

# The Skill-Chance Dichotomy in Digital Jurisprudence: A Critical Analysis of India's Departure from Established Constitutional Precedent

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## ABSTRACT

This paper provides a critical legal analysis of India's *Promotion and Regulation of Online Gaming Act, 2025* (PROGA). It argues that the Act's central provision, the imposition of a blanket ban on all online real-money games by erasing the constitutionally recognized distinction between games of skill and games of chance leads to a stark and perilous departure from nearly seventy years of settled jurisprudence. Through a doctrinal analysis of landmark Supreme Court precedents, including *State of Bombay v. R.M.D. Chamarbaugwala*, and recent High Court judgments that have consistently upheld the protected status of skill-based gaming, this paper demonstrates that PROGA is constitutionally vulnerable. It contends that the Act is manifestly arbitrary in its classification, violating Article 14 of the Constitution, and imposes a disproportionate and unreasonable restriction on the fundamental right to trade and commerce under Article 19(1)(g). Furthermore, the paper questions the legislative competence of the Union Parliament to enact such a law, which arguably encroaches upon the exclusive domain of the States. The paper concludes with findings that underscore the Act's constitutional infirmities and offers recommendations for legislative amendment and judicial review to realign India's digital gaming policy with its constitutional ethos.

## I. INTRODUCTION: A LEGISLATIVE 'KNOCKOUT PUNCH' TO A DIGITAL ECONOMY SUNRISE SECTOR

On August 22, 2025, the *Promotion and Regulation of Online Gaming Act, 2025*<sup>2</sup> (hereinafter "PROGA" or "the Act") received Presidential assent, marking a paradigm shift in India's approach to the digital economy. Framed by the government as a measure to curb addiction, financial ruin, and social distress, the Act imposes a complete prohibition on all "online money games". This legislative action, however, has been described by industry leaders as a "knockout punch," immediately decimating a sunrise sector that was a significant contributor to India's

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<sup>2</sup> Promotion and Regulation of Online Gaming Act, 2025, No. 32, Acts of Parliament, 2025 (India).

digital ambitions. The immediate aftermath was catastrophic: major platforms like Dream11, Mobile Premier League (MPL), WinZO, and PokerBaazi suspended their real-money gaming operations overnight. This shutdown sent shockwaves through the economy, wiping out an estimated 95% of revenue for market leaders<sup>3</sup>, triggering widespread job losses, and jeopardizing nearly USD 3 billion in foreign direct investment that had flowed into the sector over the preceding five years<sup>4</sup>.

The central legal conflict animating this report stems from the Act's foundational definition. PROGA deliberately conflates "games of skill" with "games of chance" under a single, prohibited category of "online money game," explicitly stating its applicability "irrespective of whether such game is based on skill, chance, or both". This statutory maneuver stands in direct and unambiguous contravention of a long and unbroken line of judicial precedent, stretching back nearly seven decades, which has consistently protected skill-based gaming as a legitimate business activity under the fundamental right to trade and commerce guaranteed by Article 19(1)(g) of the Constitution of India<sup>5</sup>. The Act's hurried passage through Parliament, conducted without substantive debate, and its stark reversal of the government's own prior policy initiatives, which had sought to regulate rather than prohibit the sector, underscore the potentially arbitrary nature of this legislative action.

This paper argues that PROGA, 2025, by statutorily erasing the judicially sanctified skill-chance dichotomy, represents a constitutionally suspect act of legislative overreach. It is manifestly arbitrary in its application, disproportionate in its effect, and stands on tenuous grounds with respect to the Union's legislative competence, thereby warranting urgent judicial scrutiny and legislative reconsideration.

## **II. THE JURISPRUDENTIAL BEDROCK: THE CONSTITUTIONAL SANCTITY OF 'GAMES OF SKILL'**

To comprehend the constitutional infirmities of PROGA, it is essential to first establish the foundational legal principles that the Act disregards. Indian jurisprudence has, for decades,

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<sup>3</sup> Riya R. Alex, *Dream11 hit by 95% revenue loss amid India's money game ban—will layoffs follow?*, LIVE MINT (Aug. 26, 2025).

<sup>4</sup> WinZO & Interactive Ent. & Innovation Council, *Path Ahead for Online Skill Gaming in India* 14 (2025).

<sup>5</sup> INDIA CONST. art. 19, cl. 1(g).

meticulously carved out a protected space for commercial activities predicated on skill, distinguishing them from the vice of gambling, which the state may prohibit.

