

Online Gaming and Betting – India Responds - The Promotion and Regulation of Online Gaming Act, 2025

The Promotion and Regulation of Online Gaming Act, 2025 (hereinafter "the Act"), passed by the Parliament of India in August 2025, represents the most significant and disruptive legislative intervention in the nation's digital economy to date. The legislation introduces a bifurcated policy framework: on one hand, it seeks to actively promote and regulate nascent sectors like e-sports and online social gaming; on the other, it imposes a complete and unequivocal prohibition on the entire spectrum of online money gaming.

For over seven decades, Indian jurisprudence, solidified by landmark Supreme Court rulings, has protected games where skill is the predominant factor as legitimate trade and business activities under Article 19(1)(g) of the Constitution. The Act, through its expansive definition of "online money game" to include any game played for stakes "irrespective of whether such game is based on skill, chance, or both," directly challenges this foundational legal principle.

The economic ramifications of the Act are severe and immediate. The prohibition is poised to act as a "death knell" for the domestic real-money gaming (RMG) industry, a sector valued at over ₹2 lakh crore, which contributes an estimated ₹20,000 crore in annual tax revenue and supports over 200,000 jobs.

Section 2: Anatomy of the 2025 Act

The Act's definitions, laid out in Section 2, are not merely technical clarifications but are the primary legal instruments for executing its policy objectives. They surgically divide the online gaming ecosystem into three distinct, legally defined categories, each with a different regulatory fate.

'E-sport' (Section 2(c)): An 'e-sport' is defined as an organized, competitive online game where the outcome is determined "solely" by skill-based factors like physical dexterity, mental agility, or strategic thinking. It must be recognized under the forthcoming National Sports Governance Act, 2025, and registered with the new Authority. This definition effectively legitimizes competitive video gaming as a sport, separating it from the ambit of gambling.

'Online Social Game' (Section 2(i)): This category covers the vast market of casual, educational, and recreational games. It is defined as a game that does not involve staking money with the expectation of monetary gain. The definition allows for monetization through subscription fees or one-time access payments, provided such payments are not in the nature of a stake or wager.

'Online Money Game' (Section 2(g)): An 'online money game' is defined as any online game played by paying fees, depositing money, or other stakes with the "expectation of winning which entails monetary and other enrichment." The critical, and revolutionary, component of this definition is the clause that it applies "irrespective of whether such game is based on skill, chance, or both". By making the skill-chance distinction legally irrelevant, this definition directly targets and encompasses platforms offering fantasy sports, rummy, and poker for stakes—games that courts have historically protected as games of skill. This legislative language is a deliberate and strategic move to bypass decades of judicial interpretation and bring the entire real-money gaming sector under a prohibitory regime.

The Prohibitory Framework: Sections 5, 6, and 7

The Act's prohibitory intent is executed through a tripartite framework designed to dismantle the entire operational ecosystem of online money gaming. This is not merely a ban on the games

themselves but a comprehensive blockade targeting their provision, promotion, and financial underpinnings.

- **Section 5 (Prohibition of online money game and online money gaming service):** This is the foundational prohibition. It makes it illegal for any person to "offer, aid, abet, induce or otherwise indulge or engage in the offering of online money game and online money gaming service".
- **Section 6 (Prohibition of advertisement related to online money game):** This section targets the marketing and public outreach of RMG platforms. It prohibits any person from making or being involved in any advertisement, across any media including digital platforms, that "directly or indirectly promotes or induces any person to play any online money game".
- **Section 7 (Prohibition of transfer of fund):** This is arguably the most potent provision, designed to sever the financial lifeline of the industry. It states that "No bank, financial institution, or any other person facilitating financial transactions shall engage in, permit, aid, abet, induce or otherwise facilitate any transaction or authorisation of funds towards payment for any online money gaming service".

Together, these three sections create an interlocking and comprehensive ban. The government's strategy is clear, if a service cannot be offered (Section 5), cannot be advertised (Section 6), and cannot be paid for (Section 7), it cannot exist in any meaningful form within the legal economy.

The Penal Regime: the Offences, Penalties, and Enforcement

The Act establishes a formidable penal and enforcement regime, underscoring the gravity with which the government views violations. The penalties are severe and designed to create a strong deterrent effect.

- **Stringent Penalties (Section 9):**
 - Offering an online money gaming service (violating Section 5) or facilitating funds for it (violating Section 7) is punishable with imprisonment for up to three years, a fine up to ₹1 crore, or both.
 - Advertising an online money game (violating Section 6) attracts imprisonment for up to two years, a fine up to ₹50 lakh, or both.
 - The Act includes provisions for enhanced penalties for repeat offenders. A second conviction for offering RMG services or facilitating funds carries a mandatory minimum imprisonment of three years (extendable to five) and a minimum fine of ₹1 crore (extendable to two crores) [Section 9(4)].
- **Serious Classification of Offences (Section 10):** In a significant move, offences under Section 5 (offering RMG) and Section 7 (facilitating funds) are classified as **cognizable and non-bailable**. This empowers the police to arrest suspects without a warrant and makes it significantly more difficult for the accused to secure bail, a measure typically reserved for serious crimes.
- **Corporate Liability (Section 11):** The Act incorporates robust provisions for corporate liability. Where an offence is committed by a company, every person who was in charge of and responsible for the conduct of the business, as well as the company itself, shall be deemed guilty. There is also a specific exemption for independent and non-executive directors not involved in decision-making.
- **Sweeping Enforcement Powers (Sections 15 & 16):** The Act grants extensive powers of investigation and enforcement to authorized officers. Section 16 allows such officers to "enter any place, whether physical or digital, and search and arrest without warrant any person"

reasonably suspected of committing an offence under the Act. The definition of "any place" is expansive, including premises, vehicles, computer resources, and virtual digital spaces, and grants the officer power to override access controls.

Powers, Functions, and Discretion of the Proposed Online Gaming Authority

To oversee this new bifurcated regime, Section 8 of the Act provides for the establishment of a central "Authority on Online Gaming". The Central Government may either constitute a new body or designate an existing one to perform the functions under the Act.

The key powers vested in the Authority include:

- **Determination and Classification:** The Authority is empowered, either upon receiving an application or *suo motu*, to determine "whether a particular online game is an online money game or otherwise". This gives the Authority significant discretionary power to classify games and decide their legal fate.
- **Registration:** The Authority will be responsible for recognizing, categorizing, and registering permissible online games (i.e., e-sports and online social games) in a manner to be prescribed by the government.
- **Enforcement and Oversight:** The Authority can issue binding directions, orders, guidelines, and codes of practice to all persons offering, organizing, or facilitating any online game. It is also empowered to handle complaints and grievances from users related to online games.

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