



# **THE RECAP**

## A ROUND-UP OF MEDIA, ENTERTAINMENT & GAMING INDUSTRIES' LEGAL UPDATES

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## INTRODUCTION

“Without freedom, no art; art lives only on the restraints it imposes on itself and dies of all others.”

- *Albert Camus*<sup>1</sup>

Albert Camus believed that freedom was essential for human existence and that without it, life loses its meaning. Camus argued that art, too, is an expression of human freedom, and that it cannot exist without the freedom to create and express oneself. He believed that art is an act of rebellion against the constraints of society and a way to transcend

them. Camus saw art as a means of understanding the human condition, and as a way to challenge and transform the world. To him, the creative process itself was a form of freedom, and without it, art would be limited and empty.

In the Indian context, with increasing discussions on the regulation of Over-The-Top (“OTT”) platforms and the censorship of obscenity, content creators are pressured to censor their work, which can stifle their creativity and undermine their artistic vision. Given this backdrop we bring to you the eleventh edition of the Recap. This edition looks back at the recent developments in the media and gaming sectors over the month of March, 2023.

1. Albert Camus was a French philosopher, writer, and journalist who is known for his philosophical concept of absurdism.



### News broadcasters request exemption from public service broadcasting

In a letter sent to the Joint Secretary (Broadcasting), the news broadcasters body, National Broadcasters & Digital Association ("NBDA") has sought an exemption from the provisions of the 'advisory on the obligation for public service broadcasting' ("Advisory"), issued by the Ministry of Information and Broadcasting ("MIB").

The Advisory was in respect of the Guidelines for Uplinking and Downlinking of Television Channels in India, 2022 ("Guidelines") issued by the MIB in November 2022. The Guidelines deal with various aspects of satellite broadcasting by television channels, which includes obligations for public service broadcasting under Paragraph 35 of the Guidelines. The Advisory, *inter alia*, clarified that content used for the purpose of public service broadcasting by private satellite TV channels may be shared between broadcasters and could be repeat telecast on one or more television channels, and that content which is broadcast as public service need not be 30 (thirty) minutes at a stretch and may be broadcasted over smaller time frames.

In this regard, the NBDA has written to Mr. Sanjiv Shankar (Joint Secretary, Broadcasting, MIB) stating that the members of the NBDA are already producing and airing news programming content in compliance with Paragraph 35 of the Guidelines and therefore, no further compliances should be imposed on its members.

You may access this update as reported in the Indian Express [here](#).

You may access the Advisory [here](#).

You may access the Guidelines [here](#).

### Web Series "College Romance" does not pass "morale decency community test".

The Delhi High Court ("Del HC"), in its recent order on March 02, 2023, observed that the TVF web series "College Romance" did not pass the "community test of common man" and ordered that it be removed from all platforms immediately.

The Del HC observed that the series contained highly sexualised content and abusive language which was not suitable for public viewing. The Del HC also noted that the series was targeted at young adults and students, and the content was not only unsuitable for children but also morally depraved and likely to corrupt the minds of the youth. The Del HC's decision has sparked mixed reactions, with

some applauding the move as a step towards curbing the portrayal of objectionable content in media, while others have criticized it as an infringement of artistic freedom and expression.

You may access the update as reported by Indian Express [here](#).

You may access the order of the Del HC [here](#).

### Department of Consumer Affairs issues "Endorsements Know-hows!"

The Department of Consumer Affairs has issued guidelines for celebrities, influencers, and virtual influencers about the endorsement of products, services or brands titled "Endorsements Know-hows!", which indicate when and how disclosures should be made during endorsement. The Endorsement Know-hows has clarified that endorsements should disclose the relationship between the advertiser and the endorser, including through the use of words such as "advertisement", "ad," "sponsored," "collaboration," or "partnership." For endorsements in a picture, disclosures should be superimposed over the image large enough for viewers to notice. For endorsements in a video or a live stream, disclosures should be made in both audio and video format and displayed continuously and prominently during the entire stream.

The Endorsement Know-hows also advises celebrities and influencers to always review and satisfy themselves that the advertiser is able to substantiate the claims made in the advertisement. It also recommends that the product and/or service must have been actually used or experienced by the endorser.

