ONLINE GAMING LAWS IN INDIA: AN ANALYSIS OF THE LEGISLATIVE INTENT VIS-À-VIS THE FUTURE ROADMAP

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I. INTRODUCTION

With the advent of technology, cheaper internet, and the COVID-19 pandemic, the online gaming industry in India has witnessed an exponential rise, growing from 79 billion Indian Rupees in 2020 to 135 billion Indian Rupees in 2022.1 India now accounts for the second-largest market in the online gaming industry, with 220 billion Indian gamers in 2023 and is likely to reach 338 million users in 2026.2 To understand the rise of this industry, it is imperative to look into what the Indian masses dive into for leisure—movies, television shows, and music. Such leisurely activities often tell a story. Gaming accentuates the experience of storytelling with an ability given to the individuals to engage with and have a say in the final outcome of such stories. Adding to this, the Indian masses also hold strong communal values. The online gaming experience provides that feeling of being in a community to the Indian masses, especially during the COVID-19 lockdowns, accounting for the increase in the compounded annual growth rate of 21% in the online gaming industry.3 Gaming quickly became a means of socialization for the public at large.

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3 Special Correspondent, Online Games Seen Picking Momentum Since COVID-19 Outbreak, The Hindu (June 14, 2021, 9:56 PM),
Following the ease that was brought about in online transactions, the gaming industry was quick to come up with in-app purchases. Games such as Players Unknown Battlegrounds, Dream11, and Fortnite incorporated money into their gameplay. The monetization of the gaming industry has invited both critical opinions from the public and careful consideration from experts—investors, developers, mental health professionals, etc. The money aspect also leads to the comparison of gaming with gambling and consequent disputes as to the legality of such games that may be comparable to gambling.

With such a meteoric rise in the industry, it became imperative for the Indian Government to regulate the online gaming industry. More so, regulation is needed because the online gaming industry also includes monetary transactions, with games like Dream11 gaining immense popularity in India. Thus, the Indian Government came up with a Draft Notification for the amendment of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (hereinafter “IT Rules, 2021”) for online gaming. The legislation is intended to regulate online gaming platforms in India and streamline the adjudication of the legal disputes that may arise. These rules also give a glimpse of how the government intends to regulate online gaming in India.

Currently, the online gaming industry is regulated by numerous legislation that predominantly deal with other areas of laws—like acts that deal with intellectual property rights, taxation, advertising, or information technology. Moreover, states in India have their own gaming laws due to the subject falling in the State List provided for in the Indian Constitution, which indicates a lack of centralized legislation. Courts in the country have tried to regulate the industry through judgements, creating judicial precedents that regulate some aspects of the gaming sector. Various Supreme Court and High


4 In-app purchases refer to the things one can buy from the gaming application. Various things may be bought from the application, including players’ abilities, characters, clothes, special weapons, etc. These may help the player in easing down the gameplay and helping the player move ahead in the storyline.

5 Dream11 is a famous fantasy sports platform in India. The platform has a current user base of more than 160 million players in 2022.


8 India Const., sch. VII, list II, entry 34.
Court decisions on online games have discussed the subject of whether a game comes under the ambit of gambling — ‘game of skill v. game of chance’ — to decide the legality of such games in India.\(^9\)

The Draft Notification of 2021 is a step towards streamlining the regulation of the online gaming sector in India. However, this Notification, rather than creating new legislation, intends to alter the current regime of IT Rules, 2021 in order to imbibe online gaming into the Information Technology Act, 2000. Further, there are many definitional problems in the IT Rules, 2021 which points out the sketchy governance of online games through these rules. Hence, it is important to analyze the way forward for the governance of online gaming in India through an examination of the current legislative framework.

II. CURRENT LEGAL FRAMEWORK

The current regulation of online gaming in India is fragmented across states and overlaps with other legislations in the country. This is owed to the kind of federal elements that exist in the Indian Constitution.\(^10\) The Indian Constitution provides for three lists (State List, Union List, Concurrent List) under its Seventh Schedule that enlists the subject matters on which the State or Union government could legislate.\(^11\) Gambling and Betting is one such subject that is included in the State List, and hence the States are enabled to legislate on the issue of betting and gambling exclusively.

