

ONLINE GAMING AND INDIAN LAW: THE CONFLICT BETWEEN REGULATION, GAMBLING, AND FUNDAMENTAL RIGHTS

by

*Dr. Prashant Yadav,
Advocate*

ABSTRACT

The rapid expansion of online real-money gaming in India has generated a sharp constitutional collision between the State's power to prohibit activities harmful to public health, order and morality, and residual claims of economic liberty under Article 19(1)(g) and personal autonomy under Article 21. This paper examines that collision after two decisive 2025–26 developments: the Promotion and Regulation of Online Gaming Act, 2025, which imposes a pan-India prohibition on all “online money games” irrespective of skill or chance, and the Supreme Court's judgment in *State of Tamil Nadu v. Junglee Games India Pvt. Ltd.*, which held that the introduction of monetary stakes converts an activity into betting and gambling under Entry 34 of List II, renders it *res extra commercium*, and strips it of Article 19(1)(g) protection. The paper argues that the legislative and judicial displacement of the classical skill–chance distinction, anchored in *R.M.D. Chamarbaugwala* (1957) and subsequent High Court jurisprudence, has produced a uniform prohibition of unprecedented breadth. It examines three interlocking tensions: federal competence arising from Parliament's occupation of a traditionally State field; proportionality and arbitrariness challenges under Articles 14 and 19(1)(g) now pending in *Head Digital Works Pvt. Ltd. v. Union of India*; and the normative implications of characterising every smartphone as a “virtual common gambling house.” While the regulatory response rests on legitimate and documented concerns of addiction, financial ruin and money-laundering, its categorical character leaves unresolved questions of overbreadth, legislative competence and the outer limits of economic liberty in the digital economy.

Keywords: online gaming, *res extra commercium*, Entry 34 List II, Article 19(1)(g), skill–chance doctrine, legislative competence, proportionality

1. Introduction: The Digital Collapse of the Skill–Chance Boundary

India's constitutional treatment of real-money gaming has for seven decades rested on a single analytical device: the substantial-skill test first articulated in 1957.¹ That test drew a line between competitions in which outcome depended predominantly on skill, protected as trade under Article 19(1)(g), and games of chance, treated as gambling and placed outside the constitutional pale as *res extra commercium*.² Two developments between 2025 and 2026 have collapsed that line. The Promotion and Regulation of Online Gaming Act, 2025 imposes a blanket, nationwide prohibition on all “online money games,” expressly discarding the skill–chance distinction as a basis for permitting stake-based play.³ Months later, the Supreme Court's judgment in *State of Tamil Nadu v. Junglee Games India Pvt. Ltd.* held that the introduction of a monetary stake, not the underlying skill content of a game, is what converts an activity into betting within the meaning of Entry 34 of List II, and that such betting is *res extra commercium* regardless of skill.⁴ Read together, the statute and the judgment complete a paradigm shift: the constitutional sanctuary that skill-based real-money gaming enjoyed since 1957 no longer exists in any general form.

This paper argues that the shift is doctrinally coherent and empirically grounded in documented public-health harms, yet remains constitutionally incomplete. Three tensions remain open. First, whether Parliament possessed legislative competence to enact a uniform national prohibition in a field, betting and gambling, historically reserved to the States under Entry 34 of List II. Second, whether the categorical character of the prohibition, extending even to formats involving overwhelming skill, survives scrutiny under Articles 14 and 19(1)(g). Third, what residual space, if any, Article 21 preserves for personal autonomy once economic liberty has been foreclosed. These tensions are presently before the Supreme Court in the transferred petitions in *Head Digital Works Pvt. Ltd. v. Union of India*, and their resolution will determine whether the 2025–26 paradigm shift is final or merely provisional.⁵

1.1 The Pre-2025 Landscape

¹R.M.D. Chamarbaugwala v. Union of India, AIR 1957 SC 628 (India).

²State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699 (India).

³The Promotion and Regulation of Online Gaming Act, No. 32 of 2025, § 5, India Code (2025).

⁴State of Tamil Nadu v. Junglee Games India Pvt. Ltd., 2026 INSC 594 (India).

⁵Head Digital Works Pvt. Ltd. v. Union of India, T.C.(C) No. 133 of 2025 (Sup. Ct. India) (transferred case pending as of Aug. 2026).

