

# State Legislative Brief

## TAMIL NADU

### The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022

#### Key Features

- The Ordinance prohibits online gambling and online games of chance played for money or other stakes, including Rummy and Poker.
- It establishes the TN Online Gaming Authority and empowers it to regulate online game providers. Game providers based outside the state are required to follow specified due diligence or restrict access to prohibited games for people in TN.
- The TN Gaming Authority may identify games of chance and recommend them to be included in the Schedule of prohibited games.

#### Key Issues and Analysis

- Some criteria for prohibiting online games of chance may also ban online games of skill. The Ordinance bans online Rummy and Poker, which have been recognised as games of skill by the Supreme Court.
- The Authority may impose time and monetary restrictions on playing online games. This may violate the right to freedom of expression, and the right to life.
- The state does not have the jurisdiction to regulate game providers based outside TN, who provide gaming services to people outside the state. The Ordinance also regulates the same game differently when played online.

**The Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Ordinance, 2022 was promulgated on October 3, 2022 to prohibit online gambling and online games of chance played for stakes.**

## PART A: HIGHLIGHTS OF THE ORDINANCE

### Context

In 2021, Tamil Nadu amended its Gaming and Police Laws Act, 1930 prohibiting all games played for a wager, bet, money, or other stakes (except for a lottery).<sup>1</sup> These included games of chance, and games of mere skill. Games of mere skill were exempt from being prohibited/penalised in the 1930 Act. The objective of the 2021 Act was to prohibit people from playing addictive games such as Rummy and Poker, and prevent them from being cheated on in such online games and committing suicides. The Madras High Court struck down the amendment stating that a blanket prohibition on all games played for stakes was arbitrary, disproportionate in achieving its stated objective, and excessive in its scope.<sup>2</sup>

The Madras High Court had noted that the state may bring in an appropriate law which conforms to the constitutional provisions on betting and gambling. The Preamble of the Ordinance states that a Committee (Chair: Retd. Justice K. Chandru) was set up to advise on a new law to regulate online games. The TN Ordinance is based on the recommendations of this Committee. However, the report is not available in the public domain.

In the last few years, several states have passed laws to regulate online gaming, and ban online gambling. Laws prohibiting betting or wagering in online games have been passed by Karnataka, Andhra Pradesh, Telangana, Meghalaya. Nagaland and Sikkim permit games of chance and skill after obtaining a license from the state government. The High Court of Karnataka struck down the Karnataka Amendment Act on grounds of being arbitrary and excessive.<sup>3</sup> Challenges to the Andhra Pradesh and Telangana Acts are pending before the High Courts.

### Key Features

- **Prohibition of online gambling:** The Ordinance defines online gambling as wagering or betting and includes playing online games of chance for money or other stakes. Other stakes may include virtual credits, tokens, objects, or anything similar purchased in a game. Online gambling is prohibited.
- **Regulation and prohibition of certain online games:** The Ordinance prohibits online games of chance

specified in the Schedule, which are played with money or other stakes. These include Poker and Rummy. It defines online games of chance as those which meet any of the following four conditions: (i) the element of chance dominates over the element of skill, (ii) games are presented as games of chance, (iii) the element of chance can only be eliminated by superlative skill, or (iv) games involve cards, dice, or wheel which work on random event generators.

- **Establishment of Tamil Nadu Gaming Authority:** The Authority shall be responsible for identifying online games of chance and recommending the state government to include them in the Schedule of prohibited games. It shall also: (i) issue certificates to local online game providers to operate in the state, (ii) make regulations regarding the time-limit, monetary limit, and age restrictions for online games, and (iii) collect and maintain information and data regarding the activities of online game providers.
- **Regulation of non-local game service providers:** Game providers based outside Tamil Nadu are required to restrict access to prohibited games to users located in the state or exercise due diligence. Due diligence includes: (i) entering into a contract with all customers on the condition that they will not play the game if physically present in the state, (ii) collecting personal details of customers to establish their physical presence in the state, (iii) informing prospective customers that the state prohibits online gambling and certain online games, and (iv) ensuring that persons physically present in the state do not have access to prohibited games.
- **Penalties:** Persons who play prohibited games shall be imprisoned for up to three months, or be fined up to Rs 5,000, or both. Persons who provide prohibited games shall be imprisoned for up to three years or be fined up to Rs 10 lakh, or both. The offences shall be compoundable. In case of violation by a non-local game provider, the TN Gaming Authority may recommend to the state government that it request the central government to block access of such games to persons in TN.

