



Recent developments in India with respect to gaming laws

Saurav Ghosh

LLM, Guru Gobind Singh Indraprastha University, New Delhi, India

Abstract

This research paper aims to provide a deep dive view of the rules formulated by the central government to control the entire online gaming industry. The new rules regulating the online gaming industry introduces advance concepts of self-regulatory bodies for easier governance and lays down compliances. The emergence of these new rules have also sparked a new round of conflict between centre and the state regarding its power to regulate the industries and conflict of legislations have already begun. This paper aims to highlight all the key aspects of the same.

Keywords: gaming; online; government; rule

Introduction

In India, betting and gambling laws are prevalent since the colonial era. Many states, including Madhya Pradesh and Uttar Pradesh, have ratified the Public Gambling Act, 1867^[1], a colonial-era law that is still in effect, with some governments amending it. Other states have enacted their own legislation and acts in their respective states on gaming, according to the constitutional framework under the seventh Schedule.

Most of the gaming laws prevalent in these states are regulating physical gaming which is played in physical premises popularly known as ‘Gaming Houses’ or ‘Common Gaming Houses’ and are older laws as they came before the internet era^[2]. The state of Sikkim regulates its Casinos under the Sikkim Casino (Control and Tax) Act, 2002^[3] and also has a regulation on games that are offered via internet terminals. Those games are regulated under the Sikkim Online Gaming (Regulation) Act, 2008^[4].

Alternatively, In the year April, 2023, Tamil Nadu has passed a legislation known as Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Act, 2022^[5] that basically prohibits real money games and online gambling in the state. The act completely puts a ban on online games that fall under the game of chance category. The act also establishes a statutory authority to known as Tamil Nadu Gaming Authority which is responsible for implementing the provisions of the Act.

A. Game of Skill and Game of Chance

In India, online gaming can be categorized into two categories i.e ‘Game of Skill’ and ‘Game of Chances’. In the case of *K.R Lakshmanan v. State of Tamil Nadu*^[6], the Supreme Court of India gave the definition of ‘Game of Skill’ as “*One in which success primarily depends on the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even Rummy are considered to be games of skill.*”

The Supreme Court also defined ‘Game of Chance’ as “*one in which the element of chance predominates over the element of skill.*”

B. New Online Gaming Rules

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 were amended to include rules for online gambling, and on April 6, 2023, the Central Government of India established a regulatory framework for the online gaming business^[7] (Herein referred as “IT Rules”).

In 2022, the central government made their intentions clear that they wanted to bring in regulations for online gaming platforms in India. In Dec, 2022, Central Government firstly amended the GOI Rules, 1961^[8] in order to bring online gaming under the Union Ministry of Electronics and IT (Herein referred as “MeitY”). Secondly, on January 2023, a draft of proposed amendments in IT Rules on online gaming was released for public review and consultation. Finally on 6th April 2023, the Central Government notified the Online Gaming Rules.

C. Key Features of Online Gaming Rules

- Intermediaries offering online real money games will come under the ambit of MeitY and will be regulated by Self-Regulatory Bodies (Herein referred as “SRB”) recognized by MeitY.
- Online games that are free to play are outside the ambit of MeitY but in certain circumstances MeitY may notify that free to play games to be treated as online money games.
- Online Gaming Intermediary (Herein referred as “OGI”) is defined as “any intermediary that enables the users of its computer resource to access one or more online games”.
- If an entity wishes to be recognized as an SRB by MeitY needs to fulfill the criteria of composition, functions etc.
- Verification of an online real money game will be done by SRB in relation to its member OGI.
- The SRB will verify ‘permissible online game’ which may be either a free to play game or an online real money game. Among these two kinds of games, the compliance requirements are to be followed by the online real money games.

Compliances for OGI

An OGI should be a member of a registered SRB. Rule 3 and Rule 4 gives the due diligence requirements that are to be followed by an OGI. Rule 3 and Rule 4 talks about the due diligence requirements for 'intermediary' and 'significant social media intermediary' respectively which is now applicable on OGI after the Online Gaming Rules.