### **A. Res Extra Commercium and the Genesis of the Dichotomy in Chamarbaugwala**

The legal architecture governing gaming in India was constructed by two seminal Supreme Court judgments in 1957. In *State of Bombay v. R.M.D. Chamarbaugwala*<sup>6</sup>, the Court established the foundational doctrine that activities of a gambling nature are *res extra commercium*—Latin for "things outside commerce". This classification is critical; it means that gambling is not considered "trade" or "business" in the constitutional sense and therefore does not receive the protection of the fundamental right to trade under Article 19(1)(g) or the freedom of commerce under Article 301<sup>7</sup>.

However, the Court's most crucial finding was the creation of a test to distinguish protected commercial activities from unprotected gambling. It held that a competition is not gambling if success depends to a "substantial degree upon the exercise of skill". This "predominance test" became the enduring legal standard. The government's justification for the blanket ban under PROGA implicitly treats all real-money gaming as a "pernicious vice," thereby extending the *res extra commercium* doctrine to activities of skill. This is a jurisprudential overreach, as the very judgment that established the doctrine also created the "predominance of skill" test to specifically carve out certain activities *from* this classification. An activity that passes the skill test is, by definition, *not res extra commercium*.

In the companion case, *R.M.D. Chamarbaugwalla v. Union of India*<sup>8</sup>, the Court applied this principle to the Prize Competitions Act, 1955<sup>9</sup>. It held that the Act was intended to regulate only competitions of a gambling nature. Significantly, it employed the doctrine of severability, stating that even if the Act's definition could be interpreted to include skill-based games, its application must be severed and confined only to gambling competitions. This implicitly affirmed that skill-based games could not be prohibited in the same manner as games of chance.

### **B. Affirmation and Application in Subsequent Precedents**

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<sup>6</sup> *State of Bombay v. R.M.D. Chamarbaugwala*, A.I.R. 1957 S.C. 699 (India).

<sup>7</sup> INDIA CONST. art. 301.

<sup>8</sup> *R.M.D. Chamarbaugwalla v. Union of India*, A.I.R. 1957 S.C. 628 (India).

<sup>9</sup> Prize Competitions Act, 1955, No. 42, Acts of Parliament, 1955 (India).

The principles laid down in 1957 were not historical artifacts; they have been consistently affirmed and applied by the judiciary, forming an unbroken chain of precedent that PROGA now seeks to sever. In *Dr. K.R. Lakshmanan v. State of Tamil Nadu*<sup>10</sup>, the Supreme Court held that betting on horse racing was a game of skill, as it involved the application of knowledge regarding a horse's pedigree, form, and the jockey's ability. The Court emphatically reiterated that wagering on a game of skill does not amount to gambling and that the predominant element, skill or chance, is what determines the character of the game. This principle was extended to card games when the Supreme Court, in *State of Andhra Pradesh v. K. Satyanarayana*<sup>11</sup>, explicitly held that the game of Rummy is not a game of chance but is "mainly and preponderantly a game of skill". This consistent judicial reasoning is summarized in the table below.

**Table 1: Evolution of the Skill-Chance Dichotomy in Indian Jurisprudence**

Case Name	Year	Court	Core Finding on Skill vs. Chance	Constitutional Implication	Citation
<i>State of Bombay v. R.M.D. Chamarbawgala</i>	1957	Supreme Court	Gambling is <i>res extra commercium</i> ; competitions where success depends substantially on skill are not gambling.	Games of chance are not "trade" under Art. 19(1)(g); games of skill are protected.	A.I.R. 1957 S.C. 699

<sup>10</sup> *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, (1996) 2 S.C.C. 226 (India).

<sup>11</sup> *State of Andhra Pradesh v. K. Satyanarayana*, (1968) 2 S.C.R. 387 (India).