The primary legislation under which online gaming is largely legislated upon is the Public Gambling Act, 1867 (hereinafter “PGA, 1867”).\(^12\) This is because gaming is largely understood to be akin to gambling in India. The enactment of this act also precedes the prevalence of online gaming by decades, implying that this legislation fails to encompass all that is needed to be regulated in the online gaming sector of today. Further, the PGA, 1867 is just a model law, and the States are left with the option to either choose it or enact their own laws due to List II of the Seventh Schedule of Indian Constitution.\(^13\) Additionally, even though only the state government has the power to regulate “betting and gambling” in India in accordance with Entry 34, List II of the Seventh Schedule of the Indian Constitution, the Indian government seems to do away with this cultural understanding by regulating online gaming through an amendment in the IT Rules, 2021 thereby making it central legislation. The authors believe it to be

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\(^9\) Most of the states in India allows skill-based games to be played for money in their respective state boundary. Further, chance-based games cannot be offered for money in most states of India as they are considered to be gambling within the state legislation.  
\(^10\) See generally India Const. art. 246, list II, entry 34.  
\(^11\) Id.  
\(^12\) See The Pub. Gambling Act, § 1–18 (1867) (India).  
\(^13\) India Const. art. 246, list II, entry 34.
a positive move by the Government as it ensures parity of legality of games across state lines.

However, the current position of the Indian States is that certain states have adopted the PGA, 1867, while others have enacted their own state specific laws. This has created the fragmented nature of the regulation of online gaming in India. Moreover, the regulations, especially the state-specific legislations, are mostly prohibitory in nature, even in contradiction to Supreme Court precedents.

A. Judicial Precedents in Action

The Supreme Court of India in *KR Lakshmanan v. State of Tamil Nadu*, concluded that gambling consists of 1) consideration, 2) an element of chance, and 3) a reward.\(^ {14} \) According to the court, gambling is simply the act of paying a fee in exchange for the opportunity to win a prize.\(^ {15} \)

In the year 1957, the Supreme Court of India opined on the question of games of skill v. games of chance in the case of *State of Bombay v. R.M.D. Chamarbaugwala*, and held that a game of skill does not come under the ambit of ‘gambling’—that is prohibited in India—and, therefore, is legal.\(^ {16} \) Game of skill was interpreted to include games in which the outcome was predominantly the result of ‘skill’ and not mere luck.\(^ {17} \)

This contention of skill versus chance has been used over the years in all landmark cases to determine the legality of gaming in India. The games that fall under the skill category are declared legal, and the games that are considered chance come under the ambit of gambling and therefore become illegal in India.

The legality of the popular game Dream11 was challenged before the High Court of Punjab and Haryana as illegal under the PGA, 1867 in the case of *Varun Gumber v. Union Territory of Chandigarh*.\(^ {18} \) The court, however, dismissed this challenge. Looking at the gameplay and considering what it takes to win, the court held Dream11 as a game of skill and thus legal. The court analyzed the format of the game and listed the elements of skill required to form a team in Dream11.

Similarly, in the case *State of Andhra Pradesh v. K. Satyanarayana*, a petition was filed challenging the legality of ‘Rummy.’\(^ {19} \) The court again discarded the challenge and held Rummy to be a game of skill and not a game of chance. It was held that Rummy was a game involving a preponderance of skill.

\(^ {15} \) Id.
\(^ {17} \) Id.
rather than chance.\textsuperscript{20} For that matter, even horse racing is considered a game of skill—as was stated by the Supreme Court in the landmark judgement of \textit{KR Lakshmanan.}\textsuperscript{21}

Largely, the disputes regarding online gaming surround this contention of ‘game of skill v. game of chance’ as can be concluded from the judicial precedents cited in the foregoing paragraphs. But the disputes also surround taxation, breach of intellectual property rights, and breach of privacy. In addition to this, cases can also surround harassment—both mental and physical. Thus, there is a large ambit of other disputes that arise/may arise in this sector that needs to be attended to and regulated.

The cases and the legislations mentioned provide a framework to tackle only one aspect of gaming, i.e., legality. The online gaming sector has a lot more issues as already enlisted that need to be tackled and prevented. Certain existing legislations deal with such issues in the online gaming section which are discussed in the following section.

