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THE REGULATION OF ONLINE GAMING **ACROSS JURISDICTIONS: SUCCESS, STANDARDS** **AND STABILITY**

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Abstract

In 2005 the gaming market was worth an estimated six billion dollars, half of that represented by online gambling revenues. However not all jurisdictions (countries) regulate the industry the same. Some jurisdictions allow the industry to flourish while some go as far as banning the industry all together. The gaming industry in India is growing exponentially, with the number of players and platforms increasing every day. However, the industry is currently unregulated and lacks the necessary legal frameworks to protect players and ensure fair play. While the online gambling market continues to grow globally, the wealth provided by it has not been spread equally.

Introduction

In any discussion of the gambling industry and its future prospects anywhere in the world, the topic of online gambling always arises. Online gaming is happening across the world, whether regional, national, and state regulators and lawmakers like it or not. The amount of uncertainty that surrounds the size, scope, and often the legal basis of online gaming make it hard to assess its current and future impacts, or to plan strategies around it. While some countries allow the industry to flourish, some countries regulate the industry to the point of banning it all together.

A prime example of this can be seen when comparing countries such as Malta and the United States. While Malta has adopted a “regulate rather than ban approach,” the United States has adopted the opposite approach. The Security and Accountability for Every Port Act of 2006 (SAFE Port Act) was an act of Congress in the United States covering port security and to which an online gambling

measure was added. The attachment to the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) was the UIGEA, or Unlawful Internet Gambling Act.

Essentially, the UIGEA seeks to cut off the flow of funds from U.S. gamblers to e-casinos. To that end, it mainly targets two actors: e-casinos and financial institutions. The interplay of sections 5363 and 5366 makes it a felony for a person (1) engaged in the business of betting or wagering to (2) knowingly accept money (3) in connection with unlawful gambling. The crime is punishable by up to five years in prison. Furthermore, federal regulators are required to draft regulations designed to compel financial institutions to identify and block restricted gambling transactions. Noncompliant financial institutions are subject to civil penalties (Alexander, 2008).

Although publicly traded gaming sites listed on the London Stock Exchange and similar markets stopped accepting funds from U.S. players, most non-public sites announced their intent to continue allowing U.S. based players. This often leads to the question of whether or not online poker is truly illegal. As will be discussed later, this is a controversial topic. The UIGEA targets financial institutions and overseas casinos. The UIGEA language never explicitly states that playing online poker is illegal. Therefore, some online casinos still allow access to American players.

This would be the norm for online casinos until April 15, 2011, when the Department of Justice arrested members of the three major casinos (Pokerstars, Fulltilt, and Cereus) on charges of money laundering and bank fraud. While some speculate that this will be the end of online gaming in the United States, this has not been the case. Many legislators have been working on bills that would give states the right to allow or disallow online gaming.

Another development is the U.S. Online Gaming Law 2011 convention. The convention took place on November 10th and 11th, 2011 and focused on legal and regulatory aspects of online gaming in the United States. In light of these events, we feel that the question of if the United States should regulate online gaming is a waste of time. Rather, we feel the question to research is how the United States should regulate online gaming. It seems as if the United States is certainly moving in the direction of legalizing online gaming in the United States. However, how they decide to regulate the industry will be of great importance. By looking at other jurisdictions I feel the United States can create a valuable

and sustainable industry.

Literature Review

I. Internet Regulation

The “four phases” development theory of internet regulation was developed by John Palfrey. The four phases of internet regulation are the "open internet" period, from the network's birth through about 2000; "access denied," through about 2005; "access controlled," through the present day (2010); and "access contested," the phase into which we are entering (Palfrey, 2010). During the time of the open internet, the dominant theory was that the internet itself was a separate space, often referred to as cyberspace. Until 1990s, most states tended to regulate online activities very lightly if there was even any regulation at all. When states did in fact regulate online activity, they treated them far different from activities in real space. Though the era of the "open internet," as a descriptive matter is long past, there are important elements of the theory that persist to the present day. This theory is at the core of the openness initiatives championed and implemented by the Obama administration (Noveck, 2009). In December of 2009, President Obama issued the long-awaited Open Government Directive. The directive sets a schedule for agencies to meet various goals related to access to information. The directive tells agencies to share information with the public through “online, open, accessible, machine- readable formats,” according to a White House press release. Agencies are to inventory existing information and establish time lines for publishing the inventories online (Ten Months After Pladge, Obama Releases Openness Plan, 2010)

The second phase, which ran from 2000 to 2005, is known as the Access Denied period.