Before 2025, India's online real-money gaming sector operated under a patchwork of State legislation superimposed on the classical skill–chance test. States including Tamil Nadu, Karnataka, Andhra Pradesh and Telangana attempted at various points to prohibit or restrict online rummy, poker and fantasy sports, and several of these attempts were struck down by High Courts on the ground that games of substantial skill enjoyed Article 19(1)(g) protection even when played for stakes.⁶ This left a jurisdictionally fragmented but commercially significant industry, valued in the hundreds of billions of rupees, operating on the strength of judicial protection rather than settled central legislation.⁷

1.2 Thesis and Roadmap

The remainder of this paper proceeds in five parts. Section 2 reconstructs the classical skill–chance doctrine to establish what has been displaced. Section 3 analyses the 2025 Act and the *Junglee Games* judgment as jointly responsible for that displacement. Section 4 examines the federal competence question raised by central occupation of a State List field. Section 5 tests the categorical prohibition against Articles 14, 19(1)(g) and 21. Section 6 concludes that the paradigm shift, though earned on the public-health record, leaves open constitutional questions that only the pending *Head Digital Works* litigation can resolve.

2. The Classical Doctrine: Skill, Chance and the Limits of State Power

2.1 R.M.D. Chamarbaugwala and the Preponderance Test

In two companion 1957 judgments, the Supreme Court considered the constitutionality of legislation regulating prize competitions conducted through newspapers.⁸ In *R.M.D. Chamarbaugwala v. Union of India*, the Court read down the Prize Competitions Act, 1955 to apply only to competitions of a gambling nature, holding that competitions in which success

⁶*Junglee Games India Pvt. Ltd. v. State of T.N.*, 2021 SCC OnLine Mad 2762; see also *State of Tamil Nadu v. Junglee Games India Pvt. Ltd.*, 2026 INSC 594, ¶¶ 33–34 (India) (recounting the litigation history).

⁷See Rahul Matthan et al., *The Promotion and Regulation of Online Gaming Act, 2025 – Redrawing India's Online Gaming Landscape*, Trilegal (Oct. 29, 2025) (noting an estimated INR 232 billion online gaming market in 2024).

⁸*R.M.D. Chamarbaugwala v. Union of India*, AIR 1957 SC 628 (India); *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699 (India).

depended to a substantial degree on skill fell outside the Act's proper scope.⁹ In the companion case, *State of Bombay v. R.M.D. Chamarbaugwala*, a five-judge bench went further and held that gambling, understood as an activity depending predominantly on chance, was extra commercium and therefore outside the protection of Article 19(1)(g) and Article 301 altogether.¹⁰ Read together, the two judgments established what later commentary termed the preponderance test: an activity in which skill substantially predominates over chance is a protected trade; an activity in which chance predominates is gambling, and the State may prohibit or regulate it without engaging Article 19(1)(g) at all.

2.1.1 The Distinction between Competitions of Skill and Wagering Contracts

The preponderance test drew a further, related distinction between playing a game of skill, which is protected, and wagering on the uncertain outcome of any game, which the Court had already indicated could constitute a separate transaction irrespective of the game's skill content. This latent tension, between the game itself and the act of staking money on it, would resurface as the central battleground sixty-nine years later in *Junglee Games*.

2.1.2 Subsequent High Court Affirmation of Online Rummy, Poker and Fantasy Sports

Following *State of Andhra Pradesh v. K. Satyanarayana*, which applied the preponderance test to hold rummy a game of substantial skill, successive High Courts extended the same reasoning to online formats of rummy, poker and fantasy sports, treating the medium of play, whether a physical table or a digital platform, as immaterial to the skill-chance inquiry.¹¹

2.2 The Pre-Junglee Games High Court Consensus

By the early 2020s a broad, though not universal, High Court consensus had formed: State legislation purporting to prohibit or criminalise online rummy and poker, when played for stakes, was struck down as an unconstitutional infringement of Article 19(1)(g), provided the game in question was shown to be substantially skill-dominant. The Madras High Court's 2021 decision striking down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 exemplified this approach, holding that Entry 34 of List II could not be stretched to cover betting

⁹*R.M.D. Chamarbaugwala v. Union of India*, AIR 1957 SC 628 (India).

¹⁰*State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699, 1957 SCR 874 (India).

¹¹*State of Andhra Pradesh v. K. Satyanarayana*, AIR 1968 SC 825 (India).

on games of skill.¹² The Karnataka High Court reached a similar conclusion in relation to amendments to the Karnataka Police Act, 1963.¹³ This consensus, more than any single statute, constituted the operative constitutional protection enjoyed by the online real-money gaming industry until 2026, and its reversal in *Junglee Games* is the doctrinal event this paper treats as the hinge of the present inquiry.