You may access the update as reported by the Press Information Bureau [here](#).

You may access the Endorsement Guidelines [here](#).

### 26% FDI limit not applicable to OTT Platforms.

MIB on March 10, 2023, issued a letter clarifying that the stipulation of a 26% foreign direct investment ("FDI") limit which applies to private satellite TV news channels, does not apply to OTT platforms that distribute live feeds of third-party news channels.

The FDI Policy of 2020 allows for FDI up to 26% under the Government approval route for entities involved in uploading/streaming of news and current affairs through digital media. The MIB received several representations



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from industry bodies and OTT platforms seeking clarification if the FDI limit would also apply to OTT platforms hosting digital feed of the news channels. The OTT platforms stated that they only provide a platform for third party news and current affairs content of news channels on an 'as is basis' without any editorial intervention. Additionally, they contended that they are not involved in any aggregation/curation of the news and current affairs content provided by such channels but are only hosting the news feed provided by such entities.

MIB has further clarified that private satellite TV news channels granted permission under the Guidelines which operate digital news content are already covered under the FDI policy. Therefore, OTT platforms simply hosting the digital feed of a private satellite TV news channel already covered under the extant Guidelines, would not be affected by the 26% FDI limit.

You may access the update as reported in the *Economic Times* [here](#).

You may access an official copy of the letter issued by the MIB [here](#).

### Delhi High Court issues Notice on Penguin's Plea against Injunction Order

The Del HC has issued notice on Penguin Random House's ("Penguin") plea against a trial court's injunction order on a book about the rise and fall of Yes Bank and its founder, Rana Kapoor, titled "The Banker Who Crushed His Diamonds: The Yes Bank Story". Earlier, an Additional

District Judge had issued an injunction against the book's publication and distribution, following a petition filed by Rana Kapoor's daughter, Roshni Kapoor, under a claim that the book contained defamatory material about Rana Kapoor and his family. After multiple hearings, the lower court dismissed Penguin's application for vacation of the injunction order. Following this, Penguin Random House had filed a plea challenging the injunction order before the Del HC, alleging that the book is a work of investigative journalism and does not contain any defamatory material.

You may access the official copy of the Del HC order [here](#).

### TRAI to release consultation paper on regulatory framework for the broadcasting sector.

The Telecom Regulatory Authority of India ("TRAI") is planning to release a consultation paper on the regulatory framework for the broadcasting sector. It aims to discuss various issues such as the ceiling on network capacity fee, multi-TV connection tariff, carriage fee, and a level-playing field regarding the pricing of TV channels. TRAI further plans to initiate a discussion on other issues such as the minimum subscription period for a television channel, listing of television channels as per genre/ language, and revenue share between multi-system operators (MSO) and local cable operators (LCO).

You may access the update as reported in the *Economic Times* [here](#).



During the ongoing Budget Session of Parliament 2023, Members of Parliament posed some pertinent questions to various ministries of the central government on online gaming and media and entertainment. We list below some of the key queries and responses:

**The MIB was asked if the government has adopted any policy to regulate OTT platforms and if any action was taken by the government regarding information that hurts religious sentiments.**

The Minister for Information and Broadcasting, Anurag Singh Thakur responded (“**IB Minister**”) by stating that the government has notified Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 (“**IT Rules 2021**”) which inter alia requires OTT platforms to adhere to a Code of Ethics laid down in the IT Rules 2021. The Code of Ethics provides for general principles to be followed by OTT platforms, including that a publisher shall take into consideration India’s multi-religious context and exercise due caution and discretion when featuring the activities, beliefs, practices or views of any religious group. The IT Rules 2021 also require OTT platforms to ensure that the content published on the platform is not prohibited by any law and subject to the age based self-classification provided in the IT Rules 2021. The IT Rules 2021 also provide for a three-tier grievance redressal mechanism to look into grievances/ complaints on violation of the Code of Ethics by OTT platforms.