During this second era, states and others came to think of activities and expression on the internet as things that needed to be blocked or managed in various ways (Palfrey, 2010). Although it may seem that the world is borderless when thinking from the perspective of cyberspace, it is clear that there are in fact well established borders online. Through a collaborative research effort called the OpenNet Initiative, the Citizen Lab at the University of Toronto, the Berkman Center for internet and Society at Harvard University, and the SecDev Group have together compared the internet filtering practices of a series of states in a systematic, methodologically rigorous fashion over the past eight years (The OpenNet Initiative, 2010).

Filtering across the world is done in many different ways. Some states implement a software application developed by one of a small handful of United States-based tech providers. Others rely less heavily on technology solutions and more extensively on "soft controls." Sometimes the filtering regime is supported explicitly by the state's legal code; in other cases, the filtering regime is carried out through a national security authority (Palfrey, 2010). Overall, blocked content revolves around a vast array of subjects. These can include political views, religious beliefs, or social values.

The third phase, from 2005 roughly to the present day, is the "access controlled" phase. Palfrey describes this as a period during which states have emphasized regulatory approaches that function not only like filters or blocks, but also as variable controls. The SAFE Port Act as well as the UIGEA were implemented during this era and fit this model. The salient feature of this phase is the notion that there are a large series of mechanisms at a variety of points of control that can be used to limit access to internet. (Palfrey, 2010). Countries also use registration, licensing, and identity requirements to control what people may do on the internet. To legally publish information online, one needs to register themselves with the state as a publisher. Palfrey explains that the first-order controls associated with censorship are combined with legal controls and surveillance, the effect of which is to ensure that those publishing online know that they are being watched and that the state is capable of shutting them down.

Currently, we are in a fourth phase called access contested. The key notion, as Palfrey explains, is that there is, and will be more pushback against some of these regulations. These push backs are fueled by political debate about the way in which these regulations are carried out by nations around the world. These contests are also caused by the increasing centrality of online activities to life in general. To internet users, online activities are an increasing part of everyday life, not a separate area to travel in occasionally. In summary, the controls and regulations applied in earlier phases of the internet are starting to give rise to strong responses from the private sector as well as other countries unhappy with its regulation. In response to pressure from countries including China and Vietnam, companies such as Google, Microsoft, and Yahoo! have joined together with human rights groups and academics to establish the Global Network Initiative. The goal of this organization is to help implement a code of conduct for handling such demands in a manner that upholds civil liberties (Global Network Initiative 2010). Although the UIGEA was first implemented in the third phase, the

fourth phase will be equally important to online gaming regulation. This is especially true after the actions taken by the United States Department of Justice on April 15, 2011, where operators of three major casinos in the online gaming world were arrested on charges of fraud and money laundering.

Internet regulation has changed substantially from where it started in the open net era described by Palfrey (2010). The argument is no longer whether or not the internet should be regulated, but to what extent it should be regulated and how that regulation should be executed. The early theorizing about internet regulation centered on the extent to which states could, and would, regulate the activities of individuals in cyberspace (Johnson & Post, 1996). Over a few decades, the internet has gone from open net to a hotly contested environment. A great example of this can be seen in Egypt. In the face of continuing political unrest, Egypt took the unprecedented step of severing all internet connections while also shutting down all cell phone services. Palfrey suggests that the question about internet regulation, looking forward, needs to be inverted. Instead of asking whether the internet can be regulated, the question should be whether it will be regulated in precisely the same way, or more extensively, than the offline world as the stakes rise in the access contested era (2010).

II. Internet Gaming Regulation (Overseas)

The question proposed by Palfrey can also be applied to the realm of online gaming regulation. The question should not be whether it can be regulated but how it should be regulated compared to their offline brick and mortar counterparts. Eighty-five jurisdictions around the world currently regulate some form of online gambling, but most such businesses are clustered in a few places. These include Antigua, Costa Rica, as well as Canada. These nations as well as a few others have legalized online gambling as an economic development strategy for attracting investment and jobs. Many anticipate that online gambling businesses will be drawn more and more to the United Kingdom as it implements its U.K. Gaming Act, which significantly liberalizes regulation of online gambling (Stewart, 2006). Although companies such as PartyGaming, Ladbrokes, and Sportingbet are publicly traded on the London Stock Exchange, the vast majority of online gambling companies are privately owned. At least two companies holding licenses in American jurisdictions have operated offshore internet gambling businesses that refused to accept bets from the U.S. or any other country where online gambling is against the law. Both MGM MIRAGE and Kerzner International operated those sites without objections from state regulators in the U.S., although both companies closed their online

gambling sites due to business reasons (Stewart, 2006).

