

## ● SKILL VS CHANCE

# Changing rules of play in gaming sector

**REGULATOR'S GAMBLE.** Why an upcoming law to prevent fraud, misuse of online gaming technology may not be a winner all the way

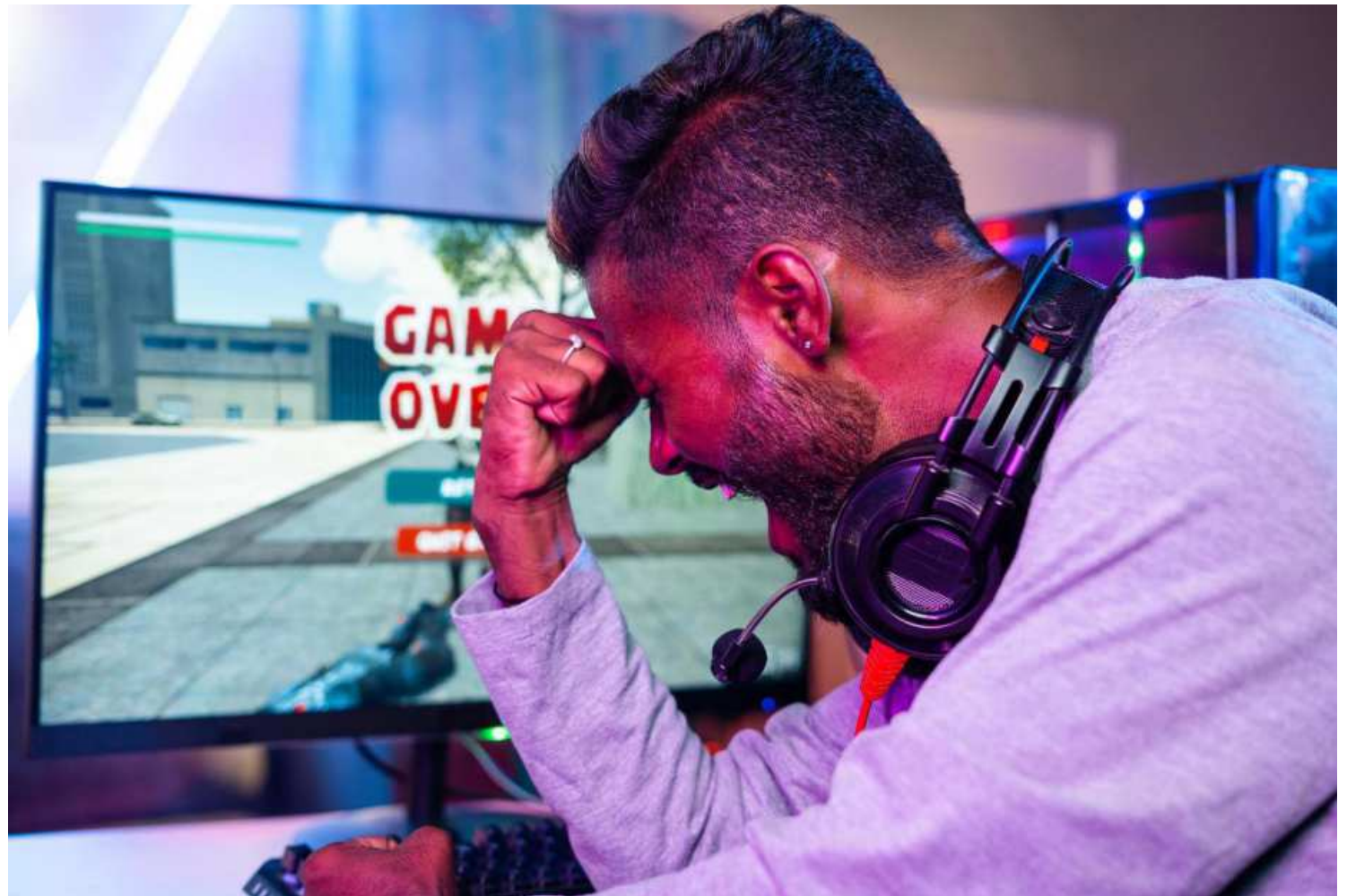
Vasanth Rajasekaran

In India, the gaming industry is regulated predominantly on the basis of whether it is a game of skill or a game of chance. Gambling is a state subject under the Constitution, hence states are empowered to legislate on games of chance and set the threshold for lawful gaming activities. In general, gambling is prohibited under most state laws. However, several states have carved out exemptions, including Goa, Sikkim, Nagaland, Kerala, Arunachal Pradesh, Meghalaya, Maharashtra, and West Bengal.

Where the outcome of a game depends on the mental and physical skill of the players, it would qualify as a game of skill. In *RMD Chamarbaugwala vs Union of India*, the Supreme Court of India recognised that conducting a game of skill is protected under Article 19(1)(g), which provides the freedom to carry out any occupation, trade or business. Previous attempts by some states to ban or prohibit certain skill-based games have been held unconstitutional by the high courts of Andhra Pradesh, Telangana, and Karnataka. Regarding players' right to participate in skill-based games, the High Court of Madras in *Junglee Games India vs State of Tamil Nadu* opined that skilled players had the right to exploit and make a living off their skills. Similarly, in *All India Gaming Federation vs State of Karnataka*, the High Court of Karnataka held that playing games was one of the elements of fundamental freedoms to life and liberty as captured under Articles 19(1)(a) and 21.

## ONLINE GAMING

With the advent of online gaming, their operators face a nightmarish situation in complying with widely varying laws across the country. Thus, for instance, a certain game may be permitted under one state law but prohibited under another's. In *Ravindra Singh Chaudhary vs Union of India*, the High Court of Rajasthan observed that online fantasy games like Dream 11 were



**NEXT CHALLENGE** Despite regulatory hurdles, the Indian mobile gaming market is expected to cross \$1.5 billion in 2022 and reach \$5 billion by 2025 ISTOCK.COM

not games of chance as players needed considerable strategising skill to increase their chance of winning. The decision was later upheld by the Supreme Court. In *Gurdeep Singh Sachar vs Union of India*, the High Court of Bombay rendered a similar decision on the legality of online fantasy games.

