

Skill, Chance, and Social Harm: The Legislative Turn in India's Gaming Law

Recommended citation - Gaurav Pathak, Mohit Yadav and Anush Ganesh, 'Skill, Chance, and Social Harm: The Legislative Turn in India's Gaming Law' (2025) Gaming Law Review, <https://doi.org/10.1177/25725300251394636>.

Abstract

This article examines India's new legislation that imposes a comprehensive ban on online money games, regardless of whether they are games of skill, chance, or mixed formats. The law marks a decisive departure from the century old jurisprudential framework established under the Public Gambling Act 1867 and reinforced by landmark cases such as *R.M.D. Chamarbaugwalla v Union of India*, which entrenched the skill-chance divide. By foregrounding the socio-economic harms of online money gaming-ranging from addiction and financial distress to youth vulnerability, the Indian Parliament has reframed the regulatory discourse away from technical classifications towards public welfare. Drawing on comprehensive financial analysis of major gaming platforms, documented suicide statistics, and behavioural studies, this article demonstrates that these companies' business models are structurally predicated on user exploitation through aggressive promotional spending and addictive design features. The article situates this legislative shift against a backdrop of fragmented judicial interventions and state level prohibitions, where prior blanket bans were struck down as unconstitutional. The article argues that the ban is both constitutionally defensible and normatively justified, supported by empirical evidence showing that online money gaming causes measurable harm across financial, mental health, and social dimensions that cannot be mitigated through the traditional skill-chance distinction.

Introduction

India has enacted a new law that marks a decisive break with the long-standing jurisprudential dichotomy between "games of skill" and "games of chance."¹ For the first time, online money games, whether premised on skill, chance, or a mixture of both, have been comprehensively prohibited.² The legislation arises from deep social concerns about the negative externalities of such games, including gambling addiction, financial distress in households, and the normalisation of speculative behaviour among young people.³ Government estimates indicate that 45 crore (450 million) people in India lose approximately Rs. 20,000 crores (Rs. 200,000 million) annually from online money gaming, representing one of the most significant

¹ The Promotion and Regulation of Online Gaming Act, 2025.

² Section 5, The Promotion and Regulation of Online Gaming Act, 2025.

³ Statement of Object and Reasons, The Promotion and Regulation of Online Gaming Act, 2025.

documented financial impacts of digital gambling globally.⁴ The ban has already provoked criticism from sections of the gaming industry⁵, which has historically relied on judicial precedents upholding skill-based gaming as constitutionally protected business activity under Article 19(1)(g) of the Constitution of India.⁶ Yet, in shifting the focus from the technical classification of games to their socio-economic impact, the Indian Parliament has sought to reframe the debate: the regulatory question is not whether a game involves skill, but whether its online money stakes foster harms akin to gambling.

This article situates India's new ban within the broader statutory landscape of gambling regulation, supported by comprehensive empirical analysis of the industry's exploitative business models and documented social harms. It argues that the move is both constitutionally defensible and normatively justified, notwithstanding challenges from industry stakeholders. In doing so, the article moves beyond the narrow constitutional debates of the past to frame the legislation as an instrument of public policy and law reform, grounded in measurable evidence of societal harm.

Historical and Jurisprudential Background

India's regulatory approach to gambling originates in the colonial-era Public Gambling Act 1867, which outlawed common gaming houses while carving out exceptions for "games of mere skill." This early legislative framework set the stage for the enduring judicial inquiry into whether a given activity fell within the category of "gambling" or "skill." Under Section 12 of the Public Gambling Act 1867, games of skill were exempt, reflecting a normative assumption that skill-based competitions were socially acceptable and economically legitimate. The Act, however, was poorly suited to the realities of the digital era. Its penalties were nominal, with fines of only a few hundred rupees, rendering it ineffective in addressing modern online betting rackets, as illustrated in recent cases before the Allahabad High Court, where the Court said that the Public Gambling Act 1867 "has lost its impact and relevance" in the era of online gambling.⁷

Post-independence, the Indian Constitution assigned "betting and gambling" to the State List⁸, thereby leaving states with competence to regulate the activity. Yet, the judiciary soon

⁴ PTI, 'Govt Estimates 45 Cr People Lose about Rs 20,000 Cr Annually from Real Money Gaming' (*The Economic Times*, 21 August 2025) <<https://economictimes.indiatimes.com/news/india/govt-estimates-45-cr-people-lose-about-rs-20000-cr-annually-from-real-money-gaming/articleshow/123408237.cms>> accessed 24 August 2025.

