

ERGO

Analysing developments impacting business

ONLINE GAMING AND NO WORK, MAKES JACK A GAMBLER BOY: TAMIL NADU'S PROPOSED ORDINANCE TO REGULATE ONLINE GAMING

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Introduction

- The Tamil Nadu cabinet has approved an ordinance on 26 September 2022 (Ordinance) to “ban” online games with stake in the state of Tamil Nadu. The announcement was made via a press release. The Ordinance will take effect once it receives the governor’s assent.
- The move comes on the heels of a pending appeal before the Supreme Court of India (Supreme Court) by the Tamil Nadu government challenging a Madras High Court (Madras HC) decision that struck down a November 2020 amendment banning online games played with stakes. The Madras HC had *vide* an order dated 3 August 2021 overturned the amendment as *ultra vires* the Constitution of India, 1950 (Constitution of India).
- Just when one of India’s fastest growing industry expected legislatures to take note of various judicial decisions drawing distinction between ‘games of skill’ and ‘games of chance’ and seize the opportunity to formulate regulations and policies that are more attuned to the online gaming businesses, the timing of this development does not augur well for the Indian online real money gaming industry.

Background

- The government’s discernible stance on banning online games played with stakes dates back to 20 November 2020 when it promulgated an ordinance amending the Tamil Nadu Gaming Act, 1930. Post the ordinance, the state legislature had *vide* the Tamil Nadu Gaming and Police Laws (Amendment) Act of 2021 (Amendment) on 4 February 2021 prohibited all forms of games being conducted in cyberspace, irrespective of the game involved being a game of mere skill, if such game is played for a wager, bet, money or other stake (refer to our [Ergo](#)).
- The Amendment was overturned by the Madras HC stating that the same has failed the ‘least intrusive’ test and fallen afoul of Article 19(1)(g) and Article 14 of the Constitution of India.
- Aggrieved by the Madras HC decision, the state government had moved to the Supreme Court in December 2021 seeking a restoration of the ban on online

games. The matter is currently *sub judice* in the Supreme Court.

- In parallel, the new state government which took over in May 2021 (State Government) had set up a committee on 10 June 2022, under the chairmanship of Madras HC retired Justice K. Chandru to analyse the negative effects of online games and make recommendations for a new law prohibiting 'online gambling games'.
- The committee presented its report before the cabinet on 27 June 2022 recommending the prohibition of these games as well as advertisements encouraging people to play them.
- The State Government also stated that it solicited feedback from key stakeholders as well as the general public via email in order to draft the ordinance with advice from the state law ministry before approving the Ordinance. Now, the State Government will be seeking the governor's approval to promulgate the Ordinance.

Comment

- For far too long, the regulatory ambiguities in the gaming sector have become an impediment to the growth of this sector and in achieving its potential.
 - While the contents of the Ordinance are unknown at this time, it will be interesting to see the scope of the Ordinance, and whether 'games of skill' are exempted from its ambit. The Supreme Court has observed multiple times that the gaming laws in various states do not apply to games where there is a preponderance of skill over chance. Therefore, games where skill dominates / preponderates over chance typically enjoy the protection and privileges which are guaranteed to all other business, trade and profession under Article 19(1)(g) of the Constitution of India. The Ordinance, if overarching, will be in conflict with the settled position of various games being classified as 'games of skill' and, therefore, falling outside the purview of the gambling laws.
 - Lately, various courts in India have also struck down state specific legislatures intending to ban real money skill gaming (refer to our ERGOs [here](#) and [here](#)). One would have expected that decisions would have made the state governments come up with a progressive regulatory framework aiming at increasing the revenue for the governments and creating employment.
 - With the support of the legislatures in formulating a clear policy in place for the gaming sector, India's gaming industry can grow exponentially and can take bigger and faster strides in boosting the economy (including Government coffers), creating employment and injecting investments in India. One is hopeful that this ordinance will be progressive and reflect the growing interest of players across demographics, and be an instrument of positive change and development for the sector.
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