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ONLINE GAMING INVOLVING REAL MONEY: LEGALLY CORRECT BUT SOCIALLY WRONG

Abstract:-

The evolving landscape of online gaming presents complex legal, social, and ethical challenges. While activities based on skill are recognized as lawful under constitutional principles, games of chance, particularly online money games, are increasingly associated with societal harms such as addiction, financial distress, and criminal activities. Landmark rulings like *R.M.D. Chamarbaugwala v. Union of India* establish that skill-based competitions fall outside gambling regulations, affording them legal protection. Conversely, the rapid growth of online money gaming has prompted the government to introduce a comprehensive Bill banning such activities to safeguard public health, morality, and national security. Despite industry objections rooted in constitutional rights and economic interests, the government emphasizes its constitutional duty to protect societal well-being and regulate activities that threaten social order. A balanced approach, involving proper regulation of lawful gaming sectors and prohibition of illegal platforms, appears crucial. This discourse underscores the importance of an adaptable legal framework that aligns technological advancements with societal needs, ensuring individual freedoms are balanced with public safety. Ultimately, a nuanced, constitutional approach is vital for fostering a sustainable, secure, and responsible digital gaming environment that supports innovation while addressing social concerns.

Keywords: Online Gaming, Games of Skill vs Chance, Legal Regulation, Social Impact

Introduction:

In the realm of gaming, understanding the fundamental differences between **games of skill** and **games of chance** is essential, not only for enthusiasts and players but also for legal and regulatory authorities. While both types of games provide entertainment and potential rewards, they operate on entirely different principles, and these differences directly influence their legal treatment.

Games of Skill

Definition:

Games of skill are activities where the outcome depends primarily on the player's knowledge, strategic thinking, and proficiency. Success in these games results from the player's ability to apply skill, practice, and experience.

Characteristics:

- **Strategy and Decision-Making:**
Players make informed choices, plan moves, and develop strategies that significantly impact the result. For example, chess involves tactical planning, while poker requires probability assessment and psychological strategy.
- **Practice and Improvement:**
Performance improves with practice, and experience over time enhances the chances of success. Skilled players develop better techniques, reflexes, and understanding of the game.
- **Player Control:**
Players have substantial control over the outcome. Their decisions, reactions, and skills influence the result, with luck playing a minimal role.
- **Examples:**
 - Chess
 - Poker (where skill in bluffing and probability matters)
 - Esports (like Dota 2, Counter-Strike)
 - Sports betting (based on knowledge of the sport and teams)
 - Fantasy sports leagues

Games of Chance**Definition:**

Games of chance, also known as luck-based games or gambling activities, are games where the outcome is primarily determined by random or unpredictable factors beyond the player's control.

Characteristics:

- **Randomness:**
The results depend on elements like dice rolls, card shuffles, or spinning wheels—events driven by chance rather than skill.
- **Probability and Odds:**
Success is largely influenced by chance, with outcomes described by probability models and odds, making results uncertain and largely unpredictable.
- **Limited Player Control:**
Players have little to no influence over the final outcome, which is predominantly governed by luck.
- **Examples:**
 - Slot machines
 - Roulette
 - Lottery draws
 - Scratch cards
 - Most casino games like baccarat, craps

The distinction between **games of skill** and **games of chance** carries significant legal consequences, particularly concerning gambling laws and regulations.

- **Legality and Regulation:**
 - **Games of Skill:**

Often fall outside the scope of gambling legislation or are subjected to less stringent regulations. They are generally regarded as lawful activities because they are based on expertise rather than luck, and thus less susceptible to exploitation or societal harm.
 - **Games of Chance:**

Are typically classified as gambling activities and are heavily regulated. These include licensing, restrictions on participation, and consumer protection measures to prevent fraud, addiction, and exploitation.
 - **Skill-Based Gaming:**

Emerging trends, such as esports tournaments and fantasy sports, are increasingly recognized as skill-based activities and are sometimes exempt from gambling restrictions, provided they meet specific legal criteria.
 - **Blurring Lines:**

Certain activities blur the line between skill and chance—for example, variations of poker, which combines luck and skill, or fantasy sports with elements of both. These create legal debates regarding their classification and regulation.