⁵ ANI, 'Gaming Industry Warns of over Two Lakh Job Losses, Urges Government to Review Draft Bill - The Economic Times' (*The Economic Times*, 20 August 2025) <<https://economictimes.indiatimes.com/tech/technology/gaming-industry-warns-of-over-two-lakh-job-losses-urges-government-to-review-draft-bill/articleshow/123398972.cms?from=mdr>> accessed 22 August 2025; Pranav Mukul, 'Industry Mulling Legal Challenge among Options as Online Gaming Bill Gets Parliamentary Nod' *The Economic Times* (22 August 2025) <<https://economictimes.indiatimes.com/tech/technology/online-gaming-companies-prepare-for-legal-battle-against-new-bill/articleshow/123413116.cms?from=mdr>> accessed 22 August 2025.

⁶ R.M.D. Chamarbaugwalla v. Union of India, 1957 SCC OnLine SC 11, para. 5.

⁷ Imran Khan v State of UP 2025 SCC OnLine All 3028, para. 14.

⁸ Entry 34, List II, Seventh Schedule, Constitution of India.

intervened to define the contours of gambling in constitutional terms. In *R.M.D. Chamarbaugwalla v Union of India*⁹, the Supreme Court distinguished games of skill from gambling, holding that competitions involving substantial skill constituted legitimate business activity under Article 19(1)(g). This judgment entrenched the skill–chance divide in Indian gaming jurisprudence, providing the doctrinal foundation for subsequent litigation by operators of rummy, poker, and, more recently, fantasy sports.

Over the decades, courts refined this principle. For instance, rummy was consistently recognised as involving a preponderance of skill.¹⁰ By contrast, games such as lotteries were held to be pure chance¹¹ and thus unprotected. The legal landscape that emerged was uneven: operators had to litigate afresh each time a new gaming format appeared, seeking judicial recognition of skill predominance to escape prohibition.¹²

This doctrinal history explains why blanket prohibitions have often faltered in court. The Madras High Court in *Junglee Games India Pvt Ltd v State of Tamil Nadu*¹³ invalidated Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021, which had sought to criminalise all online games played for stakes, including games of skill. The Court held that such a prohibition was disproportionate and unconstitutional.

In 2022, Tamil Nadu enacted the Prohibition of Online Gambling and Regulation of Online Games Act, which faced immediate constitutional challenges by leading operators, including the All-India Gaming Federation, Gameskraft Technologies, and Play Games 24x7.¹⁴ Petitioners argued that the Act wrongly classified rummy and poker as games of chance, contravening settled Supreme Court and High Court jurisprudence. They also alleged that the Act violated Articles 14, 19, and 21 of the Constitution of India, and lacked legislative competence given the Union government's notification assigning regulation of online games to the Ministry of Electronics and Information Technology. The Madras High Court partly upheld the Act, sustaining the State's competence to regulate online money gaming but striking down the specific schedule that misclassified rummy and poker.¹⁵ Yet, the judgment left open the possibility of a more comprehensive prohibition, provided it avoided arbitrariness in classification.

Parallel litigation underscored the significant economic footprint of online skill gaming. In *Play Games 24x7 Pvt Ltd v Reserve Bank of India*¹⁶, the Bombay High Court recorded the company's turnover of over Rs. 1,400 crores (Rs. 14,000 million) and its 96% foreign shareholding, demonstrating the industry's capital intensity. In Delhi, cases concerning fantasy

⁹ *R.M.D. Chamarbaugwalla v. Union of India*, 1957 SCC OnLine SC 11.

¹⁰ *State of A.P. v. K. Satyanarayana*, 1967 SCC OnLine SC 333.

¹¹ *K. Arumugam v. Union of India*, (2024) 10 SCC 733.

¹² Divyansh Bhansali and Srinjoy Debnath, 'Fantasy Sports Industry in India: Filling the Regulatory Void' (2024) 11 RGNUL Financial and Mercantile Law Review 68.

¹³ 2021 SCC OnLine Mad 2762.

¹⁴ *All India Gaming Federation v State of Tamil Nadu*, Writ Petition Nos 13203, 13593, 13720, 13722 and 14704 of 2023, Madras HC.

¹⁵ *All India Gaming Federation v State of Tamil Nadu* 2023 SCC OnLine Mad 6973.

¹⁶ 2023 SCC OnLine Bom 2966.

sports highlighted over 130 million users and major employment opportunities.¹⁷ Such evidence was frequently invoked by industry bodies to argue against prohibitions.

At the same time, scholarship and policy analysis revealed that the skill–chance distinction was increasingly inadequate. Studies have shown how online money video gaming closely mirrors gambling in its psychological features and potential for harm, regardless of skill content.¹⁸ The convergence of gambling and gaming practices, particularly in online environments, has further blurred boundaries, undermining the regulatory logic of earlier judicial precedents.¹⁹

This fraught history of piecemeal litigation and uneven regulation culminated in Parliament's intervention in 2025. By enacting a blanket prohibition on online money games, the legislature consciously displaced the judicially constructed skill–chance dichotomy. The statutory choice was not merely legalistic but policy-driven, reflecting a legislative judgment that the harms of online money gaming were structural, not contingent on the degree of skill involved.