1. \textit{Indian Penal Code & Indecent Representation of Women (Prohibition) Act, 1986}

The Indian Penal Code, 1860 is the primary legislation dealing with criminal offences in India.\textsuperscript{22} Further, the Indecent Representation of Women (Prohibition) Act, passed in 1986, outlaws any indecent representation of women, defined as the depiction of a woman's figure, form, or body in a way that is indecent, denigrating of women, or likely to degrade, corrupt, or otherwise harm public morality or morals.\textsuperscript{23}

Both these legislations can be applied to the online gaming sector. The game in itself can be responsible for the indecent representation of women, whereas the gameplayers and the gameplay both could be responsible under the Indian Penal Code for offences such as harassment, defamation, cheating, fraud, etc.

The act of playing the game can be considered an ‘act’ under the relevant provisions of the Indian Penal Code, 1860. The acts in the gameplay can easily come under the definition of offences that may be committed in online gaming. Offences against women—such as obscenity, and harassment—are all too common in an online gaming setup. For example, the gameplay of GTA would be in violation of the Indian Penal Code. However, obscenity in gameplay is often a part of the content of the game itself.\textsuperscript{24} This determination requires a serious lack of artistic, literary, scientific or political value.

\textsuperscript{20} \textit{Id.}
\textsuperscript{22} See The Indian Penal Code, 1860.
\textsuperscript{23} The Indecent Representation of Women (Prohibition) Act, 1986, § 2(c) (India).
Offences such as the promotion of enmity between different groups or even outraging of religious sentiments, and abetment of suicide are also prevalent in the gameplay as well as in the content of the game. For instance, the infamous ‘Blue Whale’ Challenge was declared abetment to suicide by the Ministry of Electronics and Information Technology in India.\(^{25}\) Now, even though these provisions may be invoked to tackle the issues that may arise, however, they do not address the prevention of such violations or even effective deterrence.

2. **Taxation, Foreign Exchange Management Act and Prevention of Money Laundering Act**

The matters of taxation, foreign investment, and money laundering are intricately linked, especially in the online gaming sector. The issue of taxation is raised in the context of winnings in an online game and if and how they must be taxed, as well as the taxes that the online gaming industries are bound to pay.

The taxation regime of a country affects the prospects of investment. This, of course, implies an effect on foreign investment in the gaming sector. Foreign investment in India is regulated by Foreign Exchange Management Act\(^{26}\) and the FEM (Non-Debt Instruments) Rules 2019.\(^{27}\) Consequently, foreign investment in the gaming sector is regulated by these existing regulations.

The Prevention of Money Laundering Act of 2002 (hereinafter “PMLA”) intends to prevent money laundering.\(^{28}\) The PMLA gives the authorities or a governmental entity the right to seize any property acquired using the profits of illicit activity.\(^{29}\)

Now, the gamers and gaming companies that intend to evade taxes and/or legalize their illegal income/source of income from such online games come under the ambit of PMLA. Online gaming is not expressly included in the provisions of the Act. However, money laundering must be prevented and tackled under the provisions of the PMLA.

3. **Prize Competition Act and Lotteries Act**

The Prize Competition Act attempted to regulate and control competitions in which the winnings have a monetary value—however, the prize can be in cash or other forms of payment.\(^{30}\) The subject matter of this regulation also falls within gambling and betting under entry thirty-four of List II of Schedule VII. Now, such prize competitions are a part of the online gaming

\(^{25}\) Government of India, Ministry of Electronics and Information Technology, Advisory on “Blue Whale Challenge Game” (Issued on September 12, 2017).

\(^{26}\) Foreign Exchange Management Act, 1999 (India).

\(^{27}\) See generally Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 (India).

\(^{28}\) See Prevention of Money Laundering Act, 2003 (India).

\(^{29}\) Id. at § 73(2)(ee).