3. The New Regime: Legislative Obliteration and Judicial Confirmation

3.1 The Promotion and Regulation of Online Gaming Act, 2025: Architecture of Absolute Prohibition

Act No. 32 of 2025 received Presidential assent on 22 August 2025 and was brought into force, together with its implementing Rules, on 1 May 2026.¹⁴ The Act divides online games into three categories, e-sports, online social games and online money games, and prohibits the last category outright.¹⁵ Section 2(1)(g) defines an “online money game” broadly enough to capture any online game, whether of skill, chance or a combination of both, played for stakes with the expectation of monetary gain.¹⁶ Section 5 makes it an offence to offer, aid, abet, induce or otherwise facilitate the playing of, or wagering on the outcome of, any online money game, and further prohibits advertising and financial facilitation of such games.¹⁷ The Act constitutes the Online Gaming Authority of India under Section 8 as the central regulatory body responsible for classification and enforcement.¹⁸

3.1.1 Section 5 and the Irrelevance of Skill

The critical drafting choice in Section 5 is its refusal to carry forward any skill-based exemption. Unlike the State legislation it supersedes, which typically targeted “gambling” or “betting” as terms of art importing the preponderance test, Section 5 targets the presence of a monetary stake

¹²*Junglee Games India Pvt. Ltd. v. State of T.N.*, 2021 SCC OnLine Mad 2762.

¹³See *State of Tamil Nadu v. Junglee Games India Pvt. Ltd.*, 2026 INSC 594, ¶¶ 33–34 (India) (recounting the Karnataka High Court’s parallel invalidation of the 2021 Karnataka Police Act amendments).

¹⁴The Promotion and Regulation of Online Gaming Act, No. 32 of 2025, § 1(3), India Code (2025); MeitY Notifies Enforcement of Promotion & Regulation of Online Gaming Act, 2025, SCC Times (Apr. 23, 2026).

¹⁵Online Gaming Act, 2025, §§ 2, 6, 7.

¹⁶*Id.* § 2(1)(g).

¹⁷*Id.* § 5.

¹⁸*Id.* § 8.

as such, irrespective of whether the underlying game is one of skill.¹⁹ This is not an oversight; the Statement of Objects accompanying the Bill expressly frames the skill–chance distinction as commercially exploited camouflage for exploitative gaming, and the Act’s design deliberately forecloses the argument, available to industry under the classical doctrine, that a game’s skill content should exempt it from prohibition.²⁰

3.1.2 Enforcement Architecture and the Online Gaming Authority of India

The Online Gaming Authority of India is empowered to classify games, register e-sports and permitted social gaming formats, and refer suspected online money gaming operations for enforcement action, giving the prohibition an institutional apparatus that earlier, judicially contested State bans lacked.²¹

3.2 State of Tamil Nadu v. Junglee Games India Pvt. Ltd. (2026 INSC 594)

While decided on the specific instrument of Tamil Nadu’s and Karnataka’s own State legislation rather than on the 2025 Act directly, Junglee Games supplies the doctrinal bridge on which the central prohibition now rests.²² A bench of Justices J.B. Pardiwala and R. Mahadevan restored the constitutional validity of Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, relevant provisions of the Tamil Nadu Online Gambling Act, 2022–23, and corresponding Karnataka amendments, setting aside contrary Madras and Karnataka High Court judgments.²³ The Court held that Entry 34 of List II, “betting and gambling,” is not confined to chance-based wagering; it extends to betting on any game, including one of substantial skill, once money is staked on its uncertain outcome.²⁴ Playing a game of skill remains protected under Article 19(1)(g); staking money on its outcome does not, because the act of wagering itself, independent of the underlying game’s skill content, constitutes betting and is *res extra commercium*.²⁵

3.2.1 Betting on Skill Games as Gambling Enterprise

¹⁹Id. § 5; cf. *State of Tamil Nadu v. Junglee Games India Pvt. Ltd.*, 2026 INSC 594 (India).

²⁰Press Information Bureau, Gov’t of India, Government Enacts Online Gaming Act 2025, Prohibits All Forms of Online Money Games and Promotes Safe Digital Ecosystem (2025).

²¹Online Gaming Act, 2025, § 8.

²²*State of Tamil Nadu v. Junglee Games India Pvt. Ltd.*, 2026 INSC 594 (India).

²³Id.

²⁴Id.

²⁵Id.

The Court's key doctrinal move was to separate the game from the wager: skill in the game does not launder the wager into a protected trade.²⁶ This directly answers, against industry, the very tension identified in Section 2.1.1 above between playing a skill game and staking money on it, resolving it firmly in favour of State and central power to prohibit the latter irrespective of the former.