Thus, understanding these core distinctions helps clarify the legal landscape surrounding gaming and gambling. Games of skill emphasize player expertise and generally enjoy greater legal freedom, whereas games of chance are strictly regulated due to their inherent risk of fostering gambling-related issues. The differentiation continues to evolve with technological advancements and changing legal perspectives, influencing how various gaming activities are regulated worldwide.

Why online gaming (involving real money) is legally correct:-

Online gaming companies claim that their games involve lot of skills. Thus they fall under game of skill rather than game of chance. Below is supreme Court ruling which treats games of skills as legally correct.

Supreme Court : The Supreme Court, in *R.M.D. Chamarbaugwala v. Union of India*, established that competitions where skill predominates over chance are not gambling and thus fall outside the ambit of gambling prohibitions. High Courts have extended this approach to online games, noting that if a game substantially depends on a player's skill (such as strategy, knowledge, or judgment), it is considered a game of skill and can legally be played even for stakes.

Details of R.M.D. Chamarbaugwala v. Union of India case:-

1. **Case is fought between whom?**
 - **Petitioners:** Engaged in promoting and conducting prize competitions across different states of India. They challenged the constitutionality of certain provisions of the Prize Competitions Act, 1955, and the related rules.

- **Respondents:** Represented primarily by the Government of India (through the Solicitor-General and advocates), supporting the validity of the Act and its provisions, and defending the regulations imposed under it.

1. Arguments of petitioner and respondent in detail

Petitioners' Arguments:

- **Definition of 'Prize Competition' (Section 2(d)):** The petitioners argue that this broad definition includes both purely chance-based (gambling) and skill-based competitions. Consequently, provisions aimed at restricting gambling affect even competitions that involve a substantial degree of skill.
- **Unworkability of the Provisions:** The conditions laid down in Sections 4 and 5 (limiting prize values and requiring licensing), as well as Rules 11 and 12 (regulating entry fees and maintaining registers), are unworkable and restrict the fundamental right to carry on business under Article 19(1)(g).
- **Violation of Fundamental Rights:** The restrictions, they claim, unjustifiably encroach upon their right to carry on lawful business. They argue the restrictions are unreasonable and amount to an unreasonable prohibition rather than regulation.
- **Rights under Article 19:** The petitioners contend that the provisions should only apply to gambling, not to skill-based competitions, and that applying these restrictions indiscriminately violates their rights under Article 19(1)(g).
- **Inseparability of the Act:** Because the Act is a single legislative enactment, the petitioners argue that if parts of it are found unconstitutional (restrictions on skill-based competitions), the entire law must be struck down, citing it as inseparable.

Respondents' Arguments:

- **Scope of 'Prize Competition' (Section 2(d)):** The respondents argue that the definition primarily encompasses gambling or chance-based competitions, not skill-based ones. They contend this was the original legislative intent based on the history and the resolutions passed by State legislatures under Article 252, which aimed to regulate gambling activities.
- **On the Unworkability of the Restrictions:** The respondents argue that the restrictions (Sections 4 and 5, Rules 11 and 12) are reasonable and within the legislative competence, aimed at curbing illegal gambling. They claim the law is a regulation of gambling, which is not protected under Article 19(1)(g), and thus, the restrictions are valid.
- **Severability of the Act:** The respondents contend that even if the Act applies to skill-based competitions, the restrictions are severable. They argue the law was meant to regulate only gambling competitions, and as such, the provisions can be upheld for that category alone, without invalidating the entire Act.
- **On the Nature of Gambling:** It is emphasized that gambling activities are *res extra commercium* (beyond commerce), and not within the scope of trade or business protected under Article 19(1)(g). As such, restrictions on gambling are justified, even if they affect certain lawful businesses.

1. Main issues involved in detail

- **Scope of ‘Prize Competition’ (Section 2(d)):** Whether the definition includes skill-based competitions or only those based on chance.
- **Constitutionality of the restrictions (Sections 4 and 5, Rules 11 and 12):** Whether these provisions unjustifiably restrict the right to carry on business or regulate gambling activities within the meaning of Articles 19(1)(g) and 19(6).
- **Validity of the law as a whole or severability:** Whether the law is inseverable if certain provisions are unconstitutional and whether the valid portions can stand independently if other parts are struck down.
- **Characterization of ‘Gambling’ vs. ‘Skill-based’ competitions:** Whether gambling activities are wholly unprotected under Article 19(1)(g), while skill-based competitions are protected, affecting the scope of regulation.
- **Legislative intent and procedural history:** Whether the law was intended to control only gambling and whether the legislative records support this.