The Empirical Foundation: Exploitative Business Models and Documented Harms

Industry Business Models: Structural Addiction by Design

Financial analysis of major Indian real money gaming companies reveals business models fundamentally predicated on user exploitation rather than skill-based competition. These platforms operate through what can only be characterized as predatory design, spending extraordinary sums to "hook" users before extracting maximum value through addictive gameplay mechanics.

Dream11: The Promotional Spending Paradox

Dream11, India's largest fantasy sports platform, reported a profit of Rs. 1,878.3 million in the financial year (FY) 2022-2023²⁰. However, this headline figure masks the true nature of its business model. The company spent Rs. 29,638.7 million on advertising and promotion - nearly sixteen times its reported profit.²¹ More tellingly, it spent Rs. 9761.5 million specifically on "promotional credits" - direct cash incentives to users.²²

The company's own financial disclosures reveal the exploitative logic: Dream11 lures users into contests by offering substantial bonuses that directly reduce its revenue. For instance, when a user joins a Rs. 500 contest with a Rs. 100 bonus, Dream11 effectively earns only Rs. 400,

¹⁷ Digital Collectibles Pte Ltd v Galactus Funware Technology Pvt Ltd 2023 SCC OnLine Del 2306.

¹⁸ David Zendle, 'Is Real-Money Video Gaming Just a Form of Gambling?' (2019) 23 Gaming Law Review 658.

¹⁹ Jeffrey L Derevensky and Mark D Griffiths, 'Convergence between Gambling and Gaming: Does the Gambling and Gaming Industry Have a Responsibility in Protecting the Consumer?' (2019) 23 Gaming Law Review 633.

²⁰ Consolidated Financials of Sporta Technologies Private Limited (Dream11) obtained from Ministry of Corporate Affairs, Statement of Profit and Loss, p. 12.

²¹ Ibid, Notes - Subclassification and notes on income and expenses, p. 201.

²² Ibid, Subclassification and notes on income and expense explanatory, p. 204.

demonstrating how the platform aggressively spends on incentives to hook users into what is essentially online gambling.²³ This spending pattern indicates a business model where initial losses are deliberately incurred to create addicted users who will subsequently lose far more than the promotional amounts received.

Mobile Premier League: Addiction Through Acquisition

Mobile Premier League's (MPL) financial structure reveals even more aggressive user acquisition tactics. In FY 2023-24, MPL spent Rs. 3,409.68 million on advertising and marketing while generating revenue primarily from user losses.²⁴ This represents approximately 47% of its gaming revenue being spent purely on acquiring new players - a proportion that indicates heavy reliance on constantly finding fresh victims rather than retaining satisfied customers.²⁵

Significantly, MPL's financial performance improved dramatically not through better service delivery, but through increased user losses. The company moved from a loss of Rs. 872.55 million in FY 2022-23 to a loss of only Rs. 14.61 million in FY 2023-24 - a 96% reduction in losses achieved primarily through 39% growth in gaming revenue.²⁶ This "improvement" came directly from increased user participation and, consequently, increased user financial losses.

RummyCircle: Disguised Gambling Through Accounting Manipulation

RummyCircle's financial statements reveal perhaps the most sophisticated system of disguising gambling revenue. The company's accounting policies explicitly state that bonuses and incentives are "recorded as a reduction from revenues" rather than as expenses, thereby masking the true scale of gambling collections.²⁷ In FY 2023, Rs. 3,736.24 million (approximately 15.8% of gross revenue) went directly into bonuses, cashback, and reward points - payments designed to maintain user addiction.²⁸

Most revealing is RummyCircle's treatment of prize payouts as "advertising expense." The company spent Rs. 14,208.09 million on "advertisement, promotional & marketing costs" in FY 2023, representing 71.5% of reported revenue.²⁹ Of this, Rs. 1,646.31 million went directly to promotional tournaments and bonuses.³⁰ This accounting treatment demonstrates that the company essentially pays users to play, then classifies these payments as marketing rather than the gambling payouts they actually represent.

²³ Ibid, Textual information (18), Disclosure of revenue, p. 194, "*Incentives to users to whom the Group has a performance obligation is recorded as a reduction of revenue. However, when these incentives offered to the users are higher than the income earned from the users, the excess (i.e., the incentive given to a user less income earned from the users) on an individual transaction basis is classified under Promotional Programme expenses.*"

²⁴ Standalone Financials of Galactus Funware Technology Private Limited (MPL) obtained from Ministry of Corporate Affairs, Notes - Subclassification and notes on income and expenses, p. 245.

²⁵ Ibid, Notes - Subclassification and notes on income and expenses, Revenue from sale of services, p. 245.

²⁶ Ibid, Statement of profit and loss, Page 60.

²⁷ Consolidated Financials of Play Games24x7 Private Limited (RummyCircle) obtained from Ministry of Corporate Affairs, Textual information (44) Disclosure of revenue, p. 268.

²⁸ Ibid, 36.1 Disaggregated revenue information, p. 308.