Leading jurisdictions have created regulatory structures that in some ways mirror the traditional regulation found for brick and mortar casinos in the U.S. and throughout the world. Stewart suggests that although they vary a little from each jurisdiction, they all share the following elements:

- All require that gambling licensees and key employees be “suitable,” or persons of “integrity,” or “fit and proper.” The completeness of the background investigations for licensing may be subject to question; some, for example, accept licensure in another jurisdiction as prima facie evidence of suitability.
- All require that players establish their identification and residence. Again, the effectiveness of those requirements depends on how they are applied, which cannot be evaluated from the regulations themselves.
- All require that the games be conducted fairly, and many insist that the Web site’s gambling technology be approved by the regulatory body or a designated testing facility. These requirements range from quite specific to fairly open-ended.
- On underage gambling, most online jurisdictions establish a minimum gambling age of 18, though Alderney (an island in the English Channel) accepts bets from anyone who has reached his own country’s “age of majority”. Some online gambling sites may apply the assumption that any holder of a major credit card is 18 years old, whether or not such an assumption is valid.
- On responsible gambling issues, several jurisdictions require that online players be provided a mechanism to set their own loss or betting limits, or limits on the deposits they can make into their online gambling account. Similarly, regulations ordinarily require that a player be permitted to exclude herself from gambling with the online business, though such self-exclusions may be reversed quite easily. Some jurisdictions go beyond current U.S. gambling regulation by promising to exclude a gambler from its Web sites in response to a petition from a person other than the gambler who claims a “close personal interest in the welfare of the

gambler”.

- Certain jurisdictions ban the extension of credit to players, though others specifically authorize it.
- All of the jurisdictions require some form of anti-money laundering monitoring, which may take the form of restricting customers to a single account with the online gambling business or identifying and reporting suspicious transactions or changes in a player’s pattern of transactions.

To gain further respectability and acceptance from consumers, some online casinos have even formed a voluntary standard setting organization. This is known as “E-Commerce and Online Gaming Regulation and Assurance,” or ECOGRA. The organization helps to establish minimum standards in areas such as fair gaming, conduct, and consumer protection.

III. Internet Gaming Regulation (United States)

In 2005 approximately fifteen to twenty million United States gamblers placed bets online.

The gaming market was worth an estimated six billion dollars, representing half the world’s online gambling revenues (Alexander, 2008). Despite the official hostility of the federal government and most state governments, internet gambling among U.S. residents grew at a rate of more than 20 percent a year (Stewart, 2006). Stewart suggests that even though federal and state governments insist that online gambling is illegal, it is truly thriving. Stewart provides a list of consequences of this contradiction between policy and reality:

- Millions of U.S. residents gamble online every day without the protection of reliable regulatory structures that ensure age and identity verification, the integrity and fairness of the games, or that responsible gambling features are included on a site.
- Neither federal nor state governments receive tax revenues from online gambling.
- Disrespect spreads for laws that are neither enforced nor evidently enforceable against an activity that

enjoys wide and growing popularity.

- The online gambling industry creates no jobs in the United States and American businesses earn no returns from online gambling.
- Current inconsistencies in U.S. internet gambling policy could lead to sanctions by the World Trade Organization (WTO).

Mentioned earlier was the question of whether or not online gaming is illegal. Although most states declare that online gambling is in fact illegal, fewer than 25 people have ever been prosecuted in the United States for gambling (Rose I. N., 2006). Much of the activity surrounding internet gambling has focused on the federal Wire Act, 18 U.S.C. § 1084, which was adopted in the early 1960s to address telephone bookmaking and strictly prohibited gambling over the “wires” (Rose I. N., 2006). Both the Clinton and Bush administrations have shared the viewpoint that this act covers all forms of internet gambling. However, it is interesting to note that the U.S. Court of Appeals for the Fifth Circuit ruled that the language only refers to “bets or wagers on any sporting event or contest” (5th Cir. 2002).