## PART B: KEY ISSUES AND ANALYSIS

### The Ordinance may be banning online games of skill

*Ordinance:*  
Clauses 2, 3,  
4, 7

The Ordinance bans online gambling, which is defined as wagering or betting and includes playing online games of chance for money or other stakes. Online games of chance are those where: (i) both an element of chance and skill are involved, and the element of chance dominates over the element of skill, (ii) games are presented as games of chance, (iii) the element of chance can only be eliminated by superlative skill, or (iv) games involve cards, dice, or wheel which work on random event generators. The Ordinance establishes and empowers the Tamil Nadu Gaming Authority to identify and recommend online games of chance to be prohibited. Two such games that have been specified in the Schedule and are banned are Rummy and Poker.

#### Some criteria for prohibiting online games of chance may also ban online games of skill

To be classified as an online game of chance, a game has to fulfil any of the four categories mentioned above. This raises two issues.

First, one of the criteria includes games involving cards or dice that work on random event generators. Every card or dice game played online will require a random number generator to simulate the shuffling of cards or throw of dice. Hence, all such games played online may be classified as games of chance. This may include games of skill such as online Bridge which is a game recognised by the International Olympic Committee.<sup>4</sup>

This criterion may have a wide implication similar to the TN Amendment Act of 2021 which provided for banning of all games (whether of skill or chance) if played for a wager. A similar amendment enacted by Karnataka was also struck down by the Karnataka High Court on the grounds of manifest arbitrariness. The Court stated that banning all games of skill defies the principle of proportionality, is excessive in nature and hence violates Article 14.<sup>3</sup> Courts have also held that games such as making virtual teams to play fantasy games are games of skill.<sup>5</sup>

Second, another criterion defines games of chance as games where superlative skill is required to eliminate the element of chance. The Supreme Court (1996) has differentiated between games of chance and games of skill, on the basis of a substantial degree or preponderance of skill.<sup>6</sup> The requirement of superlative skill sets a higher bar.

#### Ordinance prohibits online Rummy and Poker which have been recognised as games of skill by courts

The 2022 Ordinance categorises online Rummy and Poker as games of chance and hence, prohibits these games. This goes against the judgement of the Supreme Court and various High Courts that have considered Rummy and

Poker as games of skill.<sup>7</sup> The Supreme Court (1967) has noted that Rummy is not entirely a game of chance like three-card.<sup>7</sup> It noted that memorising the fall of the cards, and holding and discarding cards requires skill. Similar determinations have been made by Courts regarding Poker.<sup>2</sup> In 2021, the Kerala High Court reiterated that online Rummy is a game of skill.<sup>8</sup>

## Restrictions on playing online games may violate fundamental rights

*Ordinance:* The Ordinance empowers the TN Gaming Authority to determine the time limit, monetary limit, and impose age restrictions on all online games. Playing any online game in contravention of the regulations will be punishable with three months of imprisonment, a fine of Rs 5,000, or both. Therefore, the Authority will determine how much time and money adults can spend on online games. This provision may violate an individual's right to freedom of expression and right to life.

The Karnataka High Court (2021) observed that games of skill are protected under Article 19(1)(a) (right to freedom of expression) and Article 21 (right to life) of the Constitution, and Article 19(2) (reasonable restrictions) can be applied only if they cause excessive, immediate or discernible harm to others.<sup>3</sup> The Madras High Court (2021) had also observed that there may be a need to regulate or prohibit (in a limited manner) betting and gambling such that it does not infringe on an individual's freedom of choice.<sup>2</sup>

Interestingly, the authority can permit an online game but still specify how much time an adult may spend on them. This power may violate Article 14 on grounds of being manifestly arbitrary. A further question is how would the state monitor how much time any person spends on online games without violating their right to privacy.