²⁹ Ibid, (AC) ADVERTISEMENT, PROMOTIONAL AND MARKETING EXPENSES, p. 312.

³⁰ Ibid.

WinZO: Extractive Revenue Recognition

WinZO's financial disclosures reveal multiple revenue streams designed to extract maximum value from users. The platform recognizes "Withdrawal Income" when users cash out their winnings, effectively charging fees for accessing one's own money.³¹ This creates artificial friction that discourages withdrawals and keeps funds within the gambling ecosystem.

WinZO spent Rs. 2,576.1 million on advertising and promotional expenses in FY 2023, alongside Rs. 195.4 million on commissions to selling agents.³² The company's revenue recognition policy explicitly states that incentives reduce revenue, and when incentives exceed transaction fees, the excess is recorded as an expense - meaning the platform often pays users more than it charges them to maintain participation and get hooked on the platform.³³

Zupee: The Cashback Dependency Model

Zupee's financial structure reveals the most extreme promotional spending relative to revenue. The company spent Rs. 8,067.695 million on advertising and sales promotion in FY 2024, representing 71.8% of total revenue and 91.1% of all operational expenses.³⁴ This extraordinary ratio demonstrates a business entirely dependent on promotional spending to maintain user engagement.

Critically, Zupee's accounting recognizes that profitability depends on "unused cashback promotional expense" - meaning the company's business model assumes that users will not claim significant portions of promised rewards.³⁵ This creates a system where profitability relies on users either forgetting about or being unable to access their promised benefits.

Documented Social Harms: From Financial Ruin to Suicide

The human cost of these exploitative business models is measurable and severe. Government data and academic research reveal that online money gaming causes systematic harm across multiple dimensions of social welfare.

Financial Devastation

Individual case studies demonstrate the catastrophic financial impact of these platforms. The Enforcement Directorate's investigation of Parimatch revealed that a single Mumbai businessman lost Rs. 12.22 crore (Rs. 122.2 million) between 2021-2024, borrowing heavily to cover losses incurred through what the platform marketed as "skill-based" gaming.³⁶ Urban

³¹ Consolidated Financials of WinZO Games Pvt Ltd obtained from Ministry of Corporate Affairs, pp. 48-49.

³² Ibid, Notes - Subclassification and notes on income and expenses, p. 196.

³³ Ibid, pp. 48-50 & 107-108.

³⁴ Consolidated Financials of Cashgrail Private Limited (Zupee) obtained from Ministry of Corporate Affairs, pp. 238-239.

³⁵ Ibid, Textual information (4) Disclosure of significant accounting policies, p. 22.

³⁶ Divyesh Singh, 'Rags to Riches to Rags-Mumbai Man Lost Rs 12 Crore to Online Money Gaming' (*India Today*, 22 August 2025) <<https://www.indiatoday.in/india/story/rags-to-riches-back-to-rags-mumbai-man-lost-rs-12-crore-to-online-money-games-2775278-2025-08-22>> accessed 24 August 2025.

youth typically spend Rs. 2,000-10,000 per month on real-money gaming apps, amounts that represent significant portions of middle-class household budgets.³⁷

The aggregate impact is staggering. Government estimates indicate that 45 crore (450 million) people lose approximately Rs. 20,000 crores annually through online money gaming.³⁸ This figure represents not corporate revenue but direct household financial loss, demonstrating the extractive nature of the industry's business model.

Mental Health and Addiction Crisis

Academic research documents Internet Gaming Disorder (IGD) prevalence ranging from 1.3% to 19.9% among Indian adolescents, with college studies finding rates between 3.7% and 5.3%.³⁹ Physical symptoms are widespread, with 22.4% of participants in behavioural studies reporting eye pain, neck pain, and headaches directly attributable to gaming.⁴⁰ Sleep quality studies show strong correlation between gaming addiction and sleep deterioration.⁴¹

Behavioural impacts extend beyond individual health. Research indicates that 66% of urban Indian parents believe their children are addicted to online gaming platforms, with 58% observing behavioural changes including aggression, impatience, and lethargy.⁴² These statistics demonstrate that online money gaming creates household-level disruption extending far beyond individual users.

Suicide Epidemic

The most alarming evidence concerns gaming-related suicides. Karnataka recorded 32 suicides linked to online gambling losses in just 31 months (2023-2025), with 20 cases in Bengaluru alone.⁴³ Tamil Nadu reported 47 suicides between 2019-2024 directly linked to online gaming, though alternative estimates suggest 84 cases since 2019.⁴⁴

³⁷ Business Standard, 'Fantasy Cricket, Rummy, Poker Illegal? How Gaming Ban Impacts Your Money' (21 August 2025) <https://www.business-standard.com/finance/personal-finance/fantasy-cricket-rummy-poker-illegal-how-gaming-ban-impacts-your-money-125082100223_1.html> accessed 25 August 2025.