\(^{30}\) See Prize Competitions Act, 1955, § 4 (India).
sector in India, and, therefore, relevant provisions of the act can be invoked to regulate such games if needed.31

4. Intellectual Property Rights

The gameplay and the content of the game involve elements that can attract provisions of legislation intended to protect intellectual property rights like the Trademark Act32 and Copyright Act.33 The avatars, storylines, music, etc., that may be used in a game to appeal to the masses are included in the subject matter of such protected intellectual property. Provisions of the Trademark Act and Copyright Act can consequently be utilized against the use of such intellectual property without proper licenses.

5. Advertising and Consumer Protection Act

The Consumer Protection Act of India intends to protect customers and consumer interests from misleading advertisements and unfair trade practices.34 Although advertisements, independent of consumer interests, are not expressly legislated by any act in India, the advertising standards issued by the Advertising Standards Council of India35 are followed by the gaming companies as an industrial norm.36

With the addition of the internet to gaming, advertisements have become a part of the online gaming experience and the industry. Games can advertise in gameplay, on the mobile app or the website, or there can be advertisements of the game itself.

There is potential these advertisements engage in unfair trade practices or surrogate advertisements. Such advertisements need to be regulated and controlled in accordance with the existing laws such as the consumer protection

32 See generally The Trade Marks Act, 1999 (India).
33 See generally The Copyright Act, 1957 (India).
34 See generally The Consumer Protection Act, 2019 (India).
laws of India. The Consumer Protection Act can be used to regulate consumer affairs and protect their interests in the online gaming sector.37

The IT Rules, 2021 guidelines, on the other hand, seek to protect minors from entering into gambling and betting.38 The guidelines require advertisements to clearly place a disclaimer if the game is addictive in nature or has an added financial risk.39

6. Information Technology Act

The Information Technology Act (hereinafter “IT Act”) was enacted by the government of India to facilitate digital transactions and control cybercrimes.40 The government of India has tried to evolve the IT Act according to the developments that take place in the virtual world by amending the rules of IT Act or amending the sections.

The rise in the popularity of streaming platforms resulted in the rules being amended in 2021.41 As of now, there are no express provisions in the IT Act that deal with regulating online gaming. However, the IT Act incorporates certain provisions that deal with cyberbullying, that need to be addressed in the online gaming setup as well.

In 2023, in the face of the popularity of online gaming and increasing stakes with an added financial factor, the provisions of the IT Act were notified to be amended to regulate online gaming.

7. Telecom Related Regulations

Around 94% of gaming activity in India is now done on mobile devices as a result of the introduction of high-speed internet and rising smartphone use

37 See The Consumer Protection Act, 2019 (India).
40 See The Information Technology Act, 2000 (India).
at cheaper rates. As a result, SMS messages are used to promote games. The gaming businesses must take into account a few telecom rules when they sell and promote these games.

Telecom Commercial Communications Customer Preference Regulations, 2018 (“TCCCPR”) issued by the Telecom Regulatory Authority of India (“TRAI”) is used to regulate SMSs, Value Added Services that may be offered, activated, and deactivated vide SMSs. The game creators must be aware of any duties in line with TCCCPR—which may be relevant to interactive games—that are created to be centered upon frequent SMSs being triggered on a subscriber’s device.

8. Digital Personal Data Protection Act

Companies in the online gaming and esports sector routinely process personal data on a global scale. These companies require and are interested in the collection of personal data for multiplayer experiences and the maintenance of an online network.

To utilize gaming services, a participant often must input personal information, which is gathered throughout an onboarding process, including names, addresses, dates of birth, credit card numbers for billing, email addresses, IP addresses, participant feedback rankings, and personalized profiles.

Considering the fact that online gaming is on a meteoric rise in popularity among the Indian population, it is imperative that the data of Indian

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47 *Id.*
48 *Id.*
gamers is protected and processed in a legally regulated manner. Accordingly, the new data protection act of India aims to do just that.49

III. RETHINKING THE DRAFT AMENDMENTS TO THE IT RULES, 2021

The lack of comprehensive legislation on online gaming is glaring in the face of its growing popularity. The provisions of several existing legislations currently aid in the regulation of online gaming as well as in the adjudication of certain disputes. If the issues are not covered under the relevant existing statutes, the courts fill in the gaps.