## The Ordinance regulates the same game differently when played online

*Ordinance:* The Ordinance requires local online game providers to obtain a certificate of registration from the TN Online Gaming Authority for providing any gaming service. Failure to register is punishable with three years of imprisonment, a fine of Rs 10 lakh, or both. Similar gaming services that are provided physically do not require such registration. It is not clear why all game providers that provide games online must be regulated differently than those who provide the same games physically. For instance, a Chennai-based newspaper publishes a daily crossword puzzle in its print version and on its website. Only the online version will require the newspaper to register itself with the TN Gaming Authority. The Madras High Court (2021) noted that although physical games and sports are not comparable to online ones, there is no distinction in the skills required for card or board games such as chess or scrabble, whether played online or physically.<sup>2</sup>

The Explanatory Statement of the Ordinance states that online games (other than gambling) are addictive and have negative consequences on people, especially children. However, there is no evidence given that this is applicable to all types of online games. The requirement that all online games need to be registered may also not meet the test of proportionality, which requires that the lowest level of restrictions be imposed to meet any valid objective.

## The state does not have jurisdiction to regulate non-local game providers

*Ordinance:* Non-local game providers include those game providers who do not operate in the state, or whose services are not accessible by customers in Tamil Nadu. Game providers based outside Tamil Nadu are required to restrict access to prohibited games to users located in the state or exercise due diligence. Due diligence includes: (i) entering into a contract with customers on the condition that they will not play the game if physically present in the state, (ii) informing prospective customers that the state prohibits online gambling and certain online games, (iii) collecting personal details of customers to establish their physical presence in the state, (iv) obtaining data that indicates that a customer was not physically in the state when the account was opened, and throughout the period when the service was provided, and (v) ensure that persons physically present in the state do not have access to prohibited games.

The state government may not have the jurisdiction to regulate game providers and customers who are not present in the state. The Supreme Court (1957) examined the territorial validity of the Bombay Lotteries and Prize Competition Control and Tax (Amendment) Act, 1948 to tax prize competitions in newspapers printed and published outside Bombay.<sup>9</sup> The test for establishing a territorial connection between the law and the person being legislated upon specifies that: (i) the connection must be real and not illusory, and (ii) the liability sought to be imposed must be pertinent to the connection. The Ordinance may not meet the first test, as game providers and customers based outside Tamil Nadu, who do not restrict access to prohibited games through geo-blocking, are required to follow due diligence, have no real connection to the state.

**Illustration:** There is an online gambling provider X based in Sikkim. There is an individual A in Sikkim who gambles online on X's website. The Ordinance requires that if X does not restrict access to its game for the people

of TN through geo-blocking, it must enter into a contract with A, where A undertakes to not play the game when physically present in Tamil Nadu. A similar requirement is applicable even when X and A are based outside India. The question is whether the Tamil Nadu state government has any jurisdiction over X if it violates these provisions.

## Annexure

**Table 1: Inter-state comparison of certain recent online gaming laws**

State	Year of Amendment/Act	Provision	Status
Tamil Nadu	2022 Ordinance	Prohibits online gambling, online games of chance, and advertisements promoting prohibited games. These include Rummy and Poker.	Ordinance in force; related Bill not yet introduced in Assembly
Karnataka	2021	Prohibits wagering or betting in any game of chance or skill (online or physical). It does not prohibit lottery or betting on horse-racing.	Struck down by the Karnataka High Court
Meghalaya	2021	Permits playing games of skill or chance (online or physical) after receiving a license from the state government. This may include betting and wagering.	In force
Andhra Pradesh	2020	Prohibits online gaming, betting, and wagering. An online game means a game played for winning money or other stakes. It also prohibits physical games played for prizes or money, such as satta.	Challenge pending with the High Court
Telangana	2017	Prohibits online gaming, betting, and wagering. An online game means a game played for winning money or other stakes. It also prohibits physical games played for prizes or money, such as satta.	Challenge pending with the High Court*.
Nagaland	2015	Permits betting or wagering on games of skill, such as Chess, Poker, or virtual sport fantasy leagues, after obtaining a license from the state government. Prohibits online gambling and games of chance from obtaining licenses.	In force
Sikkim	2008	Permits games of chance or combination of skill and chance (including poker, blackjack) after obtaining a licence from the state government.	In force

\* - Status as of May 2018 as given in the Law Commission Report (2018). We have not been able to trace the further progress of the case. Sources: Respective state Acts (refer to endnote 10); Law Commission of India; Gaming Federation of India vs. State of Karnataka; PRS.