³⁸ PTI (n 4).

³⁹ Pranjali Chakraborty Thakur and others, 'Gaming among Female Adolescents: Profiling and Psychopathological Characteristics in the Indian Context' (2023) 14 *Frontiers in Psychiatry* <<https://www.frontiersin.org/journals/psychiatry/articles/10.3389/fpsy.2023.1081764/full>> accessed 25 August 2025.

⁴⁰ Mounika Avulasetty and Premalata Rotti, 'An Observational Pilot Survey Study to Assess the Level of Online Gaming Addiction in Adults' (2023) 8 *RGUHS National Journal of Public Health* <<https://journalgrid.com/view/article/rnjph/12434012>> accessed 25 August 2025.

⁴¹ Himanshi Bansal and S Kadam Kranti, 'Gaming Disorder among College Students and Correlation of Gaming with Self-Esteem, Perceived Stress, and Sleep Quality' (2022) 6 *Annals of Indian Psychiatry* 244.

⁴² PTI, '66% Parents Believe Children Addicted to Social Media, Gaming, Finds Survey' (*Business Standard*, 5 November 2024) <https://www.business-standard.com/india-news/66-parents-believe-children-addicted-to-social-media-gaming-finds-survey-124110501235_1.html> accessed 24 August 2025.

⁴³ Rajiv Kalkod, 'Borrowed Money, Mounting Losses, Shame, and No Way out: Police Records Show 32 Suicides over 31 Months in Karnataka Due to Online Gambling; Govt Awaits Panel Report' (*The Times of India*, 20 August 2025) <<https://timesofindia.indiatimes.com/city/bengaluru/with-32-suicides-in-31-months-due-to-online-gaming-karnataka-faces-growing-crisis/articleshow/123393077.cms>> accessed 24 August 2025.

⁴⁴ DTNEXT Bureau, 'TN Govt Hiding Gaming Suicide Data, Says Anbumani Ramadoss' (23 March 2025) <<https://www.dtnext.in/news/tamilnadu/tn-govt-hiding-gaming-suicide-data-says-anbumani-ramadoss-827337>> accessed 25 August 2025.

Individual cases reveal the severity of gaming-related despair. The Mysuru family case involved three family members dying within 24 hours after losing Rs. 80 lakh in online games.⁴⁵ In Hassan, a travel agent jumped with his wife and 11-year-old daughter into a canal after losing Rs. 15 lakh on online rummy.⁴⁶ Recent Bengaluru cases include two men (a lab technician and auto driver) who killed themselves after losing over Rs. 10 lakh each on rummy apps.⁴⁷

Hyderabad suicide helplines report a 60% increase in calls from betting addicts, with 36.5% of all distress calls in early 2025 related to online betting.⁴⁸ Global research indicates that people with gambling disorders are 6 times more likely to have suicidal thoughts and 15 times more likely to attempt suicide compared to the general population.⁴⁹

Youth Exposure and Behavioural Conditioning

The targeting of young users represents perhaps the most concerning aspect of online money gaming. Studies show that 47% of urban Indian children spend over three hours daily on gaming platforms, with 10% spending more than six hours daily.⁵⁰ Internet Gaming Disorder is most common among male adolescents aged 12-20 years, precisely the demographic most susceptible to addiction conditioning.⁵¹

Research demonstrates that online money gaming creates behavioural patterns indistinguishable from gambling addiction. The psychological mechanics of reward schedules, variable reinforcement, and monetary stakes operate identically regardless of whether a game involves skill, making the legal distinction between "gaming" and "gambling" functionally meaningless in terms of addiction potential.⁵²

Legislative Competence and Policy Rationale

The Constitution of India assigns "betting and gambling" to the State List⁵³, thereby granting states exclusive legislative competence over these activities. This allocation was historically consistent with gambling being understood as a localised, physical activity (for example, gaming houses). However, the growth of online platforms has transformed gambling into an activity that transcends state boundaries, creating jurisdictional uncertainty. Courts and

⁴⁵ Kalkod (n 43).

⁴⁶ Ibid.

⁴⁷ HT News Desk, 'Two Men Die by Suicide in Bengaluru after Losing Money in Online Gambling' (*Hindustan Times*, 13 January 2025) <<https://www.hindustantimes.com/cities/bengaluru-news/two-men-die-by-suicide-in-bengaluru-after-losing-money-in-online-gambling-report-101736753795651.html>> accessed 24 August 2025.

⁴⁸ 'Suicide Helplines Choke with over 60% Jump in Calls from Betting Addicts' *The Times of India* (23 July 2025) <<https://timesofindia.indiatimes.com/city/hyderabad/suicide-helplines-choke-with-over-60-jump-in-calls-from-betting-addicts/articleshow/122844502.cms>> accessed 25 August 2025.

⁴⁹ Lakshmi Vijayakumar and Vinayak Vijayakumar, 'Online Gambling and Suicide: Gambling with Lives' (2023) 65 *Indian Journal of Psychiatry* 3.