Alexander argues the UIGEA is arguably broad enough to encompass not just game of chance but hybrid games such as poker as well. Where the UIGEA is sometimes controversial is in its broad phrasing of games of chance. Here Alexander argues that even games requiring skill are subject to some degree of chance. In games like blackjack, draw, poker, and bridge, the outcome of any single hand is determined substantially by chance, but the outcome of a series of repeat iterations seems not to be (Alexander, 2008). Therefore, it appears that even skill games such as poker and blackjack may be covered by the Act’s definition.

Although the DOJ has consistently stated that internet gambling violates federal law, federal prosecutors have not been very active in pursuing internet gambling offenses. The DOJ has declined time and time again to prosecute those placing illegal bets online with gambling businesses. It can be argued that this is mainly to avoid political and social backlash. It is also important to note that because all internet gambling businesses are located offshore, the current policy has also left the DOJ with few targets for prosecutions.

This is not to say that all regulation in the United States concerning internet gambling has been prohibitive. In fact, the proposed Goodlatte bill, H.R. 4777, would allow states to legalize intrastate internet gambling, and tribes to conduct internet gambling entirely on tribal lands. The bill was introduced by Rep. Robert Goodlatte in 2006 to amend title 18, U.S. tax code, to expand and modernize the prohibition against interstate gambling (Bill Summary & Status 109th Congress, 2006). However, the bill never made its way out of the committee process. In his article written for the American Gaming Association (an organization dedicated to legalizing online gambling in the United States), Stewart (2006) offers a number of potential benefits from this approach:

1. The state could protect its citizens by requiring that online gambling businesses operate honestly according to that state's rules. State regulation would include social protections, such as enforcing standards against underage gambling, requiring mechanisms such as loss limits that gamblers could use to control their gambling, and mandating the delivery of responsible gaming information to online players.
2. The state could tax online gambling revenues, creating an additional source of funding for public services. Although revenue projections are always speculative, a small state with only one percent of the nation's population might expect to rise close to \$20 million in taxes directly from in-state online gambling, without considering additional revenues that would flow from an increase in overall economic activity in the state.
3. In-state legalization would end the widespread disrespect for the law fostered by the current mismatch between policy and reality, as millions of ordinary Americans gamble online on a daily basis despite the official prohibitions against such gambling.
4. A state could nurture a new industry within its borders and stanch the flow of its citizens' dollars to overseas businesses. By requiring that online gambling businesses locate their operations in-state, the state could create employment opportunities for its citizens.

India's Online Gaming Industry Bets On Federal Level Rules

India notified amendments to the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**Gaming Rules**”), on April 6, 2023. This is a key step to regulate online gaming at a federal level in India.

There is bill of online gaming 2022 law that specifically governs gaming or crimes related to online gaming. If we talk about the recent online gaming bill 2022 it has some drawbacks as it does not make a distinction between the game of skills and the game of chance it is only applicable to online games which do not make the clearance between the applicability of the act. So that the main drawback of the bill and the constitution of India gives power to every state to establish their limits and set of rules regarding gaming activities, thus various states have a set of rules also. The states like Assam, Tamil Nādu, Andhra Pradesh, etc have their sets of rules regarding online gaming and gambling. Some states like Andhra Pradesh and Telangana have made illegal online gaming and money gaming. Online gaming and money games are banned in these two states. And other states like Sikkim and Nagaland there is a requirement for a gaming license. There are two types of games in online gaming first game of chance and the other game of skill. There should be proper differentiation between the game of chance and skills under the act. That's how the condition of India regarding the online gaming and India is higher number of scams and it is increasing day by day as everything has its pros and cons just like that the online games gives the players and country another way to increase economy and earn money but it is causing money laundering and other type of crimes. Currently, gaming is regulated by states, with different states enacting their own state specific laws, most of which are dated and not designed for online models of business. Consequently, there is inconsistency in how different states view online skill based real money gaming, with some even banning them, despite jurisprudence that such games should not be considered as unlawful per se. This leads to business uncertainty especially since states have divergent views on what's allowed and what's not, within their states. Several petitions in different courts in India on such gaming related issues, add to the chaos.

The Gaming Rules are in response to a long-standing industry demand to have a centralised framework for regulating online skill based real money games in India. With the notification of

Gaming Rules, the online gaming industry has come under the ambit of Ministry of Electronics and Information Technology (MEITY).