Due diligence under Rule 3:

- Publish its terms of use, privacy policy and user agreement on its platform.
- Ensure that the user has the knowledge to not to use platform for uploading information that violates any law in place^[9].
- Provide required information in twenty four hours to agencies of government involved in investigating cyber security incidents^[10].
- Provide information regarding change in its terms of use, privacy policy and other information in twenty four hours^[11].
- Appoint a grievance officer who is an Indian resident and share its details^[12].

Due diligence under Rule 4:

- Publish the physical address in India on the platform^[13].
- Publish compliance report on complaint received from user and the action taken in that regard^[14].
- Inform the user about refund, deposit, and procedure of determining winner^[15].
- Appoint a chief compliance officer, who is a resident of India and is responsible for ensuring compliance with IT Acts and rules^[16].
- Display verification mark provided by the SRB^[17].
- Verify user before accepting deposits according to know your customer ("KYC") guidelines in place by the Reserve Bank of India ("RBI")^[18].

A. Verification process of 'Permissible online real money game'

Under the Online Gaming Rule, every intermediary including OGI can only allow 'permissible online game' in their respective platforms failing to do so will make them directly liable for third party content that is hosted on their platform. Also, they will lose the protection under Section 79 of IT Act.

Process of Verification

According to the Online Gaming Rules, the process of verification, suspension, revocation (if any) has to be decided by SRB and the relevant SRB must come up with detailed process for the same. There are certain basic requirements that the SRB needs to verify going into the process. The SRB needs to check the following things in 'online real money game':

- The Game does not involve wagering on any outcome^[19].
- It is in accordance of due diligence given in Rule 3 and Rule 4 of IT Rules^[20].
- The game is not offered to any minor.
- The game is not a threat to India's sovereignty, integrity and public order^[21].
- The game protects user against harm and take measures to safeguard children based on nature and content of the game^[22].

- The game protects users against addiction, financial loss, and fraud^[23].

The SRB has to complete the verification within a time span of three months and thereafter approve or reject the game as a 'permissible online game'^[24]

Recognition Process of SRB by Meity

Meity according to its consideration can appoint as many SRBs. A minimum of three SRBs need to be registered for the application of Online Gaming Rules to an OGI. There is no express timeline for a SRB to make application and get itself registered by MeitY.

These are the requirements to become a registered SRB:

- Under Sec.8 of CA, 2013, SRB fallen under it.
- Requirement of membership to represent gaming industry.
- Members have to play online games onto their own with a responsible manner
- Board of Directors having at least seven individuals from different fields.
- Presence of grievance officer and a grievance redressal framework.
- Clear process for accepting and revoking membership.

A. Nature of Games under Online Gaming Rules

Under the Online Gaming Rules only the 'Permissible Online Games' are allowed to be operated and offered to the users in India. An online game can be 'permissible' in the following two ways:

- a. When the online game is not an 'online real money game' i.e. it is a free to play game
- b. When the online game is an 'online real money game' but is verified by a recognized SRB.

The Online Gaming Rules do not have an extensive criteria or process for the SRB to verify 'online real money game' and has left it discretionary to the SRB. However, Rule 4A(3) and Rule 4A(8) are certain rules that are to be kept in consideration by SRB during such verification.

B. Self- Regulation helping ease in governance

The Online Gaming Rules have established the SRBs and have created a regulatory framework wherein regulation relating to online gaming industry will be driven by the SRBs. The MeitY has proposed for a minimum of 3 (three) SRBs, subject to eligibility criteria. A SRB which is recognized has the power to verify an 'online real money game' as a 'permissible online real money game'.

This is a welcome step as the online gaming industry is an industry which is evolving and is not static in nature. The industry is innovative and requires quick decision making, clarifications and clarity on regulations which are often delayed in government regulatory bodies. The self regulatory mechanism will promote ease of doing business and reduce the burden on the judiciary.