3.2.2 The 'Virtual Common Gambling House' Observation and Its Normative Force

The Court further observed that the ubiquity of smartphones has effectively converted every mobile device into a "virtual common gambling house," a formulation grounding the ruling's public-order and public-health rationale in the scale and accessibility of digital wagering rather than in the character of any individual game.²⁷ This observation, though rhetorical, carries real normative force: it reframes the constitutional question away from the skill–chance dichotomy that dominated twentieth-century jurisprudence and toward the aggregate societal harm of frictionless, always-available betting, a reframing the 2025 Act's Section 5 already anticipated.

4. Federal Competence: Parliament's Occupation of a List II Field

4.1 Entry 34 List II and the Traditional State Monopoly

Entry 34 of List II of the Seventh Schedule assigns "betting and gambling" exclusively to the States, and the classical Chamarbaugwala judgments confirmed that this entry, together with Entry 62 (taxes on betting and gambling), gives States plenary power to regulate or prohibit gambling within their territory.²⁸ Betting and gambling have never appeared in List I or List III, and no entry in the Union or Concurrent Lists has historically been read to authorise central prohibition of gambling as such. The 2025 Act's core prohibition therefore sits uneasily against seven decades of settled federal allocation.

4.2 Parliamentary Justification and Residual Doubts

4.2.1 Communications, Inter-State Trade and the Digital Overlay

²⁶Id.

²⁷Id.; 'No Constitutional Protection for Betting on Games of Skill': Supreme Court Upholds TN, Karnataka Laws Banning Online Games with Stakes, LiveLaw (May 27, 2026).

²⁸State of Bombay v. R.M.D. Chamarbaugwala, AIR 1957 SC 699 (India); India Const. sched. 7, list II, entries 34, 62.

The Union's defence of its competence, advanced in the Head Digital Works proceedings, rests not on Entry 34 but on the inherently inter-State and often cross-border character of online gaming platforms, which the Centre situates within the communications and residuary entries of List I, read with Article 248.²⁹ Online money gaming, on this account, is not a local activity within a single State's territory but a digitally delivered service that crosses State and national boundaries in a manner Entry 34's drafters, writing in 1950 for physically located betting houses, could not have contemplated.

4.2.2 The Risk of Legislative Overreach

The difficulty with this argument is that it proves too much: nearly every modern commercial activity now has a digital or inter-State dimension, and if that alone permits Parliament to occupy a field the Constitution expressly reserved to the States, Entry 34 is rendered a dead letter for the online economy while remaining intact for physical gambling. The Union government has told the Supreme Court that unregulated online money gaming is linked to money laundering, terror financing and a documented rise in suicides, framing the Act as a public-order and public-health measure rather than as a direct assertion of power over "betting and gambling" itself.³⁰ Whether this framing is a genuine alternative constitutional basis or a semantic relabelling of a State-List subject remains, at the time of writing, undecided by the Supreme Court, and is the central question before the Bench in Head Digital Works.³¹

5. Proportionality, Overbreadth and Residual Fundamental Rights

5.1 The Res Extra Commmercium Doctrine and the Closure of Article 19(1)(g)

Junglee Games forecloses the primary avenue industry had relied upon: characterising stake-based skill gaming as a protected trade.³² Once betting on a game's outcome is classified as res extra commercium, Article 19(1)(g) simply does not apply, and the State's power to regulate or prohibit becomes, in principle, unconstrained by the reasonableness requirement of Article 19(6). The

²⁹Head Digital Works Pvt. Ltd. v. Union of India, T.C.(C) No. 133 of 2025 (Sup. Ct. India) (pending); India Const. sched. 7, list I, entries 31, 97; India Const. art. 248.

³⁰Online Gaming Ecosystem Tied to Drugs, Hawala and Terror Financing: Centre Tells Supreme Court, LawBeat (Nov. 27, 2025).

³¹Challenge to the Promotion and Regulation of Online Gaming Act, 2025, Sup. Ct. Observer (last visited Aug. 16, 2026).