1. Judgement in detail

The Court’s decision can be summarized as follows:

- **Application of the Law to Different Types of Competitions:**
The Court found that the true legislative intent, based on the history, resolutions, and language, was to regulate only those competitions that are gambling in character—i.e., where success depends substantially on chance. The definition in Section 2(d) was broad, and including skill-based competitions was not supported historically or legally.

Interpretation and Legislative Intent:

- The Court emphasized that the language of Section 2(d) is wide and unqualified, which could theoretically include both chance-based and skill-based competitions. However, the actual legislative intent—based on history, resolutions, and the purpose of the law—was to regulate gambling activities, which are inherently linked with chance and luck, not skill.
- The resolutions passed by state legislatures under Article 252, the object and preamble of the Act, and the historical development indicate that the primary target was gambling in the form of competitions offering prizes where chances of winning are predominantly chance-based.

On the scope of ‘Prize Competition’:

- The Court held that the definition of ‘prize competition’ as contained in Section 2(d), although broad, should be construed in light of the legislative history and purpose. Therefore, the Act was intended to regulate only those competitions that are gambling, not skill-based competitions, which are protected as legitimate trade or business under Article 19(1)(g).

On the constitutionality of sections 4 and 5, and Rules 11 and 12:

- **For gambling competitions:**
The Court found these provisions to be reasonable restrictions that aim at controlling primarily gambling activities. They are within the legislative competence and do not violate Article 19(6). These restrictions were upheld.

- **For skill-based competitions:**

Because the law's provisions are primarily aimed at gambling and are interwoven with restrictions on chance-based competitions, the Court recognized that applying them to non-gambling (skill-based) competitions would be unreasonable. Since the law is a single enactment, there is a question of severability.

On severability:

- The Court applied the principle that if a law contains both valid and invalid parts, and they are separable, the invalid parts can be struck down without invalidating the entire law.
- The Court reasoned that competitions involving substantial skill are **distinct and separable** from gambling competitions.
- The restrictions (sections 4 and 5, Rules 11 and 12) are **aimed at gambling**—not at skill-based competitions—so, these provisions are **severable** as applied solely to gambling competitions.
- The law, therefore, remains valid **for gambling competitions**, but the restrictions **cannot be enforced** against skill-based competitions—they are unconstitutional in that context due to their unreasonable scope and encroachment on fundamental rights.

Final ruling:

- The Court dismissed the petitions, declaring that **the law applies only to gambling and not to skill-based competitions**.
- The **restrictions of Sections 4 and 5, Rules 11 and 12 are valid and enforceable only in respect of gambling competitions**.
- The **provisions cannot be extended** to regulate skill-based competitions and **must be struck down** insofar as they attempt to do so.
- The **law is severable**, and the **valid parts stand**, but the **unconstitutional restrictions are void** in their application to skill-based competitions.

Summary of the decision:

- The **definition of 'prize competition' is broad but to be interpreted** in the context of legislative history and purpose.
- The **law targets gambling, not skill-based competitions**.
- **Sections 4 and 5, Rules 11 and 12 are valid** as far as regulating gambling activities.
- These provisions are **unconstitutional** if applied to **competitions involving substantial skill**.
- The **law is severable**, and invalid provisions **cannot** be justified under the pretext of regulating lawful skill-based competitions.

Why online gaming(involving real money) is socially wrong:-

What World Health Organization says about online gaming:-

The ICD (International Classification of Diseases) records and reports health and health-related conditions globally, ensuring interoperability and comparability of digital health data. It contains categories such as diseases, disorders, and health conditions, and the inclusion of a condition in the ICD depends on its utility and evidence of the health issue. Gaming

Disorder is defined in ICD-11 as a pattern of gaming behavior characterized by impaired control over gaming, increased priority given to gaming over other activities, and continuation or escalation of gaming despite negative consequences.

