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### 1.1 Introduction

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The Promotion and Regulation of Online Gaming Act, 2025 is the first Central legislation imposing a nationwide ban on real-money online gaming, including popular formats such as fantasy sports. It was passed by Parliament in August, 2025. The law while encouraging e-sports and social gaming, prohibits offering of online money game and online money gaming service, regardless of whether they are games of skill or chance and categorises violations as cognizable and non-bailable offences. The law reshaped the landscape of India's digital entertainment sector almost overnight, hitting companies that once thrived on rummy, poker, and fantasy sports apps. It is the first explicit law that makes online betting and gambling an illegal activity in India, though there existed the Public Gambling Act, 1867 [also known as Gambling Act] which provided prohibition on gambling or on being present for gambling in a common gaming house and prohibition on furnishing or advancing money for the purpose of gambling to persons frequenting any such gaming house and prohibition owning, keeping or occupying or having care and management of such gaming house. The Act of 1867 was primarily enacted with the purpose of punishing public gambling and the keeping of common gaming-houses.

The Supreme Court in *Gherulal Parakh v. Mahadeodas Maiya*, AIR 1959 (SC) 781 observed:

“The history of the law of gambling in India would also show that though gaming in certain respects was controlled, it has never been absolutely prohibited. The following are some of the gambling Acts in India: ..... These Acts do not prohibit gaming in its entirety, but aim at suppressing gaming in private houses when carried on for profit or gain of the owner or occupier thereof and also gaming in public. Gaming without contravening the provisions of the said Acts is legal. Wherever the State intended to declare a particular form of gaming illegal, it made “an express

statute to that effect: See section 29-A of the Indian Penal Code<sup>1</sup>. In other respects, gaming and wagering are allowed in India. It is also common knowledge that horse races are allowed throughout India and the State also derives revenue therefrom”...

The legal landscape surrounding gambling in India is complex and varies from State to State. While some States have completely banned gambling, others permit specific forms like horse racing and lotteries. Online gambling remains a grey area, with ongoing discussions about regulation. Most Indian States have enacted laws prohibiting gambling and betting—except for certain exceptions like horse racing, lotteries and specific card games and States like Goa and Sikkim have legalized and regulated several forms of gambling and betting. Other States have also formulated their own legislations in order to regulate and govern the gambling activities on their territory. The majority of gambling laws were enacted before the advent of virtual or online gambling and betting. Therefore, gambling laws primarily refer to gambling in physical form. Since the times of British rule, many States in India have enforced the Gambling Act, thus, prohibiting all forms of gambling and betting in their respective States. Goa and Sikkim were the only States that allowed gambling and betting, subject to regulations made by these respective States.

The Public Gambling Act, 1867 is an old Act and does not contain any laws regarding online/internet gambling or betting. There are many online betting agencies that entice gamblers to place bets using the internet. In order to regulate and restrict online gambling in India, the Reserve Bank of India was authorized under the Payment and Settlement Act, 2008 to operate or start a payment system for regulating electronic payment mechanisms of all kinds in India. FDI policies have also restricted enterprises to get involved in betting lottery and gambling activities. The Information Technology Act, 2000 regulates cyber activities or online gambling in India in a way it gives the Indian Government the power to block or instruct foreign betting games and sites. Thus, there is no explicit law that makes online betting and gambling an illegal activity in India. Theoretically, it is allowed to bet on these leading casino platforms online without running the risk of getting punished for the same. The most significant obstacles that gamblers may face in India or due to the payment portals as the RBI has instructed the banks and payment gateways not to process transactions that are related to online casino sites or gambling.