Noting this lack of a regulatory body, the Government of India (Allocation of Business) Rules 1961 were modified by the Central Government in December 2022 to designate the Union Ministry of Electronics and Information Technology (hereinafter “MeitY”) as the nodal ministry for matters relating to online gaming.50

Thereafter, MeitY issued draft amendments to the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 202151 in order to incorporate online gaming into the jurisdiction of the IT Act and its rules.

A. The Highlights

The draft notification provides a definition to ‘online gaming’ while explaining the terms—‘internet’, ‘deposit’, ‘winnings’ and ‘online gaming intermediary.’52 ‘Social Media Intermediaries’ were already an existing entity

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51 Ministry of Electronics and Information Technology, Draft Notification for Amendment to IT Rules 2021 for Online Gaming (for Public Consultation) (Issued Apr. 6, 2023) [hereinafter Draft Notification for the Information Technology Rules, 2021].
52 ‘Internet’ means the combination of computer facilities and electromagnetic transmission media, and related equipment and software, comprising the interconnected worldwide network of computer networks that transmits information based on a protocol for controlling such transmission; ‘deposit’ means the deposit made or committed to, in cash or in kind, by the user for participating in an online game;
‘winnings’ means any prize, in cash or in kind, that is distributed or intended to be distributed to a user of an online game based on the performance of the user and in accordance with the rules of such online game;
within the IT Act; the draft amendment aims to include companies that offer one or more online games into the definition of intermediaries. Additionally, the amendment calls for a MeitY-recognized self-regulatory body that each game must register with and have that registration displayed on the website and/or mobile-based application.

The amendment also creates the responsibility of additional due diligence when offering online games. These due diligence measures include verifying the identity of the games and being obliged to not use the personal information so acquired for any other purpose other than the verification. Such an obligation is also in line with the latest Data Protection Act of 2023. The amendments also stipulate the role of a grievance officer, nodal contact person for 24x7 coordination with law enforcement agencies and officers to ensure compliance to their orders or requisitions made in accordance with the provisions of law or rules made thereunder.

There, of course, also exists a provision for the establishment of an appropriate mechanism for taking care of the complaints that may be raised. The Draft Notification also specifies the board of directors or governing body of such self-regulatory body that is to be established under the notification, among other functional details. The self-regulatory bodies are to register an online game subject to the conditions put forth in the draft notification, which stipulate the following:

(a) The game is offered by an online gaming intermediary, which is a member of the self-regulatory body, who has been granted membership in accordance with the provisions of sub-rule (4);

(b) The game does not contain anything which is not in the interest of the sovereignty and integrity of India, defence of India, security of the State, friendly relations with foreign States or public order, or incites the commission of any cognizable offence relating to the aforesaid;

(c) The game is in conformity with laws for the time being in force in India, including any such law that relates to gambling or betting or the age at which an individual is competent to enter into a contract.

‘online gaming intermediary’ means an intermediary that offers one or more than one online game.” Id.

53 The Information Technology Act, 2000 (India).
The second condition in sub-rule 5 of rule 4B is in line with the reasonable restrictions put forth in the Constitution of India.57

B. The Undefining Definitions

The definitions clauses in statutes, and even contracts for that matter, are a critically important aspect of the statute/contract. These definitions aid and assist in the interpretations and decrease the chances of misunderstanding and exploitation of loopholes in the implementation of the statute by the authorities and the parties. For instance:

“Online Game” means a game that is offered on the Internet and is accessible by a user through a computer resource if he makes a deposit with the expectation of earning winnings – Rule 2(1)(qa) of the IT (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

The definitions of the statutes are supposed to be precise and within the intended meaning of the legislation to avoid misinterpretation, misuse, and exploitation of loopholes. However, the definition of ‘online gaming’ in the draft legislation is far from precise. Instead the definition widens the ambit of ‘online gaming’ to potentially include gambling and betting, otherwise prohibited in India and simultaneously can be interpreted to only include games which offer monetary winnings.

The definition of the term ‘online gaming’ in the draft amendment has received major criticism from legal scholars in India.58 This definition leaves a wide blank that needs to be filled in order to narrow the meaning of the term and include within its ambit the games that do not involve money.