The journey, which officially started in January, 2023, when the first draft of the proposed amendments to the Gaming Rules were released, has seen its logical conclusion after rounds of stakeholder consultations and feedback sessions organised by the government, before the notification of an updated version of the Gaming Rules.

The Gaming Rules are focused on regulating online real money skill-based games. They can be made applicable to free-to-play games under certain circumstances (discussed below). Chance based games played for money or moneys' worth, with an expectation of winning, are expressly not allowed under the Indian law.

De-Coding the Gaming Rules

What's a Game?

There are four key definitions relating to games, built into the Gaming Rules.

Online Games, i.e. games which are either free-to-play, or are Permissible Online Real Money Games (where there is a deposit made by a user with an expectation of winnings on that deposit itself), can be offered as per the Gaming Rules.

The term deposit has not been defined in the Gaming Rules. Since the definition of online real money games says that the user has to make a deposit with the expectation of winning on *that* deposit, it seems that the intent is to cover stakes being placed in a game. The line may, however, become thin if there are elements such as registration fee or subscription charges for the game, and a part of such payments may be used for playing the online game as well.

Indian Constitution has divided law making powers between various states and the centre. Gambling is a subject that falls within the legislative powers of various states of India. Most of the states in India have prohibited gambling activities within the jurisdiction of their respective state. However, tourism and revenue generation has forced many states to allow controlled gambling in few states.

These states are also required to safeguard the interest of locals from the evil of gambling. This is the reason why most of the states have now started either prohibiting the entry of the locals or making the entry fees very high thereby making the casinos or gambling houses available to rich only. Goa has been increasing the tariffs to deter the common man from visiting them. Because of an increase in tariffs, there has been a decrease in onshore casinos in the state. On the other hand, the Sikkim government has brought out an official notification prohibiting residents of the state from entering its two casinos to safeguard the interest of the local people. So, the trend is going in the direction of tourism and revenue generation by the states and restricting access to casinos for the locals.

As per the notification dated July 4, 2007, only persons having the photo identity card or passport issued from outside the State of Sikkim will be permitted entry into the Casinos. An amendment to the Sikkim Casino Games (Control and Tax) Rules, 2007, has been made to accommodate this change. A resident of Sikkim could challenge the state's rule in court as violation of Article 14 of the Indian Constitution that mandates that State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. But courts are favouring states when the restrictions placed on residents regarding certain forms of entertainment or recreation have been imposed in bonafide public interest. For instance, the Supreme Court had upheld the Kerala government's decision to curtail consumption of liquor in bars and other public places in larger public interest. The apex court had earlier also upheld bans on online lotteries in various states on the ground that it ruined the lives of several families.

Indian population is very enthusiastic about sports and sports related activities. Indian sports has got a boost in the form of online gaming that has transformed physical sports into virtual sports, e-games, e-sports, online games, fantasy sports, etc. As on date we have no dedicated online gaming and online gambling laws in India. Similarly, we have no dedicated fantasy sports law in India till now. This is in line with the existing game laws like online poker, online rummy, online lotteries, etc that are still not governed by any dedicated Indian law. The result is inevitable i.e. online card games in India are in limbo and legal troubles. Before discussing about legality of fantasy sports it is pertinent to know a little about it. Briefly speaking, a fantasy sport is an online game that involves selection of and competition among virtual teams for points. These points can be redeemed in multiple ways and money or cash is one of them. However, when cash for stakes is involved, a fantasy game or sport is

required to comply with additional techno legal compliances. The present trends among fantasy sports stakeholders in India is to apply the tests of traditional rummy to online poker, online rummy and fantasy sports. However, this is a wrong approach. It is strongly recommend that online poker, online rummy, online lotteries, fantasy sports, etc require customised and separate treatment than simply applying the skills v chance criteria. Even the central government and Supreme Court of India are cautious about these issues and they have deliberately refrained from commenting upon the legalities of online games in India. Without going into much details, it is sufficient to say that relying solely upon skills v chance criteria for running online poker, online rummy, fantasy sports, etc would be a big mistake.