1. The Tamil Nadu Gaming and Police Laws (Amendment) Act, 2021 [https://prsindia.org/files/bills\\_acts/bills\\_states/tamil-nadu/2021/Bill%20of%20of%202021%20TN.pdf](https://prsindia.org/files/bills_acts/bills_states/tamil-nadu/2021/Bill%20of%20of%202021%20TN.pdf).
2. *Junglee Games India Private Limited v. State of Tamil Nadu*, High Court of Madras, August 3, 2021, [https://www.livelaw.in/pdf\\_upload/junglee-games-india-private-limited-v-state-of-tamil-nadu-397904.pdf](https://www.livelaw.in/pdf_upload/junglee-games-india-private-limited-v-state-of-tamil-nadu-397904.pdf).
3. *Gaming Federation of India vs. State of Karnataka*, High Court of Karnataka, October 7, 2021, [https://karnatakajudiciary.kar.nic.in/karjud/case\\_details\\_hck.php?params=UFdkQmZjM3IKOGY2TFZkZjZjNkVUdDJwWnVUZFtFyOW9sSEgzYjdNcDN0aW5LYUxCYTQ4czIvM0dpN3JlRldGTGd4aGVVa3BLYnQ3YnVlYWw2K1hUblE9PQ==](https://karnatakajudiciary.kar.nic.in/karjud/case_details_hck.php?params=UFdkQmZjM3IKOGY2TFZkZjZjNkVUdDJwWnVUZFtFyOW9sSEgzYjdNcDN0aW5LYUxCYTQ4czIvM0dpN3JlRldGTGd4aGVVa3BLYnQ3YnVlYWw2K1hUblE9PQ==).
4. World Bridge Federation, International Olympic Committee, last accessed on October 16, 2022, <https://olympics.com/ioc/recognised-international-federations/world-bridge-federation>.
5. High Court judgements include: (i) *Punjab and Haryana, Varun Gumber vs Union Territory of Chandigarh*, 2017 SCC online P&H 5372, appeal dismissed by Supreme Court on Sep15, 2017; (ii) *Bombay: Gurdeep Singh Sachar vs Union of India*, 2019 SCC online BOM 13059; (iii) *Rajasthan: Ravindra Singh Chaudhary vs Union of India*, 2020 (iv) RLW 3322 (Raj).
6. *K.R. Lakshmanan vs. State of Tamil Nadu*, Supreme Court of India, January 12, 1996, <https://main.sci.gov.in/judgment/judis/16203.pdf>.
7. *State of Andhra Pradesh v. K. Satyanarayana and Ors*, November 22, 1967, <https://main.sci.gov.in/jonew/judis/2226.pdf>.
8. *Head Digital Works Private Limited vs State of Kerala*, 2021 SCC online Ker 3592.
9. *The State of Bombay vs. R.M.D. Chamarbaugwala*, Supreme Court of India, April 9, 1957, <https://main.sci.gov.in/judgment/judis/654.pdf>.
10. State Acts include: (i) *Karnataka Police (Amendment) Act, 2021*, (ii) *Meghalaya Regulation of Gaming Act, 2021*, (iii) *Andhra Pradesh Gaming (Amendment) Act, 2020*, (iv) *Telangana Gaming (Amendment) Act, 2017*, (v) *The Nagaland Prohibition Of Gambling And Promotion And Regulation Of Online Games Of Skill Act, 2015*, and (vi) *Sikkim Online Gaming (Regulation) Act, 2008*.

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