

## Gaming Laws in India



The gaming industry has gained significant importance over the last decade with the advent of virtual and online gaming. Gaming is set to become increasingly popular. This primer aims at holistically covering all laws that may govern the gaming industry in India.

### 1. What are the laws and regulations governing gaming in India?

There is no consolidated legislation in India that comprehensively provides for the regulation of all forms of gaming and other allied activities. Various different aspects of gaming are covered under different sets of laws, like laws relating to prohibition of certain gambling activities, laws relating to the contractual aspects of gaming, laws relating to payment services, foreign investment laws, etc. All of these laws must be considered together to achieve a thorough understanding of the gaming sector in India.

### 2. What are the laws and regulations governing gambling in India?

- 2.1. Legislations relating to gambling prohibit games of chance. Gambling is a part of List II of the Seventh Schedule of the Constitution of India, which means that each state is free to enact their own laws in relation to gaming within the state. Most of the states have incorporated the provisions of the central legislation, the Public Gambling Act of 1867 with limited modifications while retaining the basic principles.
- 2.2. Most states in the country allow participation in games of skill, except Assam, Orissa, and Telangana which have imposed a blanket ban on all games of chance as well as games of skill that involves a stake of money or betting in any form, on the outcome of the game. Goa and Sikkim are two states that have permitted participation in games of chance, to a limited extent and only if a license has been obtained specifically for such purpose.

### 3. Is foreign investment permitted in the gaming sector?

Under the foreign direct investment policy, foreign direct investment is prohibited in Indian companies which engage in the business of lotteries, gambling and betting. Foreign direct investment is permitted in games of skill as games of skill do not fall within the purview of gambling. Whether a business model involves a game of chance or skill is factual and should be analyzed prior to undertaking foreign direct investment.

**4. What is a game of skill? What is a game of chance?**

- 4.1. The Indian Supreme Court, while considering the criteria which may be followed to determine a game of skill, held that, competitions where the outcome is determined by the superior knowledge, training, attention, experience and adroitness of the players may be categorized as a game of skill. Any game in which the outcome is determined purely by mere luck is a game of chance.
- 4.2. However, most games cannot be determined purely by chance or purely by skill and there would be some overlap between the two. The Indian Supreme Court has laid down that a game of skill would be one in which the element of skill is predominant over the element of chance and a game of chance would be determined accordingly. Therefore, each game has to be considered individually to categorize them as either a game of skill or a game of chance.

**5. What are the laws relating to the conducting of Lotteries in India?**

As per the Lotteries (Regulation) Act, 1998, lotteries are schemes for distribution of prizes by lots or by chance to persons participating in the chances of a prize by purchasing tickets for the same. In India, lotteries have specifically been excluded from the ambit of gambling and are regulated by the central legislation as well as similar state specific laws. Lotteries in India can only be carried out by Government authorities or by its agents appointed for the purpose. The state governments may appoint individuals or corporates as distributors or selling agents for the purposes of the lottery through an agreement to market and sell lotteries on behalf of the respective state government.

**6. Is online / virtual gaming governed by the same laws?**

- 6.1. Most Indian laws which regulate gaming in India were enacted before the advent of virtual / online gaming. Therefore, these laws do not specifically refer to online or virtual gaming. However, in practice, the application of the general provisions in relation to prohibition of games of chance have been extended to online gaming as well.
- 6.2. States of Sikkim and Nagaland have introduced specific legislation to regulate online gaming. These legislations provide for the procedure for applications of licenses for providing online gaming services in these two states. Even these licenses only permit hosting games of skill through a virtual medium and hosting of games of chance have been prohibited.
- 6.3. Online gaming has additionally, introduced a greater number of aspects for consideration and thus, may invoke the application of a variety of laws like contracts law, consumer protection law, laws relating to handling of virtual currency or in game tokens, data protection laws, etc.