This self regulatory mechanism under the Online Gaming Rules will depend upon the relationship of the SRBs and the MeitY as a SRB has to get its recognition from MeitY. The Online Gaming Rules have laid down a very fine balance between government oversight and industry led self regulations. For example, the SRB has the liberty to constitute its own board of directors but it should have a member of MeitY as given under Rule 4A (2) of the Online Gaming Rules.

C. Business model governed under the Online Gaming Rules

Under the Online Gaming Rules the definition of ‘online gaming intermediaries’ does not expressly tell us whether it only applies to ‘intermediaries’ or also covers publishers. During the process of consultation, the intent of MeitY was very clear that the rules will cover all kinds of online real money gaming platforms.

In recent years, business model for online gaming has evolved and will be evolving in future. It is not just limited to offering third party games, but also publishing own games on their platforms. There can be debate on whether all kind of business model fall under the category of ‘intermediaries’ or not but like IT Rules, 2021, the Online Gaming Rules are a step forward towards addressing these current issues.

Conflict between centre and State

Under the Constitution of India, entry 34 of the State list gives the power to state to make laws on ‘betting and gambling’ and each state government have the power to regulate the same. The courts in India have defined and differentiated between these as ‘game of chance’ and ‘game of chance’ and the above mentioned entry falls within the ambit of ‘game of chance. Different state governments have also enacted laws to regulate ‘game of skill’ and have brought it under their domain.

At the same time, Entry 31 of the union list along with the amendments in Government of India (Allocation of Business) (Amendment No. 370th) Rules, 2022 ^[25], gives the power to MeitY to regulate an entire industry of online gaming. The Online Gaming Rules is a step taken by the Central Government to regulate the long time unregulated online gaming industry in India and also addresses the issues that most of the states were facing on the subject of online gaming. Thus, there is no need for any state to further try and regulate online gaming within their jurisdiction as it has been already done by the Central Government in form of the Online Gaming Rules. Any attempts of doing so will lead to conflict of laws which will increase the burdens on Indian courts and also lead to difficulty in policy making.

A. An aid to online gaming operators

The step of regulating online gaming and coming up with the Online Gaming Rules is a boon for all the gaming operators in India. Previously, due to lack of clarity in law, the operators had to go through complex compliance processes. There were multiple state laws overlapping or inconsistent to one another. This created a lot of problem to both the industry operators as well as to the end users. It also created hesitations in the minds of investors as there were inconsistencies and lack of uniformity in online gaming laws in India.

The Rules of Online Gaming will bring a revolution to the online gaming industry in India as it has most importantly given legitimacy to this industry by recognizing it at the first place. It gives allowance to ‘permissible online game’ and a SRB to the industry for self- governance which has government supervision. The investors will now get better investment opportunities, the gaming operators will have uniform compliances and regulations and the consumers will have better confidence.

B. The way forward for India’s Online Gaming Market

India’s Gaming market is booming at the moment and is expected to grow at exponential rate. It is expected that the revenue of the Indian Mobile Gaming Industry surpass the \$1.5billion in year 2022 and in year 2025, it should surpassed \$5 billion. It is also expected to reach Rs 153 billion in the year 2024 with growing at a CAGR of 15%.

This gives us a clear idea about the developing prospects of the gaming industry in India and how much of an impact it may create in India’s ambitious target of becoming five trillion economy in the near future.

Conclusion

The Online Gaming Rules is a new beginning in many ways for not only the online gaming industry but also for fast evolving industries in India which introduces the self-regulatory model for the first time which may be followed by other industries in near future. It is a new beginning for gaming operators, intermediaries, investors and end users as finally the industry has attained legitimacy, simplified regulations and most importantly uniformity. This will lead in growth and investments in the industry and have an overall impact on the Indian Economy.

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