The Public Gambling Act, 1867 became outdated in view of the internet technology. The Act only regulates public gambling and no other forms of gambling such as lottery, online gambling, sports betting, etc. Also,

<sup>1</sup> Corresponding to erstwhile Act. Now refer section 2(39) of Bharatiya Nyaya Sanhita, 2023.

there is growing demand to regulate gambling instead of prohibiting it as times have changed and gambling is already legal in some States and Union territories and awareness among people of the risks involved has increased. Some countries have allowed gambling in their country and have enacted comprehensive laws. In the United Kingdom, The Gambling Act, 2005 regulates gambling. It has also established the UK Gambling Commission which oversees gambling operators and ensures consumer protection. In the USA, each State can decide whether to allow gambling or not. However, at the national level, online betting and gambling are regulated by the Unlawful Internet Gambling Enforcement Act. In Australia too, gambling is allowed but the Government regulates gambling through various laws such as Interactive Gambling Act, Betting and Racing Act and the Gambling Regulation Act.

Gambling in India is a State subject which means that only the State Governments are entitled to formulate and govern such activities for their own States. The Central Government has enacted the Promotion and Regulation of Online Gaming Act, 2025 establishing a uniform, national-level legal framework with its applicability to the whole of India and also to be applied to online money gaming service offered within, or operated from outside, the territory of India, prohibiting the offering, operation, facilitation, advertisement, promotion and participation in online money games through any computer resource, mobile device or the internet, to ensure the responsible use of digital technologies, maintain public order and protect public health, safeguard the integrity of financial systems and the security and sovereignty of the State and to protect individuals, especially youth and vulnerable populations, from the adverse social, economic, psychological and privacy-related impacts of such games.

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## **1.2 History of Online Gaming**

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Gaming started off in 1940 at the World Fair in the US. At the time, people viewed it as a technological phenomenon. Since then, it has grown dramatically and is today an extremely lucrative entertainment sector. Mobile technology boosted the gaming market considerably. Mobile technology, in this context, refers to the technology used for smartphone communication.

The origins of online gaming can be traced back to the early days of computer networking and the development of multiplayer games. The design of online games can range from simple text-based environments to the incorporation of complex graphics and virtual worlds. Many games were created and became quite popular between the 1940s and the 1960s.

In the 1970s and 1980s, the concept of connecting computers together to enable gameplay emerged, leading to the birth of online gaming. As technology advanced, so did online gaming.

By the late 1970s many universities in the United States were linked by ARPANET (*see* DARPA), a precursor to the Internet. The structure of ARPANET allowed users to connect their computers or terminals to a central mainframe computer and interact in what was close to real time. In 1980, ARPANET was linked to the University of Essex, Colchester, England, where two undergraduate students had written a text-based fantasy adventure game that they called *MUD*, or “multiuser dungeon.” When the first outside users connected to *MUD* through ARPANET, online gaming was born. MUDs offered text-based multiplayer adventures, where players could explore virtual worlds, interact with each other, and complete quests together. These early online games laid the foundation for the multiplayer experiences we enjoy today. Soon other programmers expanded on the original *MUD* design, adding graphic flourishes, chat functions, and player groups (or guilds). These basic features, as well as the fantasy setting, carried over into the next generation of online games, which were the first true multiplayer online games (MMOGs )

As technology advanced, so did online gaming. In the 1990s, the rise of the internet and personal computers led to the development of graphical online games. Games like “Ultima Online” and “EverQuest” brought massively multiplayer online role-playing games (MMORPGs) into the mainstream. These groundbreaking titles allowed thousands of players to connect simultaneously, immersing themselves in vast virtual realms and forging social connections.

The 2000s saw the advent of online console gaming, with platforms like Xbox Live and PlayStation Network enabling players to compete and cooperate online. This era also witnessed the rise of browser-based games, accessible through web browsers without the need for extensive downloads or installations. In recent years, the growing popularity of mobile devices has further expanded the online gaming landscape. Mobile games have become a ubiquitous part of daily life, providing quick and engaging experiences for players on the go. From casual puzzles to competitive multiplayer shooters, mobile gaming offers something for everyone.

Overall, the history of online gaming is a testament to the evolution of technology and the ever-changing desires of gamers. What started as simple text-based adventures has grown into a multi-billion dollar industry, pushing the boundaries of what is possible in interactive entertainment. Online gaming continues to shape and influence our digital culture, offering new experiences and connections for players around the globe.

