# Perspective: Online Gaming: Landscape & Regulation

**For Prelims:** Online Gaming, Gambling, Digital India, Game of Skill, Game of Chance, Lottery, Betting.

**For Mains:** Judgements & Cases, Online Gaming and its Impact, Laws related to Gambling, Betting and Lottery, Current Scenario of the Indian Online Gaming Ecosystem, Legality of Online Games in India.

## Why in News?

Recently, the Government of India announced the setting up of a committee to regulate online gaming and to identify a Ministry to oversee it.

- The committee has been mandated to study global best practices and recommend a regime for a uniform regulatory mechanism for online gaming.

## What is the Current Scenario of the Indian Online Gaming Ecosystem?

- **Bills for Regulating Gaming Industry:** Lately, the government of Rajasthan brought out a draft Bill in order **to regulate online games, specifically fantasy games**.
    - Earlier, states like Tamil Nadu, Telangana, Andhra Pradesh, and **Karnataka also passed laws banning online games**.
        - However, they were **quashed by state High Courts** on grounds that an outright ban was unfair to games of skill.
    - During the **Budget session of Parliament,** the Online Gaming (Regulation) Bill, 2022 was introduced in Lok Sabha as a **Private Member's Bill**.
        - The Bill sought to maintain integrity in online gaming and introduce a regulatory regime for online gaming.
- **Growth in Gaming Sector:** According to a 2021 report published by **Boston Consulting Group (BCG)**, India's mobile gaming sector will grow from 1.5 billion dollars in revenue in 2020 to 5 billion dollars by 2025.
    - There are now more than **300 million gamers in India**. Meanwhile, revenue across all gaming devices hit 1.8 billion dollars in 2020, up 500% from 2016.
- **Increasing Gaming Companies:** At present, there are **more than 400 gaming companies in India** that including Infosys Limited, Hyperlink InfoSystem, Fgfactory, and Zensar Technologies, among others.

## Why are States Trying to Ban Online Gaming?

- **Issues Related to Online Gaming:** Many social activists, government officials and those in law enforcement believe that online games like rummy and poker are **addictive in nature,** and when played with monetary stakes lead to depression, mounting debts and suicides.
    - Reportedly, there have been a few instances where youngsters, **faced with mounting debts** due to losses in online games, have committed other crimes like theft and murder.
    - Earlier, the **World Health Organisation (WHO)** had announced a plan to include

**"gaming disorder" as a mental health condition**.

- **Susceptible to Manipulation:** Online games are susceptible to manipulation by the websites operating such games and there is a possibility that users are not playing such games against other players, but against automatic machines or 'bots', wherein **there is no fair opportunity for an ordinary user to win the game**.

## What are the Factors Facilitating the Online Gaming in India?

- **Gaming Industry & Digital India:** The gaming industry is developing rapidly and there's a direct correlation between the growth of the industry and the **Digital India initiatives** that are recently conducted.
  - Due to digitization people getting access to **Unified Payment Interface (UPI)** so, it's not just an industry that is about growing in terms of numbers of users, it's growing in terms of monetization also.
- **Smartphone Penetration:** According to the **World Economic Forum (WEF)**, mobile is the primary vehicle for the gaming market in India. Most of the gaming is mobile-led, and as far as it is observed that the **result in an increase in the industry** is due to smartphone penetration.
  - The use of smartphones has also risen with the advent of more gaming-friendly handsets supported by faster processing capabilities.
- **Affordable Internet:** Internet access in India is very cheap as compared to the other countries which have led to heavy internet use among users which is also a result of Digital India initiatives.
  - As per WEF, access to **affordable smartphones has grown by 15% year-on-year** over the past five years. Besides, high-speed 4G internet penetration supported by the world's lowest data tariffs has contributed magnificently.
- **Opportunity for Employment:** The gaming industry is now being seen as an important pillar of the economy. This upcoming sector could **create lakhs of jobs in the country**.
  - Several gaming startup firms are also expected to firm up hiring plans to support growth in the next few years.