Gaming Disorder is identified when the behavior causes significant impairment in personal, family, social, educational, or occupational functioning, and the pattern should be evident for at least 12 months. Its inclusion in ICD-11 is based on reviews of available evidence and expert consensus worldwide, reflecting the need for standardization of this disorder. Awareness of the disorder will help health professionals focus on prevention and treatment, and the development of targeted treatment programs. Although studies indicate only a small proportion of gamers develop gaming disorder, gamers should monitor the amount of time spent on gaming, exclusion from other daily activities, and changes in physical, psychological, or social health linked to gaming behavior.

Why Indian Government says online gaming (involving real money) is social problem:-

STATEMENT OF OBJECT AND REASONS

Recent advances in information and communication technologies have spurred the emergence of new digital entertainment avenues, notably online gaming, which has gained immense popularity among youth. The online gaming industry is a fast-expanding segment of the creative economy, fostering innovation, creating employment opportunities, and boosting exports. India, with its skilled youth, robust technological capabilities, and large domestic market, is well-positioned to become a global leader in this sector. However, despite its growth potential, the online gaming ecosystem faces significant challenges, including the absence of a dedicated institutional support system and a comprehensive legal framework, which hampers infrastructure development and regulatory oversight.

The ecosystem encompasses various segments such as e-sports, social casual games, educational games, and money games involving monetary rewards. The unchecked proliferation of online money games, which offer real cash prizes, has led to serious social, economic, and psychological issues, including addiction, financial hardship, and instances of fraud. Vulnerable groups like youth and low-income individuals are particularly at risk due to their easy access to these games through mobile devices, a situation exacerbated by aggressive marketing tactics and celebrity endorsements. The algorithms powering these money games are often secretive and manipulated to maximize user engagement, sometimes operated by bots or undisclosed agents, which undermines fairness, transparency, and can foster harmful behaviors, thereby posing public health concerns.

These online money gaming platforms also have a detrimental impact on families and society at large, being linked to illegal activities such as money laundering, terrorism funding, and financial fraud, which pose serious threats to national security. Many offshore providers operate beyond national regulations, often bypassing laws, evading taxes, and creating enforcement challenges due to their cross-border operations and jurisdictional complexities. The widespread presence of such unregulated

platforms complicates efforts to curb their negative effects, highlighting the need for stricter control measures. Given the harmful impacts and the complex technical nature of online money games, experts recommend a complete prohibition of these activities rather than attempting regulation. While promoting the legitimate online gaming industry is essential for fostering innovation and economic growth, it is equally critical to address the risks posed by illegal online money games, particularly concerning consumer rights, health, societal order, and national security. To this end, the Union Government should oversee the industry, categorizing different types of online games and crafting specific legal frameworks suited to each sector's unique issues. The proposed Bill aims to establish a strong legal foundation to ban online money gaming, regulate and support the broader sector, and create a safe, responsible digital environment for users while encouraging innovation and economic development. Thus government passed a bill against online gaming which were offering monetary rewards (in return for a fee initially deposited). This bill has been passed in both houses. Below is summary of bill:-

Promotion and Regulation of Online Gaming Bill, 2025

The Bill has a provision of complete ban on offering, operating, or facilitating online money games. There is a provision of imprisonment up to three years and fine up to one crore rupees or both in case of violation of the law related to online money gaming. In case of repeat offences, it will attract enhanced penalties, including imprisonment of 3 to 5 years and fines up to two crore rupees. The bill will establish a uniform and national-level legal framework in the public interest. The Bill will protect the country's youth from predatory online Real Money Gaming apps, like Poker, Rummy and other Card games, which manipulate them through misleading monetary return promises, that leaves entire families in financial distress. The introduction of the Bill reflects the Government's commitment to a safe, secure, and innovation-driven Digital India that boosts creativity, safeguards citizens, and strengthens national security. **Bill encourages e-sports, online social gaming**

Grounds on which online gaming companies can challenge this bill:-

Legal Grounds: Online gaming firms are preparing court challenges on five fronts: vague definitions of online gaming involving money, violation of constitutional rights (Articles 19(1)(g) and 19(1)(a)), arbitrary regulation breaching Article 14, federal overreach into state powers, and contradictions with existing IT Rules.