**The MIB was asked what steps the government may take to stop the dissemination of fake news.**

The IB Minister responded by stating that the government has statutory and institutional mechanisms in place to combat fake news. These include a) a fact checking unit set up under the Press Information Bureau which will take cognizance of fake news and respond to queries sent by citizens. b) The Press Council of India (PCI), under the Press Council Act, 1978, has framed ‘Norms of Journalistic Conduct’ to regulate print media. c) The Program Code under the Cable TV Networks (Regulation) Act, 1995

prevents television channels from airing anything obscene, defamatory or false. Further d) the IT Rules 2021 provide a three-tier mechanism for redressal of grievances with regard to digital media.

**The Ministry of Electronics and Information Technology (“MeitY”) was asked if they are aware of the trend of increased violence in video games and if MeitY is planning to take preventive measures such as imposing weekly game time limits on minors.**

The Minister of State (“**MoS**”) for Electronics and Information Technology Rajeev Chandrashekhkar responded by stating that the government is aware of the possible risks and challenges associated with the online games including with their associated violence. However, there has been no proposal under the government’s consideration to limit the amount of time spent by gamers playing online games.

**The Ministry of Finance was asked if the government proposes to constitute a regulatory body to prevent revenue leakage and tax evasion of lotteries in India. They were also asked if they are taking any steps to prevent money laundering and tax evasion by lottery operators and distributors.**

The MoS for the Ministry of Finance Pankaj Chaudhary responded by stating that there is no such regulatory body under consideration by the government. Further, based on the information received from informers and intelligence developed by officers, 12 cases involving GST evasion of INR 344.57 crore have been detected against lottery distributors and INR 352.95 crore (including interest and penalty) has been recovered/ realized from July 2017 to till February 2023.

You may access the questions and responses raised in the Lok Sabha on media & entertainment [here](#) and [here](#).

You may access the questions and responses raised in the Lok Sabha on gaming [here](#) and [here](#).

## Tamil Nadu Governor returns online gaming bill to the state government, assembly passes it again

After months of deadlock in Tamil Nadu, Governor R.N. Ravi withheld his assent to the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill 2022 (“**TN Online Gaming Bill**”) and returned it to the state government for lack of legislative competence in drafting the TN Online Gaming Bill. This was not well received by the state government who promised to pass an identical bill and send it back to him for his assent. Staying true to their word, on March 23, 2023, the legislative assembly once again unanimously passed the TN Online Gaming Bill in the state for the Governor’s assent.

The TN Online Gaming Bill which was first passed in October 2022, prohibits online gambling (which has been defined as online wagering or betting and includes playing of any online game of chance with money or other stakes, in any manner) and also categorized rummy and poker as games of chance and specifically prohibited them from being offered for real money in the state.

Under the Constitution of India 1950 (“**Constitution**”) the Governor cannot deny his assent to a bill at the second time of asking. However, the Constitution does not provide for a time frame within which the Governor must provide his assent to the bill.<sup>2</sup> Further, the Governor also has the power to reserve any bill for the consideration of the President of India. Given the time taken to return the TN Online Gaming Bill in the first instance, coupled with the draft amendments to the IT Rules 2021 on online gaming imminent, one can only wonder when the Governor will assent to the fresh bill, if at all.

*You may read more about this development as reported in the The Hindu [here](#).*

*You can access the official copy of the Tamil Nadu Prohibition of Online Gambling and Regulation of Online Games Bill 2022 [here](#).*

## Puducherry next to propose new law on online gaming

The Law Minister of Information and Technology in the Union Territory of Puducherry K Lakshminarayanan has announced that a draft legislation on online gaming titled ‘Puducherry Prohibition of Online Gaming and Regulation of Online Games Bill 2023’ has been prepared by the law department with its financial implications currently being ascertained by the government of Puducherry. Thereafter, it will be placed for approval before the central government

as any penal legislation to be passed by a Union Territory requires the concurrence of the central government.

*You may read more on this development as reported in the The New Indian Express [here](#).*

## Governor assents to online gaming law in Chhattisgarh

The Governor of Chhattisgarh Biswabushan Harichandan has provided his assent to a January 2023 bill proposing a new law on online gaming in the state. The Chhattisgarh Gambling (Prohibition) Act 2023 (“**Chhattisgarh Gaming Act**”) which has been published in the official gazette on March 23, 2023, prohibits gambling, including online gambling in the state but exempts the provisions of the act governing games of skill.