As far India the Law Commission of India (report No. 276 dated July 5, 2018) observed:

“8.3 There are no specific Central Laws governing online gambling in India. Sikkim and Nagaland are the only States that expressly permit online gambling. While the Sikkim On-line Gaming (Regulation) Act, 2008 (as it stands after the Amendment of 2015) restricts the offering and playing of “online games and sports games” to the physical premises of gaming parlours through intra-net gaming terminals within the territory of the State, the Nagaland Prohibition of Gambling and Promotion and Regulation of Online Gaming Act, 2016 on the other hand, seeks to provide for pan-India application of licences obtained thereunder.

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8.10 To curb online betting and gambling, authorities rely on the Information Technology Act, 2000 (Technology Act). Section 67 of the Act, reads as:

*Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of second or subsequent conviction with imprisonment of either description for a term which may extend to five years and also with fine which may extend to ten lakh rupees.*

8.11 Further, this may be supplemented by section 69-A of the Technology Act, which empowers the Central Government to direct its agencies and/or intermediaries to “block for access by the public or cause to be blocked for access by the public any information generated, transmitted, received, stored or hosted in any computer resource”.

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8.14 Initially online gaming was limited to a certain group of people. Slowly, its sphere increased and more people began to engage in it. Today, the scenario is such that people are even being hired to play or gamble online. Even Industry giants are keen to hire and invest in ‘professional’ gamers.

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### **1.3 Promotion and Regulation of Online Gaming Act, 2025 – Objects and Reasons**

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The objects of the Promotion and Regulation of Online Gaming Act, 2025 are—

- to promote and regulate the online gaming sector including e-sports, educational games and social gaming;
- to provide for the appointment of an Authority for coordinated policy support, strategic development and regulatory oversight of the sector;
- to prohibit the offering, operation, facilitation, advertisement, promotion and participation in online money games through any computer resource, mobile device or the internet, particularly where such activities operate across State borders or from foreign jurisdictions;
- to protect individuals, especially youth and vulnerable populations, from the adverse social, economic, psychological and privacy-related impacts of such games;
- to ensure the responsible use of digital technologies;
- to maintain public order and protect public health;
- to safeguard the integrity of financial systems and the security and sovereignty of the State;
- to establish a uniform, national-level legal framework in the public interest; and for matters connected therewith or incidental thereto.

For the following reasons the Union Government considered it necessary to clearly delineate and categorise the various forms of online games and to provide a tailored legal framework to govern each sub-sector of the industry appropriately and considered it expedient in the public interest for to assume legislative competence over the online gaming sector to ensure the creation of a secure, structured and innovation-friendly digital environment, while addressing the associated risks to public health, consumer safety, public morality and financial sovereignty:

The online gaming sector has rapidly evolved into one of the most dynamic and fastest-growing segments of the digital and creative economy, offering significant opportunities for innovation, cognitive development, employment generation, technological advancement and global competitiveness. The online gaming ecosystem comprises diverse segments, including e-sports, casual and social games educational games

and online money games, and is currently operating in the absence of a dedicated institutional and legal framework necessary for strategic coordination, capacity building, common infrastructure, research and responsible innovation. Lack of a coherent and enabling legal framework has hindered the sector's structured development and the promotion of responsible gaming practices, requiring urgent policy intervention and support mechanisms. The parallel proliferation of online money games accessible through mobile phones, computers and the internet, and offering monetary returns against user deposits has led to serious social, financial, psychological and public health harms, particularly among young individuals and economically disadvantaged groups. The online money games have deleterious and negative impact on the individuals, families, society and the nation and given the technical aspects including the very nature of the electronic medium used for online money games, the algorithms applied and the national and transnational networks involved therein.

Such games often use manipulative design features, addictive algorithms, bots and undisclosed agents, undermining fairness, transparency and user protection, while promoting compulsive behaviour leading to financial ruin. The unchecked expansion of online money gaming services has been linked to unlawful activities including financial fraud, money-laundering, tax evasion, and in some cases, the financing of terrorism, thereby posing threats to national security, public order and the integrity of the State.