C. Self-Regulating Bodies Lacking Self-Regulation

The self-regulating bodies (hereinafter “SRBs”) to be established under the draft notification for amendment have been assigned the tasks of verifying and registering the online games, taking care of the complaints and complaining mechanism.59

57 India Const., art. 19, cl. 2.
58 See Faranaaz Karbhari & Akriti Shikha, Draft Online Gaming Rules: Amendment to the Intermediary Guidelines, MONDAQ (June 19, 2023) https://www.mondaq.com/india/gaming/1330974/draft-online-gaming-rules-amendment-to-the-intermediary-guidelines#:~:text=%27Online%20game%27%20is%20defined%20as,the%20expectation%20of%20earning%20winnings.
59 Id.
The SRBs are supposed to have a board of directors comprising of:

(i) an independent eminent person from the field of online gaming, sports or entertainment, or such other relevant field;
(ii) an individual who represents online game players;
(iii) an individual from the field of psychology, medicine or consumer education, or such other relevant field; and
(iv) an individual with practical experience in the field of public policy, public administration, law enforcement or public finance, to be nominated by the Central Government;
(v) an individual from the field of information communication technology.60

On paper, this composition of the board of directors seems like a progressive and effective one. Nonetheless, considering the variety of games and the consequent variety of issues and that precautions may have to be taken care of; it is important to regulate such games to avoid possible mishandling of the affairs of online gaming.

For instance, the gameplay of Players Unknown Battleground requires players to kill the competing players. Such a game requires tackling the violence that is associated with the game and the impact it may have on its players, especially the minors. On the other hand, an online game of Rummy requires an understanding of card games for an apt regulation of the game.

One solution to this issue could be to have the ‘independent eminent person’ on the board of directors be an expert in the specific category of the online game the SRB is intended to regulate. Additionally, there is no mention of how these SRBs of directors may be appointed.

One important aspect in the draft notification, with respect to the SRBs, is that it stipulates a framework that has to include criteria regarding the content of an online game registered (or to be registered) with such body. This is done with a goal of safeguarding users against harm—including self-harm—and provide appropriate measures to protect children. The measures seek to safeguard users against the risk of gaming addiction and financial loss. An interesting aspect is of repeated warning messages at higher frequency beyond a reasonable duration for a gaming session. This was a provision to enable a user to exclude himself upon user-defined limits for time and money spent. There are other measures to safeguard against the risk of financial frauds.61

“And to the people suffering from their effects, this conflict is not a game. It destroys lives and leaves communities devastated. Therefore, we’re challenging you to play FPS by the real Rules of

60 Draft Notification for the Information Technology Rules, 2021, supra note 51.
61 Id.
War, to show everyone that even wars have rules—rules which protect humanity on battlefields IRL.”

– International Committee of the Red Cross website

It must be noted that this list of criteria for the content framework of the game is not exhaustive, since the draft uses the phrase ‘among other things, also include.’ Thus, more such criteria and safeguards can be added to this list. One such criterion could be to follow the advice of the International Committee of the Red Cross, which urges games that include war and violence, such as Fortnite, in their gameplay to follow the laws of conflict and not commit virtual war crimes.

Another pertinent aspect to note is that this draft notification does not provide a mechanism to regulate the SRBs. The lack of such a mechanism will inadvertently place a burden on the already burdened civil courts of India.

D. The Issue with the Intermediary

Interestingly, the draft notification intends to regulate online gaming by terming the gaming company as an “intermediary” under Section 2(1)(w) of the Information Technology Act 2001. Further, Section 79 of the Information Technology Act 2000 provides an exemption to intermediaries for any liability. Additionally, the safe harbor provided to the intermediaries extends to the online gaming intermediaries.

It is well recognized internationally that the intermediaries should not be subjected to general monitoring obligations. The title of Section 79 of the IT Act 2000 justifies the same by using the word “exemption.” Hence it is important that the law is formulated by keeping in mind that the intermediaries should not be subjected to onerous liabilities.

