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Analysing developments impacting business

END OF PLAY – ANDHRA PRADESH OUTLAWS REAL MONEY GAMING

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Following the footsteps of its neighbouring state Telangana, effective 25 September 2020, the Andhra Pradesh Government has banned all forms of real money games in the State. This comes as a serious blow to one of the fastest growing industries in India. On 23 September 2020, the Honourable Governor of Andhra Pradesh promulgated the Andhra Pradesh Gaming (Amendment) Ordinance 2020 [*Andhra Pradesh Ordinance #13 of 2020*] (Ordinance) amending the Andhra Pradesh Gaming Act 1974 (AP Gaming Act). The Ordinance has made significant amendments to the AP Gaming Act and has extended its application to online gaming activities. The Ordinance prohibits all forms of real money gaming from being conducted in the state of Andhra Pradesh with immediate effect. These amendments to the AP Gaming Act have been made by promulgation of the Ordinance pursuant to the extraordinary legislative powers of the Governor under Article 213 of the Constitution of India since the AP State Legislature is currently not in session. The Ordinance will have to be tabled before both the houses of the AP State Legislature once in session and will have to be approved with or without changes within six weeks of reassembling, else it will cease to operate.

Right in the midst of India's premier sporting event, the Indian Premier League, the timing of this development does not augur well for the Indian online real money gaming industry. At a time when advertisements by real money gaming companies have been bombarding television screens and Dream11, India's first gaming unicorn is bankrolling the Indian Premier League as the title sponsor, the industry is set to lose the customer base in a belt that has predominantly seen a high density of online real money gaming players.

KEY CHANGES

The Ordinance has made the following key changes to the AP Gaming Act:

- Prior to the Ordinance, the AP Gaming Act prohibited any person from opening, keeping or using or allowing to use a 'common gaming house' (which covered physical premises like house, tent, enclosures, rooms, vehicles, vessels, etc), where 'instruments of gaming' are kept or used. Pursuant to the Ordinance, cyber-space is now specifically included within the scope of a common gaming house.
- Instruments of gaming, which included physical items such as cards, dice, gaming tables, etc., now specifically covers any articles that can be used for virtual or intangible including electronic modes of 'gaming'. Electronic and digital records that are used as registers or records or evidence of 'gaming';

proceeds of any 'gaming' including any online transfer of funds or transactions are now specifically covered in the definition of 'gaming'.

- Online gaming for winning money or any other stakes is now included in the definition of 'gaming'. Wagering or betting now specifically includes any act of risking of money or playing stakes or otherwise on the result of a game or an event including on a 'game of skill'.
- The savings and exceptions for 'games of skill' from the provisions of the AP Gaming Act has now been entirely done away with. Rather, the AP Gaming Act now supersedes anything inconsistent with any other law in force. Earlier, the provisions of the AP Gaming Act did not apply to a 'game of skill' and only playing a 'game of chance' for real money was prohibited.
- Offences under the AP Gaming Act have been made cognizable and non-bailable. A cognizable offence is an offence where police is empowered to (a) investigate without prior permission or order from the jurisdictional magistrate, and (b) arrest without warrant. A non-bailable offence is an offence where bail has to be sought from the jurisdictional courts as opposed to a bailable offence, which are of lesser severity in nature, and bail can be given even by a competent police officer in such cases.
- In case of offences by companies, the company, its directors and other persons responsible for the conduct of business are now deemed to be guilty and liable for punishment unless such person is able to prove that the contravention took place without its knowledge and it exercised all due diligence to prevent such contravention.
- Penalties for contravention have also increased. Any person who operates or assists in the operations of such games or furnishes or advances monies for gaming could be liable for imprisonment of up to one year (extendable up to two years in case of subsequent offences). Any person found to be indulging in gaming or found partaking in gaming in a common gaming house could be punishable with imprisonment of up to six months.
- Police have been granted wider powers of search, seizure and investigation including the power to freeze bank accounts.

COMMENTS

The market value of the gaming industry in India was around INR 62billion (~US\$ 845.5million) in 2019 and is estimated to go up to over INR 250 billion by 2024 (~US\$ 3.4billion) (*source: Statista.com*). Armed with the largest youth population in the world, India remains one of the most attractive markets for online gaming. However, owing to a lack of progressive regulatory policy framework, the stakeholders (especially, the legitimate business operators) in the online gaming industry in India often face the brunt knee-jerk legislative actions, government investigations and lawsuits.

The Supreme Court of India has observed multiple times that the gaming laws in various states do not apply to games where there is a preponderance of skill over chance. Therefore, games where skill dominates/preponderates over chance typically enjoy the protection and privileges which are guaranteed to all other business, trade and profession under Article 19(1)(g) of the Constitution of India. The Ordinance appears to be in conflict with the settled position of various games being classified as 'games of skill' and, therefore, falling outside the purview of the gambling laws. While regulation of gaming is a state subject under the Constitution of India and the Government of

Andhra Pradesh has exercised its special legislative power and promulgated the Ordinance, it needs to be seen whether the Ordinance will face the same opposition before courts as happened with the amendments that the State of Telangana made in the year 2017 in its gaming laws (which matters are currently *sub judice*).

Lately, various courts in India have also nudged the state governments to look into the legislative void around online gaming in the state specific legislations (refer to our ERGOs [here](#) and [here](#)). One would have expected that these nudges will make the governments look into the suggestions of various experts and stakeholders and come up with a progressive regulatory framework aiming at increasing the revenue for the governments and creating employment –especially in the present times where government coffers are depleting and unemployment is increasing. Focus should be on creating awareness and framework around responsible and legitimate gaming as a mode of entertainment (and not a source of profit or income). Given the track record and the potential of this industry, regulation (through stakeholder discourse and consultation), and not prohibition, should be the approach. *Au contraire*, the steps such as this Ordinance will only hurt the legitimate operators who want to operate within the bounds of law and will cease operations in states that are banning *in toto* all real money games.

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