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#### 1.4 Salient features

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The salient features of the Online Gaming Act, 2025 are —

- expressions such as “online game”, “online money game”, “online social game”, “e-sport”, “internet”, have been elaborately defined;
- provides for recognition and registration of e-sports and of online social games and their promotion and development;
- provides prohibition of—
  - offering online money game and online money gaming service;
  - advertisement related to online money game;
  - transfer of funds towards payment for any online money gaming service;
- provides for establishment of an Authority on online gaming to recognise, categorise and register online games;

- provides for penalty and prosecution for contravention of the prohibitory provisions and for cognizance of offence and for punishment of directors in case of offence committed by company.

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### **1.5 Online Gaming Act, 2025 - An overview**

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The Online Gaming Act, 2025 is legislation that is enacted to promote and regulate the online gaming sector including e-sports, educational games and social gaming. The Act defines “online game”, “online money game”, “online social game”, “e-sport”. The Act provides for constituting an Authority on online gaming to recognise, categorise and register online games and also provides for the Central Government taking steps for recognition, registration, promotion and development of e-sports, and to recognise, categorise and register ‘online social games and facilitating its development and availability for recreational and educational purposes’.

The Act prohibits offering online money game and online money gaming service (section 5), prohibits making advertisement related to online money game (section 6), and prohibits transferring of funds towards payment for any online money gaming service (section 7) and also provides prohibition of aiding, abetting, inducing in such offering or making advertisement, and, transferring of funds. Offences under sections 5 and 7 shall be cognizable and non-bailable.

The Act provides for punishment for contravening the aforesaid prohibitions, provides for investigation offences and also provides for search and seizure of property and arrest without warrant.

The Act does not repeal the Public Gambling Act, 1867; it continues in operation.

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### **1.6 Scheme of the Act**

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The Online Gaming Act, 2025, consists of six chapters.

Chapter I is preliminary chapter. Section 1 contains title of Act and its extent and commencement. Section 2 is definition provision, defining various expressions used in the Act expressions such as “online game”, “online money game”, “online social game”, “e-sport”, “internet”, etc.;

Chapter II consists of sections 3 and 4; Section 3 providing for the Central Government taking steps for recognition, registration, promotion and development of e-sports, and section 4 providing taking steps to recognise, categorise and register ‘online social games and facilitating its development and availability for recreational and educational purposes’;

Chapter III consists of sections 5, 6 and 7; Section 5 dealing with prohibition of offering online money game and online money gaming service, section 6 dealing with prohibition of advertisement related to online money game, section 7 dealing with prohibition of transfer of funds towards payment for any online money gaming service and also deals prohibition of aiding, abetting, inducing in such offering or making advertisement, and, transferring of funds.

Chapter IV has only section 8 which provides for constituting an Authority on online gaming to recognise, categorise and register online games.

Chapter V relates to offences and penalties and consists of sections 9,10,11 and 12; section 9 dealing with punishment for contravention of sections 5, 6 and 7; section 10 providing that offences under section 5 and section 7 shall be cognizable and non-bailable, section 11 dealing with punishment in case of offence committed by the company, section 12 dealing with penalty for failing to comply any direction issued by the Central Government or the Authority of online gaming.

Chapter VI is a miscellaneous chapter and consists of sections 13 to 20; dealing with compliance of directions of the Central Government, blocking of online money gaming service for access by the public, power of the Central Government to authorize investigation and to search and arrest any person without warrant, providing protection of Central Government or the Authority or their any officer for action taken in good faith against any suit or legal proceeding, power of the Central Government to make rules for carrying out, and to remove any difficulty arising in giving effect to, any provision of the Act.

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### **1.7 Online Gaming Act, 2025 - Constitutionality**

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The constitutionality of the Online Gaming Act, 2025 has been challenged in various High Courts on the ground of the competence of the Parliament and also on ground of being violative of articles 14, 19, 21 and 301 of the Constitution. On September 8, 2025, a Supreme Court Bench headed by Justice J.B. Pardiwala had transferred to the Apex Court separate petitions challenging the law, pending scattered across various State High Courts, including Delhi, Karnataka and Madhya Pradesh.

