games’. To create these standards, BIS may form a technical committee (as envisaged under the BIS Act, 2016) involving stakeholders (including government officials, industry, subject matter experts, and psychologists), to give inputs. MeitY may notify this standard for mandatory compliance by the industry for SRB verification, granting SRBs the authority to certify and enforce adherence.

This approach would ensure that game permissibility assessments are based on objective and independently determined criteria. However, irrespective of the regulatory model implemented, it will be important to ensure the following:

a. Code of Conduct for Responsible Gaming

To address online gaming addiction, the government could consider mandating gaming companies to have responsible gaming practices, such as giving warnings to its users on the time and money spent, encouraging breaks, and allowing users to set their personal monetary limits. The Internet and Mobile Association of India, E-Gaming Federation, All India Gaming Federation and Federation of Indian Fantasy Sports developed the Voluntary Code of Ethics for Online Gaming Intermediaries,[105] which several companies have adapted and subjected to third-party audits.[106] However, the code is voluntary in nature and not legally binding.[107]

An assessment done in South Korea found that mandatory time and monetary limits on gaming failed to reduce usage and increased identity theft, promoting shift to a voluntary system for self-imposed time and money limits.[108] Similarly, UAE requires gaming operators to offer options to set cooling-off periods, account closer information, provide information, and resources for addiction and compulsive behaviour.[109] Therefore, allowing users to set their own time and monetary limits may be more effective than strict mandates. Similarly, a risk minimisation with responsible gaming tools, including user-defined limits and self-exclusion, should be implemented.[110]

b. Whitelisting Model

A whitelisting model can effectively tackle illegal online gaming apps[111] by registering only those that fulfil predetermined compliance requirements, while unauthorised platforms would be denied access to the digital ecosystem. This allows consumers to easily identify unmarked platforms, enhancing visibility and trust.[112]

This model ensures that only authorised and trusted gaming apps are accessible in India, assisting to eliminate malicious inappropriate apps offering betting/gambling in the garb of gaming. In addition, the online gaming companies may also be considered to register under the Prevention of Money Laundering Act, 2002. Registration will not only address the concerns of money laundering but create a distinction between legitimate Indian apps and illegal offshore entities which can then be relied upon by the consumers while choosing the app to play on. It aligns with India's regulatory approach, where the government sets standards for whitelisted products, as envisioned under the IT Gaming Rules.

Conclusion

The online gaming sector has potential to contribute to India's goal of growing a US$1-trillion digital economy by driving growth in ancillary industries, creating jobs, contributing to tax collections, and attracting foreign investments. However, regulatory uncertainty and high taxation are impediments. Without proper regulation, addressing illegal offshore betting platforms that harm users and the economy remains a massive challenge.

To foster growth, regulatory measures (in whatever manner introduced) should focus on whitelisting legitimate companies, eliminating illegal platforms including illegal offshore platforms, enabling innovation, and ensuring compliances while maintaining ease of doing business.

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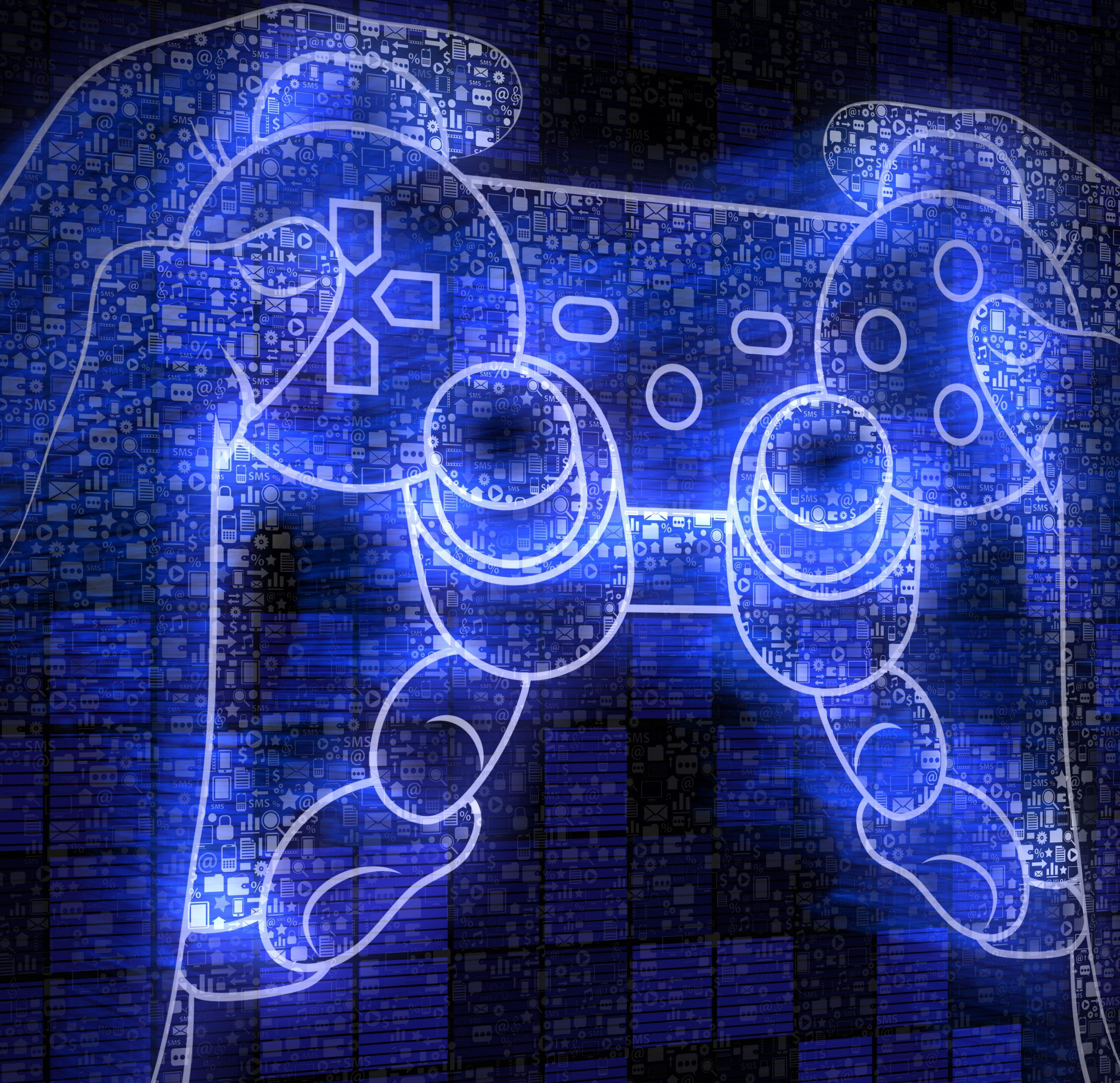

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