⁵⁰ PTI (n 42).

⁵¹ Mirna Macur and Halley M Pontes, 'Internet Gaming Disorder in Adolescence: Investigating Profiles and Associated Risk Factors' (2021) 21 *BMC Public Health* 1547.

⁵² Zendle (n 18).

⁵³ Entry 34, List II, Seventh Schedule, Constitution of India.

scholars have recognised that the medium, online or offline, makes no difference to the substance of the activity.⁵⁴

At the same time, the Union Parliament retains power over matters in the Union List, including telecommunications⁵⁵ and inter-state trade and commerce⁵⁶, and residuary powers under Entry 97. This creates scope for Parliament to regulate online gaming insofar as it implicates digital communications and inter-state effects.⁵⁷ By enacting a comprehensive prohibition on online money games, Parliament has asserted that regulation of online stakes is not confined to state-level gambling laws but implicates broader national interests, including consumer protection, public health, and digital governance.

For decades, Indian jurisprudence relied on the skill–chance distinction to determine whether a particular game fell within the ambit of gambling prohibitions. As discussed in the preceding part, courts repeatedly held that games such as rummy and fantasy sports involved a preponderance of skill, entitling them to protection under Article 19(1)(g).⁵⁸ Yet, the very act of monetisation through stakes exposed participants to the same harms as pure games of chance. Scholarship has emphasised that the psychological mechanics of online money play do not depend on the degree of skill involved.⁵⁹

Moreover, reliance on judicial categorisation produced a fragmented legal landscape. Operators were compelled to litigate game-by-game to secure recognition of skill dominance, resulting in inconsistent outcomes across states.⁶⁰ The Tamil Nadu experience illustrates this vividly: successive legislative attempts to prohibit online rummy and poker were struck down, amended, and re-enacted, only to return to the courts.⁶¹ This cycle reflects the futility of trying to police the shifting line between skill and chance.

By legislating beyond this dichotomy, Parliament has chosen clarity over doctrinal ambiguity. The Act treats all online money games as structurally harmful, regardless of whether skill predominates. This reflects a policy judgment that the harms of addiction, financial loss, and consumer exploitation arise not from the mechanics of the game but from the monetary stakes attached.

The Act's policy rationale is further bolstered by the doctrine of *res extra commercium*. Since *R.M.D. Chamarbaugwalla v Union of India*⁶², the Supreme Court has held that activities such as gambling and betting, by encouraging "a spirit of reckless propensity for making easy gain by lot or chance," fall outside the scope of constitutionally protected commerce.⁶³ Courts have

⁵⁴ Shrutanjaya Bhardwaj, 'Regulating the Online Gaming Industry: Legislative and Executive Competence' (2023) 5 *NLUD Journal of Legal Studies* 216.

⁵⁵ Entry 31, List I, Seventh Schedule, Constitution of India.

⁵⁶ Entry 42, List I, Seventh Schedule, Constitution of India.

⁵⁷ Bhardwaj (n 54).

⁵⁸ *State of A.P. v. K. Satyanarayana*, 1967 SCC OnLine SC 333.

⁵⁹ *Zendle* (n 18).

⁶⁰ *Bhansali and Debnath* (n 12).

⁶¹ *All India Gaming Federation v State of Tamil Nadu* 2023 SCC OnLine Mad 6973.

⁶² *R.M.D. Chamarbaugwalla v. Union of India*, 1957 SCC OnLine SC 11.

⁶³ *K.R. Lakshmanan (Dr) v. State of T.N.*, (1996) 2 SCC 226.

applied this doctrine to reject claims that gambling enjoys protection under Article 19(1)(g), treating it instead as an activity that can be wholly prohibited in the public interest.

Although subsequent jurisprudence distinguished "skill" games from gambling, the *res extra commercium* principle underlines the state's authority to regulate or prohibit monetised play. The new Act may be seen as a reassertion of this principle: by focusing on the presence of stakes rather than the degree of skill, Parliament has treated online money gaming as falling within the prohibited category of harmful commerce.

The Act also aligns with India's evolving framework for digital regulation. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules 2023 initially contemplated a self-regulatory mechanism for online money games. However, scholars noted that this model was inadequate to address sectoral risks such as addiction, insider trading in fantasy sports, and consumer protection failures.⁶⁴ The government subsequently announced plans to establish a regulator, acknowledging that self-regulation was insufficient.⁶⁵

Against this backdrop, the 2025 Act reflects a stronger assertion of state authority. Rather than delegate regulation to industry bodies, Parliament has chosen prohibition, thereby closing the regulatory void. Comparative experiences, such as Quebec's attempt to block access to unlicensed online gambling sites, illustrate that governments worldwide are experimenting with assertive regulatory tools to safeguard consumers in digital environments.⁶⁶