When the validity of an Act is called in question, the first thing for the court to do is to examine whether the Act is a law with respect to a topic assigned to the particular Legislature which enacted it and then to ascertain if there is anything in any other part of the Constitution which places any fetter on the legislative powers of such Legislature.

Under Arts. 245 and 246, subject to the provisions of the Constitution, the Parliament has power to make laws for the whole or any part of the territory of India with respect to any matters enumerated in List I of Schedule VII to the Constitution and the Legislature of State with respect to any of the matters enumerated in List II of the Schedule.

Das, C.J., in the *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 (SC) 699 observed:—

“For the reasons Stated above, we have come to the conclusion that the impugned law is a law with respect to betting and gambling under entry 34 and the impugned taxing section is a law with respect to a tax on betting and gambling under entry 62 and that it was within the legislative competence of the State legislature to have enacted it.”

The present Central Act is in a way with respect to betting and gambling under entry 34 of List II which falls within the domain of the State and therefore could be dubbed unconstitutional. But, the Central Government assumed legislative competence over the online gaming sector. One reason for enacting the Act as Stated in the Bill was that the Central Government considered “it necessary to clearly delineate and categorise the various forms of online games and to provide a tailored legal framework to govern each sub-sector of the industry appropriately and considered it expedient in the public interest for to assume legislative competence over the online gaming sector to ensure the creation of a secure, structured and innovation-friendly digital environment, while addressing the associated risks to public health, consumer safety, public morality and financial sovereignty”

The Law Commission in its Report No.276 dated July 5, 2018 observed:

“5.1 Whilst ‘betting and gambling’ and taxation thereof are State subjects, as enumerated under Entries 34 and 62 of List II (State List) of the Seventh Schedule of the Constitution of India, there still exist certain Central Legislations, affecting the subject. The Indian Penal Code, 1860 (IPC)<sup>1</sup>, the Indian Contract Act, 1872 (Contract Act), the Foreign Exchange Management Act, 1999, and the Prevention of Money Laundering Act, 2002 (PMLA) are some examples.”

Since the Central Government assumed legislative competence in public interest of public health, consumer safety, public morality and financial sovereignty, The Online Gaming Act, 2025 does not suffer any unconstitutionality on account of its legislative competency. It may be

1 Corresponding to erstwhile Act. Now refer Bharatiya Nyaya Sanhita, 2023 (BNS, 2023).

mentioned that the prohibition under sections 5 and 6 of the Gaming Act is also applicable to State itself.

The Law Commission of India (report No. 276 dated July 5, 2018 ), Stated that

“9.8 Since online betting and gambling are offered and played over media (telephones, wireless, broadcasting and other like forms of communication) covered under Entry 31 of List I of the Seventh Schedule to the Constitution, the Parliament has the legislative competence to enact a law(s) dealing with the same.

The Parliament may also enact a model law for regulating gambling that may be adopted by the States or in the alternative, the Parliament may legislate in exercise of its powers under Article 249 (in national interest) or 252 of the Constitution (if two or more States consent).”

### **Constitutionality – Articles 19(1) and 301**

The scheme of our Constitution is to protect the freedom of each individual citizen to carry on his trade or business. This it does by Article 19(1)(g). This guaranteed right is, however, subject to Article 19(6) which protects a law which imposes, in the interest of the general public, reasonable restrictions on the exercise of the fundamental right guaranteed by Article 19(1)(g). Our Constitution also proclaims by Article 301 the freedom of trade, commerce and intercourse throughout the territory of India ‘subject to the provisions of Arts. 302-305 which permit the imposition of reasonable restriction by Parliament and the State Legislatures’. The language used in Article 19(1) (g) and Article 301 is quite general and that the provisions for restricting the exercise of the fundamental right and the declared freedom of the country’s trade, commerce and intercourse are made separately, e.g., by Article 19(6) and Arts. 302-305. Arts. 302, 305, lay down certain restrictions subject to which the declaration contained in Article 301 is to operate. Article 302 empowers Parliament by law to impose restrictions on the freedom of trade, - commerce or intercourse not only between one State and another but also within the State, provided in either case such restrictions are required in the public interest. Article 304(b) authorises the State Legislatures to impose reasonable restrictions on the freedom of trade, commerce or intercourse with or within the States as may be required in the public interest, provided the formalities of procedure are complied with Arts. 19(1)(g) and 301. Article 19(1)(g) looks at the matter from the point of view of the individual citizens and protects their individual right to carry on their trade or business, Article 301 looks at the matter from the point of view of the country’s trade and commerce as a whole, as distinct from