<i>R.M.D. Chamarbau gwalla v. Union of India</i>	1957	Supreme Court	Applied doctrine of severability to uphold a law by confining its application only to gambling competitions, not skill-based ones.	Affirmed that laws cannot impose unreasonable restrictions on skill-based games.	A.I.R. 1957 S.C. 628
<i>State of A.P. v. K. Satyanarayana</i>	1968	Supreme Court	The game of Rummy is "mainly and preponderantly a game of skill."	Extended constitutional protection to card games where skill is the dominant factor.	(1968) 2 S.C.R. 387
<i>Dr. K.R. Lakshmanan v. State of Tamil Nadu</i>	1996	Supreme Court	Horse racing is a game of skill, and wagering on it is not gambling.	Reaffirmed the "predominance of skill" test and its application to betting on skilled contests.	(1996) 2 S.C.C. 226

<i>Varun Gumber v. U.T. of Chandigarh</i>	2017	Punjab & Haryana HC	Fantasy sports are games of skill, requiring knowledge and judgment.	Applied the established principles to the new format of online fantasy sports. SLP dismissed by SC.	2017 Cri LJ 3827
<i>Junglee Games v. State of Tamil Nadu</i>	2021	Madras HC	A blanket ban on online skill games is arbitrary, disproportionate, and violates Art. 19(1)(g).	States lack legislative competence to ban skill games under the "betting and gambling" entry.	2021 SCC OnLine Mad 2767
<i>AIGF v. State of Karnataka</i>	2022	Karnataka HC	Treating games of skill and chance alike is unconstitutional and violates the equality clause of Art. 14.	Reaffirmed that skill games do not become chance games merely because they are played online.	W.P. 18703 of 2021

### C. The Doctrine of Manifest Arbitrariness under Article 14

A crucial constitutional tool for analyzing PROGA is the doctrine of manifest arbitrariness. Evolving from landmark cases like *E.P. Royappa v. State of T.N.*<sup>12</sup>, this doctrine holds that any state action, including legislation, that is capricious, irrational, or without adequate determining principle can be struck down for violating the right to equality under Article 14 of the Constitution. A core tenet of Article 14 is that the law must not treat unequals as equals. A legislative classification that clubs together two fundamentally distinct categories such as constitutionally protected games of skill and unprotected games of chance without a rational basis for doing so, is a textbook example of manifest arbitrariness. This principle forms a powerful basis for challenging the constitutional validity of PROGA's overarching definition of "online money game."

### III. THE DIGITAL FRONTIER: HIGH COURTS AS GUARDIANS OF PRECEDENT

As gaming migrated to online platforms, state legislatures attempted to enact broad prohibitory laws, often driven by populist concerns. However, High Courts have consistently acted as guardians of the constitutional precedents set by the Supreme Court, striking down these laws and creating a body of persuasive jurisprudence directly applicable to PROGA.

#### A. The Karnataka High Court's Rebuke: *All India Gaming Federation v. State of Karnataka*

In a landmark judgment on February 14, 2022, the Karnataka High Court in *All India Gaming Federation v. State of Karnataka*<sup>13</sup>, struck down the Karnataka Police (Amendment) Act, 2021<sup>14</sup>. The state law, in a manner strikingly similar to PROGA, had amended its definitions to criminalize wagering on all games, including games of skill. The High Court found the amendment unconstitutional on multiple grounds. It held the law violated Article 14 because it "unjustifiably selective and clamped an absolute embargo on all games of skill defying the principle of proportionality". The court described the state's failure to distinguish between skill and chance as "egregious" and reaffirmed that offering games of skill is a legitimate business protected under Article 19(1)(g). When the state invoked "public order" and "public health" to justify the ban which is also the same rationale underpinning PROGA, the court rejected the

<sup>12</sup> *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 S.C.C. 3 (India).

<sup>13</sup> *All India Gaming Federation v. State of Karnataka*, 2022 SCC OnLine Kar 435 (India).

<sup>14</sup> Karnataka Police (Amendment) Act, 2021, No. 28, Acts of Karnataka State Legislature, 2021 (India).

argument, noting that the state had failed to provide any empirical data to support its claims of harm specifically from skill-based gaming.

### **B. The Madras High Court's Stand: *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu***

Similarly, on August 3, 2021, the Madras High Court in *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*<sup>15</sup>, invalidated the Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021<sup>16</sup>, which had also imposed a blanket ban. The court found the prohibition on online skill games to be "unreasonable, excessive, and manifestly arbitrary". It ruled that the state had failed the proportionality test by not demonstrating why less restrictive regulatory measures would be insufficient to address concerns about addiction. A particularly salient observation was the court's rejection of the notion that the medium of play alters the nature of the game; it correctly noted that the skills required for games like Rummy or Poker remain the same whether they are played physically or in cyberspace. This preemptively dismantles a key potential argument for PROGA that the online format itself justifies a different legal treatment.

