



Regulate online gaming

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(Mains GS 2 : Government Policies and Interventions for Development in various sectors and Issues arising out of their Design and Implementation.)

Context:

Recently, the Karnataka High Court declared certain provisions of the Karnataka Police (Amendment) Act, 2021, as unconstitutional, which prohibited and criminalised the offering and playing of online games.

Court jurisprudence:

- This decision of the High Court has reaffirmed the Supreme Court jurisprudence that games of skill and games of chance (gambling) are two distinct legal concepts of constitutional significance, and that the former are legitimate business activities protected under our fundamental rights.
- The Stare Decisis goes back to the famous Chamarbaugwala cases wherein the apex court held that in any game, if the element of skill is dominant over the element of chance, then it is a game of skill and cannot be construed as gambling.
- Over the years, using this standard, the Supreme Court and various High Courts have held several games including rummy, fantasy sports, bridge, chess and horse racing to be games of skill.

Government's argument:

- Few southern States started banning any game played for stakes, without making a distinction between games of skill and games of chance.

- One persistent argument is that the Chamarbaugwala cases, which go back to the 1950s, are outdated now; that technology has progressed significantly and most games are played online.
- The Madras and Kerala High Courts have held that games of skill do not metamorphise into games of chance if played online.
- The Karnataka High Court has gone a step further and held that it is fallacious to argue that Chamarbaugwala jurisprudence needs a relook, because it has been reaffirmed by a series of Supreme Court and High Court decisions since then.
- The courts have also held that the government's argument that exposure to games of skill is leading to certain social evils such as addiction and financial distress is only anecdotal.

Bring regulations:

- It is pertinent that the courts have objected to the total ban of the sector and have left it to the governments to effectively regulate it.
- The online skill gaming industry too has urged the respective State governments to regulate the sector and come out with a policy structure that is based on checks and balances.
- A blanket ban is not only arbitrary, but also leads to untoward situations such as proliferation of illegal syndicates.

Multiplier benefits:

- With the judicial validation, as well as Central government in the Union Budget announcing that an Animation, Visual Effect, Gaming and Comics promotion task force will be set up, it is important that the State governments work towards introducing a reform-oriented policy structure in this sunrise sector which has immense investment, revenue-generating potential, and creates employment.
- The sector currently employs 40,000 people and has multiplier benefits to several sectors that have been identified as focus areas by the Government of India, including semiconductors, telecom, fintech and animation/graphics.

Economic dimension:

- In the last five years, the online gaming sector has received around \$1,700 million in venture capital and private equity.
- Global investors feel confident about the sector not only because of India's favourable macro-economic and demographic indicators, but also because of unequivocal jurisprudence that differentiates games of skill from gambling.
- Thus, an attempt by some State governments to sidestep or ignore the judicial decisions may not only be impractical, but may also send a poor message to the international investor community about governments in India not respecting the sanctity of the judiciary.

Conclusion:

The online skill gaming industry and its investors hope that the government can work together with all stakeholders to create a policy structure based on principles of light touch regulation and not prohibition.