## What is the Legality of Online Games in India?

- **Legal Jurisdiction:** The state legislators are, vide **Entry No. 34 of** List II (State List) of the Seventh Schedule of the **Constitution of India**, given exclusive power to make laws relating to betting and gambling.
- **Types of Games in India:** Most Indian states regulate gaming on the basis of a distinction in law between **'games of skill' and 'games of chance'**.
- **Test of Type of Game:** As such, a 'dominant element' test is utilized to determine whether chance or skill is the dominating element in determining the result of the game.
  - This **'dominant element'** may be determined by examining whether factors such as superior knowledge, training, experience, expertise or attention of a player have a material impact on the outcome of the game.
- **Status of Type of Games Allowed:** Staking money or property on the outcome of a 'game of chance' is prohibited and subjects the guilty parties to criminal sanctions.
  - However, **placing any stakes on the outcome of a 'game of skill' is not illegal** per se and may be permissible.
  - It is important to note that the Supreme Court recognized that **no game is purely a 'game of skill'** and almost all games have an element of chance.
- **Common Gaming House:**
  - Another concept common to the gaming law in most states is the idea of a 'common gaming house'.
  - Owning, keeping, or having charge of a common gaming house or being present for the purpose of gaming in any such common gaming house is **ordinarily prohibited in terms of these state gaming laws**.
  - A common gaming house is defined as any house, walled enclosure, room, or place in which instruments of gaming are kept or used for profit or gain.
  - Pertinently, courts have clarified in the past that the mere charging of an extra fee to facilitate playing the game and/or **to maintain the facilities** may not necessarily be seen as making a profit or gain.

# What are the Central Laws Related to Lottery, Gambling, and Betting?

- **The Lotteries Regulation Act, 1998:**
  - The lottery is considered legal in India. The lottery **should be organised by the state government** and the place of Draw should be in that particular state.
- **Indian Penal Code, 1860:**
  - The code has provisions for punishing anyone who to the annoyance of others does any obscene act in a public place or sings, recites, or utters any obscene song, ballad, or words, in or near any public place.
  - These provisions of the IPC may be attracted if any obscene matter is used for the purpose of advertising betting and gambling activities.
- **Prize Competitions Act, 1955:**
  - It defines Prize in Competitions.
- **Foreign Exchange Management Act, 1999:**
  - Remittance of the income generated from lottery winning, and racing/riding is prohibited under this Act.
- **Information Technology Rules, 2011:**
  - Under these rules, any internet service provider, network service provider, or any search engine will not host any such content which directly or indirectly supports Gambling.
- **Income Tax Act, 1961:**
  - Current taxation policy in India covers all types of Gambling industry directly and indirectly. Thus, it can be said that all regulated and legalised Gambling is supported by the **Gross Domestic Product (GDP)** of India.

# Why is there a Need to Regulate the Gaming Industry?

- The online gaming industry within India has a **lack of regulatory oversight** and falls into a **'grey area'**.
- India currently has no comprehensive legislation with regards to the legality of online gaming or boundaries that specify **applicable tax rates within the betting and gambling industry**.
  - The development comes when more and more states are bringing about legislation seeking to **bring about some order in the online gaming sector**.
- Online gaming in India is **allowed in most parts of the country**. However, different states have their own legislation with regards to whether online gaming is permitted.
  - Well-regulated online gaming has its own advantages, such as **economic growth and additional benefits**.
  - However, shifting users to grey or illegal offshore online gaming apps not only results in a **loss of tax revenue for the State and job opportunities** for locals but results in users being unable to avail remedies for any unfair behaviour or refusal to pay out winnings.

# What can be the Way Forward?

- **Checks & Balances:** Instead of a complete ban, **one could look at regulating the industry with various checks and balances such as**:
  - Diligent KYC and anti-money laundering processes.
  - Barring minors from accessing real money games.
  - Placing weekly or monthly limits on the money that can be staked or time that can be spent.
  - Counseling for addictive players and allowing self-exclusion of such players etc.
- **Required Monitoring:** A **Gaming Authority at the central level should be created**. It could be made responsible for the online gaming industry, monitoring its operations, preventing societal issues, suitably classifying games of skill or chance, overseeing consumer protection, and combatting illegality and crime.
- **Regulation of Gaming Industry:** More and more youngsters are getting hooked on online games. Considering this, the Online gaming industry needs to be regulated in India. Moreover, regulation of online gaming will not only open up economic opportunities but also address its social

costs.

- **No in-game Purchases:** These types of purchases should not be allowed without adult consent and wherever possible.
- **Need for Awareness:** Gaming companies should proactively educate users about potential risks and how to identify likely situations of cheating and abuse.
  - There is also a need to remove the anonymity of participants and build a robust grievance handling mechanism.
- **Need for Licensing:** There is a need to license the industry. There is a need to create several safety checks. The industry has to be brought in as a self-regulator instead of having a policy.

## UPSC Civil Services Examination, Previous Year's Question (PYQs)

**Q. Which of the following is/are the aim/aims of "Digital India" Plan of the Government of India? (2018)**

1. Formation of India's own Internet companies like China did.

2. Establish a policy framework to encourage overseas multinational corporations that collect Big Data to build their large data centres within our national geographical boundaries.

3. Connect many of our villages to the Internet and bring Wi-Fi to many of our schools, public places and major tourist centres.

Select the correct answer using the code given below:

(a) 1 and 2 only

(b) 3 only

(c) 2 and 3 only

(d) 1, 2 and 3

**Ans: (b)**