



Karnataka HC: Ban on Online Gaming Unconstitutional

Context:

Recently, a division bench of the Karnataka High Court delivered a judgment **striking down** major portions of the **Karnataka Police (Amendment) Act, 2021**, a new law that was introduced by the State government to ban online gambling and skill-based gaming platforms like rummy, poker and fantasy sports that involved any wagering or risking of money on an uncertain event.

Relevance:

GS II- Polity and Governance

Dimensions of the Article:

1. Why are States resorting to banning online gaming?
2. On what grounds did the Karnataka High Court strike down the online gaming law?
3. Way Forward

Why are States resorting to banning online gaming?

- Online games like rummy and poker are **addictive in nature**;
 - When played with monetary stakes leads to **depression, mounting debts and suicides**.
- Reportedly, there have been a few instances where youngsters, faced with mounting debts due to losses in online games have committed other **crimes like theft and murder**.
- Some experts also believe that online games are **susceptible to manipulation** by the websites operating such games and that there is a possibility that users are not playing such games against other players, but against automatic machines or 'bots', wherein there is no fair opportunity for an ordinary user to win the game.



On what grounds did the Karnataka High Court strike down the online gaming law?

- The Karnataka High Court struck down the amendments to the Karnataka Police Act on three major grounds:
 - Violation of fundamental rights of trade and commerce
 - liberty and privacy
 - Speech and expression;
- The law being manifestly **arbitrary and irrational** insofar as it did not distinguish between two different categories of games, i.e.
 - Games of skill
 - Chance
- **Lack of legislative competence** of State legislatures to enact laws on online skill-based games.
- The court held that games where substantial effort, knowledge and skill is required are different from games of mere luck or chance.
- Relying upon previous judgments of the Supreme Court which had held rummy, fantasy sports and betting on horse-racing to be games of skill, the High Court ruled that online games involving skill, regardless of whether money is staked on them or not enjoy protection of right to trade and commerce, unlike gambling or betting.
- The court also held that playing online games could help in building the character of an individual and enjoying online gaming could also fall within the **contours of freedom of expression and right to liberty and privacy guaranteed under the constitution.**
- The judgment also noted that State governments have been granted powers under the constitution to make laws for 'gambling and betting' but interpreted the word 'betting' for this purpose to mean betting on gambling games, i.e. **betting on games of chance and not games of skill.**

Other States :

- Apart from Karnataka, a similar law introduced by the **Tamil Nadu government** was struck down by the Madras High Court in August 2021.
- In September 2021, the **Kerala High Court** had also quashed a notification issued by the State government specifically banning the game of online rummy when played for stakes.

Way Forward



- An outright ban may not entirely curtail the playing of such online games, with or without stakes.
 - **Telangana**, which was the first State to ban online games for stakes in 2017 has seen a spurt of illegal or underground online gambling apps, most of which originate from China or other foreign countries, and except payments from players through dummy companies or hawala channels.
 - Both the **Enforcement Directorate (ED) and local cybercrime authorities** have tried to crack down on such apps but with limited success.
- Shifting of users to grey or illegal offshore online gaming apps not only results in 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.
- Experts believe that instead of a complete ban,
 - One could look at licensing and **regulating the industry** with various checks and balances such as diligent KYC and anti-money laundering processes,
 - Barring minors from accessing real money games,
 - Placing weekly or monthly **limits on the money** that can be staked or time that can be spent,
 - **Counselling** for addictive players and allowing self-exclusion of such players etc.

-Source: *The Hindu*