the individual interests of the citizens and it relates to trade, commerce or intercourse both with and within the States. The right guaranteed by Article 19(1)(g) and the freedom declared by Article 301 should, in the first instance and to start with, be widely and liberally construed and then reasonable restrictions may be superimposed on that right under Article 19(6) or Arts. 302-305 in the interest of the general public.

The Supreme Court in *M.J. Sivani v. State of Karnataka*, AIR 1995 (SC) 1770 held that "no one has inherent right to carry on a business which is injurious to public interest. Trade or business attended with danger to the community may be totally prohibited or be permitted subject to such conditions or restrictions as would prevent the evils to the utmost".

The Supreme Court in *State of Bombay v. R. M. D. Chamarbaugwala*, AIR 1957 (SC) 699 observed:

"The question arises whether our Constitution makers ever intended that gambling should be a fundamental right within the meaning of Article 19(1)(g) or within the protected freedom declared by Article 301. The avowed purpose of our Constitution is to create a welfare State. The directive principles of State policy set forth in Part IV of our Constitution enjoin upon the State the duty to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which justice, social, economic and political, shall inform all the institutions of the national life. It is the duty of the State to secure to every citizen, men and women, the right to an adequate means of livelihood and to see that the health and strength of workers, men and women, and the tender age of children are not abused, to protect children and youths against exploitation and against moral and material abandonment. It is to be the endeavour of the State to secure a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities, to protect the weaker sections of the people from social injustice and all forms of exploitation, to raise the standard of living of its people and the improvement of public health. The question canvassed before us is whether the Constitution makers who set up such an ideal of a welfare State could possibly have intended to elevate betting and gambling on the level of country's trade or business or commerce and to guarantee to its citizens, the right to carry on the same. There can be only one answer to the question."

Crime as such is not a trade. Even if in the crime such as house-breaking there is a real systematic and organised course of activity or conduct with a

set motive of producing income. Such an activity cannot acquire the status of trade or profession. Lord Denning observed in Griffiths (*Inspector of Taxes*) v. J.P. Harrison (Watford) Ltd. (1965) 58 ITR 328 (PC) observed :

“... or nearer still, take a gang of burglars. Are they engaged in trade or an adventure in the nature of trade. They have an organisation. They spend money on equipment. They acquire goods by their efforts. They sell goods. They make a profit. What detail is lacking in their adventure? You may say It lacks legality, but it has been said that legality is not the essential characteristic of a trade. You cannot point out any detail that it lacks. But still it is not a trade, nor an adventure in the nature of trade. And how does it help to ask the question. If it not a trade, what is it? It is a burglary and that is all there is to say about it...”

Similarly, gambling activities are extra commercial and will not be included within the word “trade”, “business” and “commerce” although the external forms, formalities and instruments of trade might be employed [see *State of Bombay v R. M. D. Chamarbaugwala*, AIR 1957 (SC) 699]. The Supreme Court in that case observed:

“In short the argument is that Article 19(1)(g) and Article 301 guarantee and declare the freedom of all activities undertaken and carried on with a view to earning profit and the safeguard is provided in Article 19(6) and Arts. 302-305. The proper approach to the task of construction of these provisions of our Constitution, it is urged, is to start with absolute freedom and then to permit the State to cut it down, if necessary, by restrictions which may even extend to total prohibition. On this argument it will follow that criminal activities undertaken and carried on with a view to earning profit will be protected as fundamental rights until they are restricted by law. Thus there will be a guaranteed right to carry on a business of hiring out *goondas* to commit assault or even murder, of housebreaking, of selling obscene pictures, of trafficking in women and so on until the law curbs or stops such activities. This appears to us to be completely unrealistic and incongruous”.