## **7. How is the law of contracts invoked for online gaming?**

- 7.1 A user of an online gaming application typically agrees to terms and conditions for use of the application. These terms and conditions are in the nature of contracts being entered into individually with each such user and both parties would be bound by these contracts as well as the Indian Contracts Act, 1872, which is the principle legislation governing contracts in India.
- 7.2 These contracts could impose certain obligations for performance on both parties and may even lay down conditions for breach of the contract and the possible claims arising from such breaches. It is important that terms and conditions of the contract address key issues such as data privacy, limitation of liability, redressal of complaints and disputes. Depending upon the nature of information collected by the application and nature of services offered on the platform (such as subscription, token, in-game purchases), the terms and conditions may need to be modified to cover specific issues and challenges under Indian laws.

## **8. What is the applicability of the Consumer Protection laws in providing online gaming services?**

- 8.1 Any user of an online gaming application may fall under the scope of a 'consumer' as per the Consumer Protection Act of 2019 if such user avails of any service for a consideration and shall include any beneficiary availing the service with the approval of the first user. Any aggrieved consumer may file a complaint with Consumer Disputes Redressal Commissions (CDRC) that have been set up at the district, state and national levels.
- 8.2 A complaint may be filed if there is any deficiency of services on the part of the service provider. A deficiency may be in the form of any fault, imperfection, shortcoming or inadequacy in the quality, nature or manner of the performance of the services. Deficiency in services is a subjective concept as no fixed criteria for such determination can be laid down. The courts shall make such determination after considering the facts of each case.
- 8.3 If the value of services provided is less than one crore rupees, then the complaint is to be filed before the District CDRC. Complaints against online gaming service providers would generally fall under the jurisdiction of



the District CDRC. Appeals from a District CDRC shall be heard by the State CDRC and then by the National CDRC. A final appeal may be sought before the Supreme Court.

**9. What are the regulations in respect to the issuance of in-game currency?**

- 9.1 All forms of in-game currencies issued during the course of gaming, may be subject to relevant provisions under the Payment and Settlement Systems Act, 2007 and the Reserve Bank of India (Issuance and Operation of Prepaid Instruments) Directions, 2017 ("RBI Direction") issued by RBI in relation to pre-paid payment instruments ("PPIs"). In-game currencies may be considered to be PPIs if the currency issued can be used to obtain goods or services from the gaming service provider or any other entity.
- 9.2 PPIs may be close system PPIs, semi-closed system PPIs or Open PPIs.
- 9.3 Close system PPIs are instruments that can be used to purchase goods or services from only the entity issuing the instrument and if no cash withdrawals are allowed from such instruments. No permits or approvals are required from RBI to issue and operate such PPIs. Typically, in-game currencies issued in gaming applications fall under this category and thus, no prior authorization is required.
- 9.4 Semi-closed system PPIs are instruments where goods and services may be obtained from a group of clearly identified merchants other than and including the issuing entity. No cash withdrawals are allowed through this category of PPIs. These PPIs may be issued by non-bank entities after obtaining RBI approval. If the in-game currency issued, falls under this category then relevant RBI approvals must be obtained.
- 9.5 Open System PPIs may only be issued by banks after having obtained RBI approval and may be used to obtain services from any third party. Cash withdrawals are permitted also. In-game currencies issued by gaming service providers would typically not fall under this category.
- 9.6 In the event a gaming application uses in-game currency then the applicability of RBI Direction should be considered on a case to case basis for such in-game currency.

**10. Are Data Protection laws applicable to gaming service providers?**

Any online gaming service provider that collects any personal information during the course of providing any service would be responsible for maintaining and following all data protection norms as per relevant legislation in India. Personal information may include any information that relates to a natural person and is capable of identifying such person, either alone or in combination with other similar information. The terms and conditions of the gaming application should include the terms of storage, collection, handling and use of the collected personal data and provide a mechanism to resolve any grievances related to the personal data of the user. To know more about data protection laws in India, please refer to our primer on Data Protection Laws [here](#).



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