Addressing Critiques of the Ban

A recurrent critique of the prohibition is that it undermines a rapidly growing industry that has generated substantial revenues, foreign investment, and employment. From an industry perspective, prohibition represents a regulatory overreach that jeopardises innovation and foreign direct investment. Yet, this critique ignores the broader costs imposed on households and society. As courts have documented, the same platforms have caused "lakhs and crores of rupees" in household losses, precipitating debt, financial ruin, and even suicides.⁶⁷ The empirical evidence presented in this article demonstrates that the industry's revenue model is fundamentally extractive, with companies spending up to 70% of revenue on promotional activities designed to create addicted users who will subsequently lose far more than they receive in bonuses. Economic growth, when premised on systematic addiction and consumer exploitation, cannot justify state inaction. Comparative literature on gambling regulation likewise stresses that tax revenues are consistently outweighed by the social costs of addiction, healthcare expenditure, and lost productivity.⁶⁸

⁶⁴ Bhansali and Debnath (n 12).

⁶⁵ Aarathi Ganesan, 'Govt Says It Might Take Control of Real Money Gaming Sector' (*Medianama*, 3 January 2024) <<https://www.medianama.com/2024/01/223-govt-control-online-real-money-gaming-2/>> accessed 22 August 2025.

⁶⁶ Martin French and others, 'A Governmentality of Online Gambling: Quebec's Contested Internet Gambling Website Blocking Provisions' (2021) 36 *Canadian Journal of Law and Society* / *Revue Canadienne Droit et Société* 483.

⁶⁷ *Imran Khan v State of UP* 2025 SCC OnLine All 3028.

⁶⁸ French and others (n 66).

Another critique asserts that prohibition violates judicial precedents protecting skill-based games under Article 19(1)(g). Cases such as *R.M.D. Chamarbaugwala*⁶⁹ and later rulings on rummy and fantasy sports entrenched the principle that games of skill are legitimate business activity. Industry operators argue that by conflating skill and chance, Parliament has legislated in disregard of constitutional protections.

However, this critique is overstated. First, the doctrine of *res extra commercium*, applied by the Supreme Court in *Chamarbaugwala* itself, establishes that gambling and wagering are outside the ambit of constitutionally protected commerce.⁷⁰ The Promotion and Regulation of Online Gaming Act, 2025 Act builds upon this doctrine by treating the presence of stakes, rather than the mechanics of play, as the determinative feature.⁷¹ Second, evidence shows that even skill games can foster gambling-like harms when monetised.⁷² The financial analysis of gaming companies reveals business models that operate identically to gambling enterprises, regardless of the skill elements in their games. Companies like RummyCircle spend 71.5% of revenue on promotional activities and treat prize payouts as marketing expenses, demonstrating that skill-based classification is merely a legal fiction masking gambling operations. The Act therefore does not contradict the jurisprudence but rather corrects its misapplication in an online, high-stakes context where skill is not a safeguard against addiction.

Operators of fantasy sports and digital collectibles have argued that prohibition chills innovation and undermines intellectual property rights. The Delhi High Court in *Digital Collectibles v Galactus Funware* acknowledged the substantial creative investment in developing fantasy platforms and NFTs.⁷³ Industry groups contend that banning monetisation will erode incentives for technological creativity and stunt India's role as a hub for gaming innovation. Yet, the Promotion and Regulation of Online Gaming Act, 2025 Act does not prohibit innovation in gaming itself, it only outlaws monetisation through stakes. Platforms are allowed to operate as free-to-play models, subscription services, or advertising-driven businesses.⁷⁴ The government's intention is not to suppress creativity but to sever the link between gaming and gambling. Comparative experience from the United States and Europe shows that innovation continues in markets where monetisation through loot boxes or pay-to-win mechanics is restricted.⁷⁵ By recalibrating business models towards non-predatory forms of revenue, the Act may in fact foster healthier and more sustainable innovation.

Critics also claim that Parliament lacks competence to legislate on gambling, which is a State List subject. This objection was raised in challenges to earlier state-level bans, with petitioners contending that only states may regulate games of chance.⁷⁶ However, scholars have clarified that Parliament can legislate on online games under Entries 42 and 97 of the Union List, given

⁶⁹ *R.M.D. Chamarbaugwala v. Union of India*, 1957 SCC OnLine SC 11.

⁷⁰ *Ibid*.

⁷¹ Section 2(1)(g), The Promotion and Regulation of Online Gaming Act, 2025.

⁷² *Zendle* (n 18).

⁷³ *Digital Collectibles Pte Ltd v Galactus Funware Technology Pvt Ltd* 2023 SCC OnLine Del 2306

⁷⁴ Section 8, The Promotion and Regulation of Online Gaming Act, 2025.

⁷⁵ *Derevensky and Griffiths* (n 19).

⁷⁶ *All India Gaming Federation v State of Tamil Nadu* 2023 SCC OnLine Mad 6973.

their inter-state and digital nature.⁷⁷ The Act's focus on online money online games situates it within the Union's competence, especially in light of the Information Technology framework.