### **C. The Judicial Affirmation of Fantasy Sports**

The application of these principles to modern gaming formats is best exemplified by the judicial treatment of fantasy sports. Beginning with the Punjab & Haryana High Court's decision in *Varun Gumber v. Union Territory of Chandigarh*<sup>17</sup>, courts have consistently held that fantasy sports are games of skill. Success in these games requires users to apply substantial knowledge of sports, player statistics, and strategic judgment, thus satisfying the "predominance of skill" test. Crucially, the Supreme Court has dismissed multiple special leave petitions challenging these High Court rulings, thereby giving its tacit seal of approval to the classification of fantasy sports as a legitimate, skill-based business activity. The inclusion of fantasy sports under PROGA's sweeping ban is, therefore, a direct legislative contradiction of a judicially settled matter. The consistent invalidation of state-level blanket bans by High Courts reveals a clear pattern of legislative overreach being corrected by judicial review. PROGA appears to be a national-level replication of these constitutionally flawed state laws, making it exceptionally vulnerable to a similar fate.

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<sup>15</sup> *Junglee Games India Pvt. Ltd. v. State of Tamil Nadu*, 2021 SCC OnLine Mad 2767 (India).

<sup>16</sup> Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021, No. 1, Acts of Tamil Nadu State Legislature, 2021 (India).

<sup>17</sup> *Varun Gumber v. Union Territory of Chandigarh*, 2017 Cri. L.J. 3827 (P&H) (India).

## **IV. THE PROMOTION AND REGULATION OF ONLINE GAMING ACT, 2025: A CONSTITUTIONAL AUTOPSY**

Applying the established legal principles to the text of PROGA reveals several deep-seated constitutional flaws. The Act's architecture is built upon a foundation that is legally and logically unsound.

### **A. The Impugned Definition: Erasing a Constitutional Faultline**

The lynchpin of the entire legislation is Section 2(1)(g)<sup>18</sup>, which defines an "online money game" as any game played for stakes, "irrespective of whether such game is based on skill, chance, or both". This clause is not a mere definition; it is a deliberate legislative device intended to nullify the entire body of jurisprudence on the skill-chance dichotomy. By including this phrase, Parliament has attempted to do through ordinary legislation what the Constitution does not permit: erase a distinction that the Supreme Court has held to be of constitutional significance under Articles 14 and 19. This legislative strategy forces a direct constitutional question: can Parliament statutorily declare that a judicially protected category of "trade" is no longer a trade?

### **B. Deconstruction of Unconstitutionality**

The core constitutional argument against the Act can be framed simply by exposing its fundamental legal flaw. A law that imposes a blanket prohibition on a legitimate business activity protected under Article 19(1)(g) of the Constitution, without satisfying the test of reasonable restriction, is unconstitutional. PROGA imposes a blanket prohibition on online games of skill played for stakes, which have been repeatedly held by the Supreme Court and various High Courts to be a legitimate business activity protected under Article 19(1)(g). Therefore, PROGA is unconstitutional.

A blanket ban on all online real-money games is a necessary and justified measure. The government cites rising cases of addiction, financial ruin, social distress, suicides, fraud, and money laundering, estimating that 450 million players have lost ₹20,000 crore. The societal harms caused by online games of skill are indistinguishable from and as severe as those caused by online games of chance, and no less restrictive measure can effectively address these harms. The Act's preamble and ministerial statements reflect a paternalistic duty to protect citizens

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<sup>18</sup> PROGA, supra note 1, § 2(1)(g)

from these perceived evils. The warrant is fundamentally flawed and contrary to law. First, the judiciary has consistently held that skill and chance games are legally distinguishable. Second, the government has failed to provide empirical data to prove that the harms from skill-based gaming are equivalent to gambling, a point explicitly noted as a legislative failing by the Karnataka High Court. Third, the ban fails the test of proportionality, as numerous less restrictive alternatives exist. A robust regulatory framework including licensing, mandatory KYC, age verification, spending limits, and self-exclusion tools could mitigate the identified harms without resorting to a complete prohibition. Such a framework was, in fact, previously contemplated by the Ministry of Electronics and Information Technology's (MeitY) own 2023 amendments to the IT Rules<sup>19</sup>, which PROGA has now rendered obsolete. Therefore, the claim that a blanket ban is necessary is constitutionally unsustainable and can, at best, apply only to games of pure chance.