³²State of Tamil Nadu v. Junglee Games India Pvt. Ltd., 2026 INSC 594 (India).

doctrinal question that survives is narrower: does *res extra commercium* status attach only to the wagering transaction, leaving open a licensed, strictly regulated space for skill competitions that exclude monetary stakes, or does it attach to the entire online money-gaming activity as the 2025 Act now treats it, foreclosing any such intermediate category.³³

5.2 Article 14 Arbitrariness and the Pending Challenge in Head Digital Works

5.2.1 Blanket Ban versus Calibrated Licensing

Petitioners in Head Digital Works argue that a categorical prohibition, applied identically to a game of overwhelming skill and a game of pure chance, is manifestly arbitrary within the meaning of Article 14 because it treats constitutionally dissimilar activities identically, without any classification connecting the means chosen to the harms identified.³⁴ The State's response, that the empirical difficulty of policing the skill-chance line at scale across thousands of digital platforms justifies a bright-line rule, invokes a familiar administrability rationale, but one that petitioners contend cannot by itself satisfy the manifest-arbitrariness standard where less restrictive alternatives, such as stake caps, mandatory cooling-off periods or licensing limited to verified skill-dominant formats, were neither seriously considered nor shown to be unworkable.³⁵

5.2.2 Documented Harms versus Less Restrictive Alternatives

The Union's own submissions to the Supreme Court, citing annual losses of approximately twenty thousand crore rupees and links to money laundering and suicide, supply a rational basis for regulation, and arguably for prohibition of high-risk formats.³⁶ What they do not, on their own, establish is why a total ban, rather than the calibrated licensing architecture Parliament itself adopted for e-sports and social gaming under the same Act, was the least restrictive means available for skill-dominant formats specifically. This is precisely the proportionality inquiry, encompassing suitability, necessity and balancing, that Head Digital Works places before the

³³Cf. Online Gaming Act, 2025, § 5.

³⁴See Head Digital Works Pvt. Ltd. v. Union of India, T.C.(C) No. 133 of 2025 (Sup. Ct. India) (pending); India's Complete Ban on Real-Money Skill Gaming Is Unlikely to Withstand Constitutional Scrutiny, Yogonet Int'l (Dec. 24, 2025).

³⁵Id.

³⁶Online Gaming Ecosystem Tied to Drugs, Hawala and Terror Financing: Centre Tells Supreme Court, *supra* note 30.

Court, and that Jungle Games, decided on State legislation rather than the 2025 Act, did not itself resolve.³⁷

5.3 Article 21 Autonomy and the Limits of Public-Health Justification

A narrower residual claim sounds in Article 21: that an adult's choice to stake money on a game of skill implicates personal autonomy independent of any Article 19(1)(g) trade interest, and that a purely paternalistic prohibition, untethered to demonstrated third-party harm, sits uneasily with the post-Puttaswamy autonomy jurisprudence. This claim faces the same *res extra commercium* obstacle at one remove: if the underlying activity is classified as intrinsically harmful rather than merely risky, the State's public-health and public-order justification is likely to prevail even under heightened Article 21 scrutiny, leaving autonomy as, at most, a factor bearing on the degree of restriction rather than a basis for striking down the prohibition outright.

6. Conclusion: Toward Constitutional Coherence in the Digital Age

6.1 The Earned Character of the Paradigm Shift

The displacement of the classical skill–chance sanctuary is not the product of judicial overreach or legislative caprice. Sections 2 and 3 of this paper show that the 2025 Act and Jungle Games together respond to a documented, escalating pattern of financial harm, addiction and criminal misuse that the 1957 preponderance test, designed for physical prize competitions conducted through newspapers, was never built to address. Section 4 nonetheless shows that the federal tension generated by central occupation of a subject the Constitution assigns to the States is real and unresolved. Section 5 shows that the public-interest rationale for prohibition, while rationally grounded, does not by itself answer the narrower question whether a categorical, skill-blind ban satisfies proportionality and non-arbitrariness where less restrictive, calibrated alternatives exist.

6.2 Open Questions and the Path Ahead

The pending determination in *Head Digital Works Pvt. Ltd. v. Union of India* is therefore the necessary next stage of this constitutional sequence, not a mere footnote to it.³⁸ Its outcome will

³⁷*State of Tamil Nadu v. Jungle Games India Pvt. Ltd.*, 2026 INSC 594 (India); *Head Digital Works Pvt. Ltd. v. Union of India*, T.C.(C) No. 133 of 2025 (pending).

³⁸*Head Digital Works Pvt. Ltd. v. Union of India*, T.C.(C) No. 133 of 2025 (Sup. Ct. India) (pending).

decide whether the 2025–26 paradigm shift is constitutionally final, or whether a more calibrated architecture, preserving a licensed space for pure skill competitions under strict safeguards, must be restored as a matter of proportionality even after *Junglee Games*. Beyond the immediate stakes for India’s gaming industry, the episode illustrates a deeper and more general jurisprudential lesson: as digital platforms collapse the practical distance between commerce, recreation and vice, doctrines built around the physical and transactional boundaries of an earlier era, such as the century-old skill–chance test, will increasingly need reconstruction rather than mere application, and courts will be asked with growing frequency to decide not what a game is, but what staking money on it, at digital scale, has become.