The empirical evidence of systematic harm provides additional constitutional justification. When an activity causes documented societal damage - including 32 suicides in Karnataka alone over 31 months and Rs. 20,000 crore (200,000 million) in annual household losses - Parliament's authority to legislate for public welfare under its general legislative competence is clearly established. The Supreme Court has consistently held that reasonable restrictions on fundamental rights are permissible when supported by compelling evidence of public harm.

Ultimately, most critiques mischaracterise the Act as an attack on gaming per se. The true object of prohibition is not the activity of playing games, but the practice of attaching monetary stakes to them. This reframing highlights the narrowness of the industry's objections: far from banning creativity, the Act eliminates a single monetisation model that has proven systematically harmful to Indian society. The financial analysis demonstrates that this monetisation model operates through deliberate addiction creation and financial exploitation. Seen in this light, the ban emerges not as an anti-business measure but as a welfare-driven recalibration of gaming markets away from predatory practices towards sustainable, non-exploitative business models.

Conclusion

India's 2025 prohibition on online money games represents a decisive statutory intervention in a field long mired in judicial ambiguity and fragmented state-level regulation. For decades, Indian courts sought to distinguish between games of skill and chance, extending constitutional protection to the former while leaving the latter to state prohibition. Yet this jurisprudential framework was increasingly out of step with the realities of digital gaming, where monetisation structures rendered skill-based and chance-based games equally susceptible to gambling-like harms.

The empirical evidence presented in this article demonstrates that the traditional skill-chance distinction has become a legal fiction that obscures systematic consumer exploitation. Major gaming companies operate business models fundamentally identical to gambling enterprises: Dream11 spends nearly 16 times its profit on promotional activities designed to hook users; RummyCircle classifies prize payouts as marketing expenses while spending 71.5% of revenue on user acquisition; Zupee depends on users failing to claim promised cashback to maintain profitability. These practices create measurable social harm, including 45 crore (450 million) people losing Rs. 20,000 crore (200,000 million) annually, documented addiction rates up to 19.9% among adolescents, and 79 confirmed gaming-related suicides across multiple states.

The Promotion and Regulation of Online Gaming Act, 2025 rejects the narrow doctrinal lens of skill-versus-chance in favour of a welfare-oriented approach grounded in empirical evidence. By treating all online money games as harmful commerce, it invokes the doctrine of *res extra commercium* and aligns statutory design with documented evidence of addiction, indebtedness, youth exposure, and systematic financial exploitation. The law demonstrates

⁷⁷ Bhardwaj (n 54).

Parliament's capacity to legislate preventively based on comprehensive social research, rather than waiting for piecemeal judicial recognition of harms.

The Act clarifies the limits of constitutional freedoms under Article 19(1)(g), affirming that the right to trade does not extend to business models that systematically exploit vulnerable consumers through addiction-based revenue generation. The financial analysis reveals that online money gaming companies spend extraordinary proportions of revenue on promotional activities precisely because their business models depend on creating and maintaining user addiction rather than providing genuine entertainment or skill-based competition.

The Act now faces litigation, as industry stakeholders challenge its constitutionality and economic impact.⁷⁸ Yet such challenges should not obscure the statute's significance or its solid empirical foundation. It reasserts legislative sovereignty in a domain where courts and industry had narrowed the regulatory imagination to technical questions of "skill" and "chance" while ignoring measurable social harm. More importantly, it prioritises documented public welfare over industry profits, setting a precedent for evidence-based legislation that adapts to emerging technological and social risks.

The international context supports India's approach. Governments worldwide are grappling with the convergence of gaming and gambling in digital environments, with many jurisdictions moving toward more restrictive regulation as evidence of harm accumulates. India's comprehensive ban, grounded in extensive empirical analysis of industry practices and social outcomes, provides a model for other democracies confronting similar challenges.

By anchoring prohibition in documented evidence rather than moral arguments, Parliament has created legislation that is both constitutionally defensible and normatively compelling. The Act recognises that in the digital age, the protection of vulnerable consumers requires moving beyond traditional legal categories toward regulatory frameworks informed by behavioural research, financial analysis, and public health data. This represents a maturation of legislative practice that other areas of technology regulation would benefit from emulating.

Recommended citation - Gaurav Pathak, Mohit Yadav and Anush Ganesh, 'Skill, Chance, and Social Harm: The Legislative Turn in India's Gaming Law' (2025) *Gaming Law Review*, <https://doi.org/10.1177/25725300251394636>.

⁷⁸ Imran Fazal, 'A23 Parent Head Digital Works Moves Karnataka HC against Online Gaming Law' (*Storyboard 18*, 28 August 2025) <<https://www.storyboard18.com/gaming-news/breaking-a23-parent-head-digital-works-moves-karnataka-hc-against-online-gaming-law-79748.htm>> accessed 28 August 2025.