#### **D. The Analogy of the Stock Market: A Test of Proportionality**

To illustrate the disproportionality of the government's action, a compelling analogy can be drawn. The government's decision to ban online skill-based gaming due to instances of financial loss and addiction is akin to banning all stock market and derivatives trading because some retail investors engage in speculative day-trading and lose their life savings. Both activities involve a significant degree of skill (analysis, strategy) mixed with an element of market risk (chance). Both can lead to substantial financial gains or devastating losses. However, for the stock market, a constitutionally mature state chooses to regulate it through bodies like the Securities and Exchange Board of India (SEBI), with strict KYC norms, circuit breakers, and investor awareness programs. By choosing prohibition for one skilled activity while regulating another, the state acts disproportionately and arbitrarily, revealing that the ban is not a principled response to risk, but a paternalistic judgment against a specific form of commerce.

Furthermore, the Act creates an internal contradiction by simultaneously banning all real-money skill games while claiming to promote "e-sports". Many premier e-sports tournaments involve prize money funded by player entry fees, which could easily fall under the Act's broad definition of playing for "stakes in expectation of winning". This ambiguity creates a chilling

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<sup>19</sup> Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, Ministry of Electronics and Information Technology (India).

effect, where even legitimate e-sports organizers may fear being classified as operators of illegal money games, thus undermining the Act's own stated objective of promoting the sector.

## **V. LEGISLATIVE COMPETENCE: A FEDERAL OVERREACH**

Beyond the violation of fundamental rights, PROGA faces a formidable challenge on the grounds of legislative competence, raising critical questions about India's federal structure.

### **The Constitutional Division of Powers**

Under the Seventh Schedule of the Constitution, "Betting and gambling" is an exclusive State subject under Entry 34 of List II<sup>20</sup>. This grants state legislatures the sole authority to enact laws on this matter. The Union's legislative powers are enumerated in List I (the Union List). A primary ground of challenge in the pending petition before the Karnataka High Court is that the Union Parliament lacks the competence to enact PROGA, as it is, in its true nature, a law on gambling.

The "pith and substance" doctrine is employed by courts to determine the true character of a law. By examining its scheme, scope, and operative core, it becomes evident that PROGA is overwhelmingly a penal statute aimed at prohibiting activities it equates with gambling. Its promotional aspects for e-sports are discretionary and vague, while its prohibitory sections are detailed, stringent, and backed by severe penalties, including cognizable and non-bailable offences. Therefore, in pith and substance, the Act pertains to "betting and gambling," making it an unconstitutional encroachment on the States' domain.

The Union is likely to defend the Act under its powers over telecommunications<sup>21</sup> or inter-state trade<sup>22</sup>. However, this argument is weak. As the Madras High Court noted, the subject of legislation does not change merely because the activity is conducted online. The Act does not regulate communication infrastructure; it regulates the activity of gaming itself.

### **The GST Case Contradiction**

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<sup>20</sup> INDIA CONST. sch. VII, list II, entry 34.

<sup>21</sup> INDIA CONST. sch. VII, list I, entry 31.

<sup>22</sup> INDIA CONST. sch. VII, list I, entry 42.

The Union government's position is further undermined by its own contradictory legal strategy. In a separate, high-stakes case before the Supreme Court concerning a ₹2.5 lakh crore Goods and Services Tax (GST) demand on the gaming industry, the government has argued that online gaming falls under "betting and gambling" (a State subject) to justify the highest tax slab of 28%.<sup>23</sup> To defend PROGA, however, it is now arguing the opposite: that online gaming is a Union subject. This has created a "constitutional catch-22" for the government. If the Supreme Court accepts its GST argument, then PROGA is unconstitutional for lack of legislative competence. If the courts accept its PROGA argument, then its entire legal basis for the massive GST demand collapses. This strategic inconsistency severely weakens the government's credibility and legal position in both matters.

## VI. FINDINGS AND SUGGESTIONS: CHARTING A PATH BACK TO CONSTITUTIONAL PROPRIETY

The foregoing analysis leads to a series of clear findings regarding the constitutional status of PROGA and informs a set of recommendations for legislative and judicial action to realign India's digital gaming policy with its constitutional ethos.