Recently the Indian government has clarified about the Foreign Direct Investment (FDI) in E-Commerce Sector of India. As per the “Consolidated FDI Policy Circular 2015” (FDI Policy), FDI is prohibited in lottery business including Government/private lottery, online lotteries, etc and gambling and betting including casinos etc. Recently the Crime Investigation Department (CID) of the Andhra Pradesh police had sought a ban on the website of “Playwin” which had allegedly been selling online lotteries banned in the state. As on date, online gaming, online gambling and lotteries websites are not complying with the internet intermediary compliances and cyber law due diligence requirements prescribed under the Information Technology Act 2000. Similarly, almost all of the online poker websites in India are violating one or other laws of India. Although online gaming market in India is booming yet regulatory compliances cannot be ignored. It seems online gaming and online gambling industry of India is not considering regulations while conducting their businesses in India.

Even the banks, payment gateways and online payment merchants, mobile payment vendors, etc supporting these online poker, online rummy, online card games and fantasy sports websites can be held liable for not following cyber law due diligence norms as they have blindly approved online payment option to these illegal and law breaking websites. These banks and payment gateways can also be held liable for money laundering, FEMA violations and assisting in tax evasion. If such banks, payment gateways and online payment merchants have already approved such illegal and law breaking online poker, online rummy, online games and fantasy sports websites in India, it is in their own interest to cancel such approval immediately. The banks etc must ask them to first comply with applicable techno legal compliances and then support their claims with a proper techno legal

consultancy and opinion from a reputed law firm.

In the past, Kerala refused permission to Future Gaming Solutions India Private Ltd to sell Nagaland lotteries in the state. A social worker had knocked judiciary's doors praying for immediate ban on unauthorized and alluring online lotteries. Promoted by other states within Maharashtra, he contended that over 1,300 bogus online lotteries under various strange names are operating here and ruining lives of millions. A division bench comprising Justice Bhushan Gavai and Justice Swapna Joshi issued notices to central and state governments seeking their reply in the matter.

What are the Factors Facilitating the Online Gaming in India?

Gaming Industry & Digital India: The gaming industry is developing rapidly and there's a direct correlation between the growth of the industry and the Digital India initiatives that are recently conducted. Due to digitization people getting access to Unified Payment Interface (UPI) so, it's not just an industry that is about growing in terms of numbers of users, it's growing in terms of monetization also.

Smartphone Penetration: According to the World Economic Forum (WEF), mobile is the primary vehicle for the gaming market in India. Most of the gaming is mobile-led, and as far as it is observed that the result in an increase in the industry is due to smartphone penetration. The use of smartphones has also risen with the advent of more gaming-friendly handsets supported by faster processing capabilities.

Affordable Internet: Internet access in India is very cheap as compared to the other countries which have led to heavy internet use among users which is also a result of Digital India initiatives. As per WEF, access to affordable smartphones has grown by 15% year-on-year over the past five years. Besides, high-speed 4G internet penetration supported by the world's lowest data tariffs has contributed magnificently.

Opportunity for Employment: The gaming industry is now being seen as an important pillar of the economy. This upcoming sector could create lakhs of jobs in the country. Several gaming startup firms are also expected to firm up hiring plans to support growth in the next few years.

Need for Regulating Gaming Industry

The online gaming industry within India has a lack of regulatory oversight and falls into a 'grey area'. India currently has no comprehensive legislation with regards to the legality of online gaming or boundaries that specify applicable tax rates within the betting and gambling industry. The development comes when more and more states are bringing about legislation seeking to bring about some order in the online gaming sector. Online gaming in India is allowed in most parts of the country. However, different states have their own legislation with regards to whether online gaming is permitted. Well-regulated online gaming has its own advantages, such as economic growth and additional benefits. However, shifting users to grey or illegal offshore online gaming apps not only results in a loss of tax revenue for the State and job opportunities for locals but results in users being unable to avail remedies for any unfair behaviour or refusal to pay out winnings.

Conclusion

Undeniably, the need of the hour is either to update the central law or come up with guiding principles in order to standardise the regulations governing the gaming industry. The government is required to play an active role in bringing uniformity in the laws governing the online gaming industry. The government may also explore other solutions such as imposing restrictions on gaming advertisements so that they do not target minors, limit the deposits/losses and time spent on the gaming website or impose measures to protect players. We hope the government to step in soon and bring uniformity around gaming laws, considering the tremendous growth and investment in the gaming industry.

As online gaming becomes more popular, it is likely that more countries will look to regulate the activity. This could be in the form of licensing requirements, taxation, or even bans on certain types of online gaming. The global online gaming industry is expected to reach \$196 billion by 2025, according to a report by Grand View Research. With this growth, there is an increasing need for statutes and regulations to govern online gaming. There are many challenges when it comes to regulating online gaming. One challenge is the cross-border nature of the industry.