The present Chhattisgarh government has been monitoring issues relating to online gambling and betting in the state in the recent past, especially operations run by illegal offshore betting applications. To curb this, in September 2022, the Chief Minister of Chhattisgarh directed the Director General of the Chhattisgarh police to formulate legal guidelines for addressing online betting and gambling.

The Chhattisgarh Gaming Act extends to online gambling and distinguishes between games of skill and chance. It considers a game of skill to be a game where the outcome is predominantly determined by the knowledge, training, expertise and experience of the participant. A game of chance is one where the outcome is not dependent on such factors but on chance and luck.

*You can access an official copy of the Chhattisgarh Gambling (Prohibition) Act 2023 [here](#).*

## Single judge of Madhya Pradesh High Court orders state to submit draft online gaming law within a week, Division Bench quashes the order

While dealing with a case on alleged betting, the High Court of Madhya Pradesh (“**Madhya Pradesh HC**”) on March 13, 2023, issued a summons to the Principal Secretary and the Additional Chief Secretary of the state’s Home Department to submit a draft copy of the state’s proposed online gaming law within a week. Aggrieved with the order, a writ appeal was filed by the state government before the Division Bench of the Madhya Pradesh HC which quashed the March 13, 2023 order of the single judge.

2. Article 200 of the Constitution of India 1950



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Since early last year, the state government has repeatedly declared their intention to introduce a new law to regulate online gaming and curb the alleged online gaming addiction among the young residents of the state. Further, in September 2022 during the hearing of this case the Madhya Pradesh HC ordered the state government to take concrete steps on online gaming in the state and submit a report within the next 3 months. At the subsequent hearing, the state government informed the court that a committee of senior state secretaries are currently deliberating the matter and sought 3 months' time to prepare and pass appropriate legislation. The matter was listed again on March 13, 2023 where the state government sought to revoke the earlier order of the court which called for a new law on online gaming to be presented before it. Rejecting the application, the Madhya Pradesh HC ordered for a draft copy of the state's proposed online gaming law to be submitted within a week and a date for when it is going to be tabled before the state legislative assembly. However, due to the quashing order from the Division Bench, the single judge could not proceed with the case and disposed it while lamenting at the failure of the state government in taking concrete action to solve the alleged plight of residents succumbing to gambling addiction.

You can read more about this development as reported in the *Hindustan Times* and the *Times of India* [here](#) and [here](#).

You can access official copies of the orders passed by the High Court of Madhya Pradesh [here](#) and [here](#).

## Meghalaya passes a bill to scrap their state online gaming law

The state legislative assembly of Meghalaya has unanimously passed a bill to repeal the Meghalaya Regulation of Gaming Act 2021 ("**Meghalaya Gaming Act**") in the ongoing budget session of the state assembly. The Meghalaya Gaming Act is one of the few legislations in India that legalized betting and gambling in the state under a licensing regime. However, religious organizations, youth

councils and political parties have been vocally opposed to it due to concerns around morality and insist that the government should look at alternate solutions towards increasing state revenues. The bill will now be sent to the Governor of the state for his assent, upon which it will be notified in the state gazette and the Meghalaya Gaming Act will be officially repealed.

You can read more about this development as reported in the *Shillong Times* [here](#).

You can access an official copy of the Meghalaya Regulation of Gaming Act 2021 [here](#).

## MeitY invites gaming companies to develop games for better user engagement

MeitY via their citizen engagement platform MyGov has issued an invitation for bids from gaming companies to develop web and mobile based games for the gaming platform of MyGov. As mentioned in their invitation, MeitY has called on developers to build games for greater participatory governance. Some of the relevant criteria for the game developers *inter alia* are that (i) only Indian companies will be permitted to enter this process; (ii) must have a registered office in Delhi NCR; and (iii) an average annual turnover of INR 5 crore during the preceding three financial years. Keeping national interest in mind, the themes shall be for promoting civic education and dissemination of information as per the targeted audience. For instance, the theme can be on the lines of 'Swacchata Mission', 'War Hero's', 'Rural Development' etc. The smaller games can have a playtime of up to an hour with the larger games having to be for longer a duration and preferably in phases.

You can access the official copy of the Request for Empanelment of agencies for Development Of Web and Mobile Game Applications For MyGov [here](#).



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