Despite the hurdles, the Indian mobile gaming market is expected to cross \$1.5 billion in 2022 and reach \$5 billion by 2025. According to industry body FICCI, revenues of transaction-based games grew 25 per cent, with the number of paying players increasing by 17 per cent from 2020 to 2021. Clearly, there is a market for gaming in India. The

multiple state laws hinder ease of doing business.

State laws are applicable within a state. Therefore, without a law enacted by Indian Parliament, games operated by foreign entities or individuals outside India fall entirely outside the scope of any regulation. Thus, there is a need to revamp the regulatory framework of the gaming industry, with particular emphasis on online gaming.

## ONLINE GAMING BILL

In April 2022, the Online Gaming (Regulation) Bill was tabled in the Lok Sabha. The Bill seeks to regulate online gaming activities to prevent fraud and misuse of online

gaming technology. It also aims to establish an 'online gaming commission' and introduce a licensing mechanism for gaming applications. It proposes to make the operation of a gaming business without licences a cognisable and bailable offence. Experts have pointed out several shortcomings in the Bill. First, the Bill does not distinguish between games of skill and chance. Second, it envisages becoming a central legislation while gambling and betting (a subset of online gaming) are state subjects. No clarification is provided on how the Bill would operate simultaneously with the laws enacted by various states. Third, the Bill overlooks the pre-ex-

isting licensing regime in states such as Goa, Meghalaya and Sikkim. Fourth, and most importantly, the Bill fails to address how data privacy and security concerns would be tackled by monitoring online gaming activities.

Therefore, while the attempt is to establish a central law, several issues need to be relooked. The Bill is certainly a step in the right direction. However, there is still a long way to go before the regulatory framework for the Indian gaming industry can be revamped in line with global best practices.

The writer is the founder and head of Trinity Chambers, Delhi