Online gaming companies may be based in one country, but their players may be located in another. This can make it difficult to enforce laws and regulations. Online gaming has its adverse effects on

society it gives any player a fun time but can also cause serious damage related to money. There are a lot of chances of money laundering and there is no clarity on that how to protect the users from it as there is no specific law to protect any person in the virtual world of gaming. It is a dilemma for the government to ban gaming because apart from the dangerous side the gaming industry is providing a huge amount of revenue to the country, if they ban gaming it will cause the interest of players and developers as gaming is their way of earning money, fair way apart from illegal activities it helps to generate revenue, but the gaming industry considered to be a menace to the society. So, if we want to run both things together to safeguard against money laundering and other financial crimes one aspect of online gaming and the other is generating revenue for the country then the prudent way to run is that there should be regulation to regulate online gaming instead of a total ban. And such laws or regulations will help the states also to run accordingly. An improved regulatory work will provide job options to the people and it also helps the government in the assistance. It will provide transparency to the stakeholders and the players.

References

- Alexander, G. (2008). The U.S. on Tilt: Why the Unlawful Internet Gambling Enforcement Act is a BadBet. *Duke Law and Technology Review*, 19.
- Ayres, I., & Braithwaite, J. (1995). *Responsive Regulation: Transcending the Deregulation Debate*. USA:Oxford University Press.
- Bill Summary & Status 109th Congress*. (2006, February 6). Retrieved April 19, 2011, from The Library of Congress: <http://thomas.loc.gov/cgi-bin/bdquery/z?d109:H.R.4777>:
- Bowers, S. (2006, October 17). Players Walk Away as U.S. Law Wipes Out 90% of PartyGaming's Revenue. *The Guardian* .
- Castellas, M. (2000). Materials for an Explanatory Theory of the Network Society. *British Journal of Sociology* , 10-11.
- Deibert, R., & Rohozinski, R. (2010). Beyond Denial: Introducing Next Generation Information AccessControls. *Access Controlled: The Shaping of Power, Rights, and Rule in Cyberspa* .
- Holahan, C. (2006, October 19). Online Gambling Goes Underground. *Bloomberg Business Week* .
- Johnson, D. R., & Post, D. (1996). Law and Borders: The Rise of Law in Cyberspace. *Stanford Law Review* .May, P. (2007). Regulatory Regimes and Accountability . *Regulation and Governance* , 18-26.
- Noveck, B. (2009). *Wiki Government: How Technology Gan Make Government Better, Democracy Stronger, and Citizens More Powerful*. Washington, D.C.: Brookings Institution Press.
- Palfrey, J. (2010). Four Phases of Internet Regulation. *Social Research* , 981-996.
- Press, A. (2006, October 25). *Experts: Online Gambling Ban Won't Work*. Retrieved February 20, 2011, from Foxnews: <http://www.foxnews.com/story/0,2933,224839,00.html>
- Rose, I. N. (2006). Gambling and the Law: An Introduction to the Law of Internet Gambling. *UNLV Gaming Research & Review Journal*, 1-14.
- Rose, N. I. (2008). Enforcing a Stupid Law. *Gaming Law Review and Economics*.
- Rose, N. I. (2009). New UIGEA Regs Puts Benefits and Burdens on States. *Gaming Law and EconomicReview* .
- Sinclair, D. (1998). Self Regulation Versus Command and Control? Beyond False Dichotomies. *Law*

&Policy , 529-560.

Stewart, D. O. (2006). An Analysis of Internet Gambling and its Policy Implications. *American Gaming Association* , 1-22.

Ten Months After Pledge, Obama Releases Openness Plan. (2010, January 22). Retrieved April 20, 2011, from Virginia Coalition for open Government: <http://www.opengovva.org/newsletter/january-2010/1310-ten-months-after-pledge-obama-releases-openness-plan>

The OpenNet Initiative. (2010). Retrieved March 6, 2011, from <http://opennet.net>

US ONLINE GAMING LAW 2011. (2011, November 1). Retrieved November 9, 2011, from c5 online: <http://www.c5-online.com/2012/637/us-online-gaming-law-2011>

Wright, J. S., & Head, B. (2009). Reconsidering Regulation and Governance Theory: A Learning Approach. *Law & Policy* , 192-216.