However, the draft notification places numerous onerous burdens on online gaming intermediaries. Sub Clause (b) of Clause 1 of Rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 mandates the online gaming intermediary to observe if the information in one of the games is “defamatory, obscene, pornographic,

65 The Information Technology Act, 2000, § 79 (India).
66 See Draft Notification for the Information Technology Rules, 2021, supra note 51 (defining an “online gaming intermediary” as an “intermediary that offers one or more than one online game”).
68 Information Technology Act, 2000, § 79 (India).
paedophilic, invasive of another’s privacy, including bodily privacy, insulting or harassing on the basis of gender, libelous, racially or ethnically objectionable, relating or encouraging money laundering or gambling, or otherwise inconsistent with or contrary to the laws in force. Such an imposition casts “general monitory obligations” upon the intermediary which is against the essence and spirit of exemption imbibed Section 79 of the IT Act 2000.

Further, this mandate asks the online gaming intermediary to determine whether the information is obscene or defamatory, which is essentially a subject matter of judicial adjudication and not what the intermediary should be made to decide.

Moreover, the draft notification talks about a self-regulatory body for online gaming intermediaries. However, the draft notification does not elaborate more on how the self-regulatory body will be established and what will be the composition of it. This leaves a lot of questions unanswered such as who will establish the body or what is the criteria to be a part of the body and causes further difficulties in understanding the legal regime.

IV. THE INTENTION OF THE STATE AND FUTURE OF INVESTMENT

The government of India has been vouching for and encouraging investment in the online gaming sector. The government has launched a website, Invest India, that essentially enlists the reasons for foreign direct investment in India.

“Government believes social as well as economic purpose will be served as people will indulge in more productive activities if revenues (of online gaming companies) fall due to the new 28% tax.”

—Federal Revenue Secretary Sanjay Malhotra in an interview with Reuters.

The government has placed minimal intervention from the government even with the draft notification for amendments. However, the announcement of levying a 28% goods and services tax on online gaming by the government can be highly detrimental to the prospects of foreign direct investment.

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70 Id.
71 See id. (Rule 4B of the draft notification addressed the self-regulatory body to protect the interests referred in Section 69A of the IT Act 2000.).
74 Id.
The announcement of a 28% tax on online gaming came as a shock to prospective investors in the industry. Even a letter was addressed to the Prime Minister of India by the industry expressing their concerns with respect to the survival of the industry. The letter noted that the new tax effectively increases tax payments by 55%.

Reported reasons for such a high rate of taxation are owed to Indian Ministers viewing online gaming as a social evil. The high rate of taxation is thus aimed to curb betting in online gaming and aid in the economy as well. This move along with statements by the government make their intentions and policy on the online gaming sector in India increasingly unclear.

V. CONCLUSION

The online gaming industry of India is one of the growing sectors of the Indian economy and has huge potential to generate substantial revenue. However, the industry is jarred with complex legal regulations and unclear policies by the government. Instead of regulating the industry by amending the IT Rules, 2021, the government should create separate central legislation. Also, it is important to rethink the framework of self-regulatory bodies, keeping in mind the issues discussed in the article, such as the importance of self-regulation in online gaming and the governance of online gaming through intermediary guideline rules.

The governance of online gaming through amending the intermediary guideline rules is not the right step forward, as this would mean that the field of online gaming is governed through the Information Technology Act of 2000, which is not why the act was created in the first place. The area of gaming should be regulated by creating a separate legislation.

Building upon the imperative for simplicity and clarity in regulating India's online gaming industry, it's crucial to highlight the broader benefits of a streamlined legal framework. Such a framework not only fosters industry growth but also enhances regulatory effectiveness and public trust. By prioritizing simplicity, policymakers can facilitate easier compliance for businesses, reducing administrative burdens and associated costs. This, in turn, encourages innovation and investment, driving economic development within the sector. Moreover, clear and concise regulations empower consumers by enabling them to better understand their rights and protections while engaging in online gaming activities. Additionally, a straightforward legal framework allows regulatory authorities to enforce standards more effectively, ensuring a level playing field.

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77 Ohri, supra note 73.
and mitigating risks such as fraud, money laundering, and unethical practices. Ultimately, simplicity in approach and laws can pave the way for a sustainable and responsible online gaming ecosystem in India, promoting industry integrity and consumer welfare. Through thoughtful and strategic legislative reforms, India can harness the full potential of online gaming while upholding the highest standards of governance and accountability.