Industry and Political Pushback: The sector, valued at over ₹2 lakh crore and contributing ₹20,000 crore in taxes, argues the ban threatens jobs, startups and revenue. Karnataka's IT Minister has publicly criticised the move as misguided and harmful.

Alternative Approach: Experts and industry leaders warn prohibition may drive users to offshore betting platforms, urging calibrated regulation—licensing, consumer safeguards and skill-chance distinction—over blanket restrictions.

My observations:-

Firstly, while online gaming firms may argue that vague definitions of online gaming involving money violate their rights, it is important to

recognize the State's fundamental duty under Article 51A(h) to protect citizens from harmful activities that threaten their health, safety, and social well-being. Regulating online money games aligns with the constitutional obligation to safeguard public interest, especially considering the social and economic harms caused by illegal gambling, addiction, and fraud. The state's authority to impose restrictions for reasons of public order and morality is also supported under Article 19(2), which permits reasonable restrictions to be placed on fundamental rights in the interest of sovereignty, integrity, and public order.

Secondly, the challenge based on violation of constitutional rights like Article 19(1)(g) (right to practice any profession or carry on any occupation) and Article 19(1)(a) (freedom of speech and expression) overlooks the fact that these rights are subject to reasonable restrictions under Article 19(2). The government's measures target illegal activities that undermine the rule of law, public morality, and financial security, which are legitimate grounds for restrictions. The regulation aims to protect citizens' rights to a safe and healthy environment, balancing individual freedoms with societal interests, consistent with the constitutional principle of reasonable restrictions.

Thirdly, accusations of arbitrary regulation breaching Article 14 (equality before the law and equal protection of laws) do not hold when the legislation is based on rational classifications aimed at addressing distinct needs. Online money gaming involves specific risks and harms that justify differentiated regulations, such as banning illegal gambling platforms while allowing legitimate, regulated gaming sectors. The state's role in establishing such distinctions and crafting targeted laws is within its constitutional ambit to promote social justice and protect vulnerable groups, which satisfies the test of reasonableness and non-arbitrariness articulated in Article 14.

Lastly, regarding claims of federal overreach into states' powers, it is essential to note that regulation of online gaming involves national concerns related to cyber laws, financial security, and public health, which can justify centralized legislation under the Union's constitutional authority. While states have jurisdiction over local laws, issues like illegal online money gaming transcend regional boundaries, necessitating a uniform approach for effective regulation. Properly calibrated legislation, respecting the constitutional framework, can strike a balance between federal authority and state interests, ensuring an overarching protective legal regime in line with the constitutional duty to safeguard societal interests.

Conclusion:-

In conclusion, the evolving landscape of online gaming underscores the intricate balance between individual rights, societal well-being, and legal regulation. Legally, activities rooted in skill are recognized as legitimate under constitutional principles, as exemplified by landmark rulings like *R.M.D. Chamarbaugwala v. Union of India*, which affirm that skill-based competitions fall outside the scope of gambling laws. This distinction provides a framework that allows certain gaming activities to thrive under the protection of fundamental rights, particularly Article 19(1)(g). However, the rise of online money gaming with its associated risks of

addiction, fraud, and societal harm has prompted government intervention. The recent Bill banning online money games exemplifies a proactive approach to safeguarding public health, morality, and national security, even as it faces challenges from industry stakeholders citing constitutional rights and economic concerns.

Despite the industry's arguments, it is paramount to recognize the government's constitutional mandate to protect society from activities that threaten health, safety, and social order, especially when unregulated online money gaming exacerbates issues like financial distress and criminal activities. Proper regulation, rather than blanket bans, might serve as a more effective and balanced approach—addressing illegal platforms while supporting legitimate, skill-based gaming sectors. Ultimately, the legal framework must adapt to technological advancements and societal needs, ensuring that individual freedoms do not come at the expense of public welfare. The ongoing debate highlights the necessity of a nuanced, constitutional approach that prioritizes societal interests, safeguards vulnerable groups, and promotes sustainable growth in the digital gaming industry.

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