This decision only lays down that gambling is not business or trade and that “the gambling activities in their very nature and essence were extra commercium and could not either be trade or commerce within the meaning of the aforesaid provisions and therefore neither the fundamental right of the respondents under Article 19(1)(g) nor their right to freedom of inter-State trade under Article 301 is violated”.

### Doctrine of *res extra commercium*

The doctrine of *res extra commercium* seeks to exclude certain activities from the ambit of freedom of trade and profession guaranteed under Articles 19(1)(g) and 301 of the Constitution of India. In *State of Bombay v. RMD Chamarbaghvala* [AIR 1957 (SC) 699], the Supreme Court observed that: "We find it difficult to persuade ourselves that gambling was ever intended to form any part of this ancient countries' trade, commerce or intercourse to be declared as free under Article 301... the real purpose of Articles 19(1)(g) and 301 could not possibly have been to guarantee or declare the freedom of gambling. Gambling activities from their very nature and essence are *extra commercium* though the external forms, formalities and instruments of trade may be employed and they are not protected either by Article 19(1)(g) or Article 301 of the Constitution." Though these activities employ external forms, formalities and instruments of trade, they could not be considered commerce. Trade and commerce protected by Article 19(1)(g) and Article 301 are only those activities which could be regarded as lawful trading activities, that gambling is not trade but *res extra commercium*, and that it does not fall within the purview of these Articles.

The Karnataka High Court in *State of Arunachal Pradesh v. Union of India* AIR (KAR) 2007 (4) R 349 observed, "It is thus clear from the above decisions of the Constitution Bench of the Supreme Court in *State of Bombay v. R.M.D. Chamarbaugwala* and of *Khoday Distilleries Ltd. v. States of Karnataka*, AIR 1996 (SC) 911 as well as bars. *State of Punjab v. Devans Modern Breweries Ltd.* [(2004) 11 SCC 26] that lottery is nothing but gambling and it is *res extra commercium* and its effect is pernicious and it does not enjoy the protection of Article 19(1)(g) of the Constitution of India." .

As regards right to life under Article 21, it does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. [see *M.J. Sivani v. State of Karnataka*, AIR 1995 (SC) 1770] the Supreme Court in *Kishan Chander v. State Of Madhya Pradesh*, AIR 1965 (SC) 307: 1964 SCR (1) 765 observed that "the argument based on Article 21 need not be separately noticed because if the impugned provisions are found to be constitutional, the curtailment of liberty would not be except according to the procedure established by law." As regards Article 14, the court observed, "considering the fact that gambling is an evil and it is rampant, that gaming houses flourish as profitable business and that detection of gambling is extremely difficult, the law to root out gambling cannot but be in the public interest. Such a law must of necessity provide for special procedure but so long as it is not arbitrary and contains adequate safeguards it cannot be successfully assailed."

The Supreme Court in *M.J. Sivani v. State of Karnataka* (supra) observed

“20. It is true that the owner or person in charge of the video game earn livelihood assured under Article 21 of the Constitution but no one has the right to play with the credulity of the general public or the career of the young and impressionable age school or college-going children by operating unregulated video games. If its exhibition is found obnoxious or injurious to public welfare, it would be permissible to impose total prohibition under Article 19(6) of the Constitution. Right to life under Article 21 does protect livelihood, but its deprivation cannot be extended too far or projected or stretched to the avocation, business or trade injurious to public interest or has insidious effect on public morale or public order. Therefore, regulation of video games or prohibition of some video games of pure chance or mixed chance and skill are not violative of Article 21 nor is the procedure unreasonable, unfair or unjust.”

The Supreme Court did not find force in the contention that the prevention of the students from attending the video games is arbitrary and, therefore, violates Articles 14 and 21.