### A. Key Findings

1. **Stark Departure from Precedent:** PROGA, 2025, represents a radical and constitutionally suspect departure from nearly seventy years of settled jurisprudence that distinguishes between games of skill and games of chance, affording constitutional protection to the former.
2. **Violation of Fundamental Rights:** The Act's core definition in Section 2(1)(g) is manifestly arbitrary by treating unequals as equals, violating Article 14. Consequently, the blanket ban imposes an unreasonable and disproportionate restriction on the fundamental right to trade and commerce under Article 19(1)(g).
3. **Failure of Proportionality:** The legislative decision for a complete prohibition, when less intrusive regulatory alternatives were available and previously considered (e.g., the 2023 IT Rules), fails the constitutional test of proportionality. This conclusion is supported

<sup>23</sup> *Directorate Gen. of GST Intel. v. Gameskraft Tech. Pvt. Ltd.*, S.L.P. (C) No. 19366-19369 of 2023 (India) (pending before the Supreme Court of India).

by the Law Commission of India's 276th Report, which, while recommending a ban on unlawful activities, had previously suggested regulation, not prohibition, as the more viable path<sup>24</sup>.

4. **Legislative Competence in Question:** The Act is highly vulnerable to a constitutional challenge on the grounds that, in pith and substance, it legislates on "betting and gambling," a field exclusively reserved for the States under the Seventh Schedule.
5. **Perverse Unintended Consequences:** The ban is likely to be counterproductive to its own stated goals. It has decimated a legitimate, tax-paying domestic industry while creating a vacuum that is being rapidly filled by unregulated and illegal offshore betting platforms, thereby increasing risks of money laundering and consumer harm.

## B. Suggestions and Recommendations

1. **Judicial Intervention:** The constitutional challenges pending before the High Courts and likely to reach the Supreme Court should be heard on an expedited basis. The judiciary should strike down the impugned provisions of the Act, particularly Section 2(1)(g) and the consequential prohibitory sections, for being violative of Articles 14 and 19(1)(g).
2. **Legislative Amendment:** Parliament should repeal or substantially amend PROGA. A revised Act should:
  - Reintroduce the Skill-Chance Dichotomy:** The definition of "online money game" should be amended to apply only to games where the outcome is predominantly determined by chance.
  - Focus on Regulation, Not Prohibition:** For games of skill, the Act should establish a robust licensing and regulatory framework, not a ban.
3. **Adopt a Nuanced Regulatory Model:** A new framework for online skill gaming should be created, drawing from the MeitY IT Rules (2023) and international best practices from jurisdictions like the UK and the EU. This should include:

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<sup>24</sup> Law Commission of India, *Legal Framework: Gambling and Sports Betting Including in Cricket in India*, Report No. 276 (2018).

**Licensing:** A central licensing authority to ensure operators meet stringent standards of fairness and financial stability.

**Strict KYC and AML:** Mandatory and robust Know-Your-Customer (KYC) and Anti-Money Laundering (AML) protocols to prevent fraud and financial crimes.

**Responsible Gaming:** Mandatory implementation of responsible gaming features, such as age verification (18+), player-set deposit limits, time limits, and self-exclusion options.

**Advertising Code:** A strict code for advertising that prohibits targeting minors and making misleading claims about winnings.

4. **Resolve the Federalism Impasse:** The Union and States must collaborate to create a harmonized regulatory framework. A potential model could involve the Union government setting baseline standards for technology, security, and KYC under its IT powers, while states retain the authority to license and tax the activity of gaming within their borders, thereby respecting the constitutional division of powers.

## VII. CONCLUSION

The Promotion and Regulation of Online Gaming Act, 2025 (PROGA), represents a constitutionally precarious departure from nearly seven decades of established Indian jurisprudence. By statutorily erasing the judicially recognized dichotomy between games of skill and games of chance, the Act imposes a blanket prohibition that is manifestly arbitrary under Article 14 and places a disproportionate restriction on the fundamental right to carry on trade and commerce guaranteed by Article 19(1)(g) of the Constitution. Furthermore, the Union Government's overarching ban encroaches upon the exclusive legislative domain of the States regarding betting and gambling, raising profound questions concerning federal overreach and legislative competence. To align with constitutional mandates and sustain India's digital economy, the state must pivot from a paternalistic strategy of absolute prohibition toward a nuanced, robust regulatory framework. Embracing targeted regulations—such as those previously contemplated in the 2023 Information Technology Rules and the Law Commission's 276th Report—will effectively mitigate societal harms while safeguarding legitimate business activities, thereby realigning India's digital gaming policy with its constitutional ethos.

