

Not always fair game

State must guard against zealous paternalism while seeking to curb activities online

Good intentions do not always make for good legislation. The Tamil Nadu government's effort to protect its youth from the temptations of online gambling by amending a colonial gaming law to ban online rummy and poker, has not survived judicial scrutiny. Its amendment to the Tamil Nadu Gaming Act, 1930, has been struck down by the Madras High Court, which found the prohibition unreasonable because it sought to bring even games predominantly of skill under the label of gambling, if there was an element of betting or even prize money or any other stake involved. The State's intention was acceptable to the extent that it sensed the danger involved in allowing addictive games. However, it erred in failing to make a distinction between games of skill and games of chance, and in seeking to treat as 'gaming' anything that involved stakes, contrary to judicial pronouncements circumscribing the term to games that are based on chance. In an audacious move that the court found completely unacceptable, the amending Act sought to "turn the statute on its head" by replacing a section that provided exemption to 'games of skill' from its purview with one that said it would apply to even games of skill if played for wager, bet, money or stake. The court rightly found that this would actually render illegal even offline games that were played for prize money. It said, "What was once the exemption or escape provision has now been given the most claustrophobic stranglehold and has the possibility of bringing about the most ridiculous and unwanted results if applied in letter and spirit."

One of the problems of political populism is that the state takes its paternalistic role too seriously. It assumes that large sections of society require guidance, lest their ideas of freedom lead them to uncharted zones where lack of restraint and self-control land them in debt and penury. Notions of individual freedom and choice tend to be forgotten. Another problem is that the moral element is predominant in such laws, often to the detriment of the reasonableness of their provisions. Some activities are associated with sin more than with commerce, and these are susceptible to the government's regulatory reach and banning instincts. The court, while understanding the law's intent, has rightly questioned the lack of proportionality in banning something that could have been regulated. It notes that excessive paternalism could descend into authoritarianism and curb an activity individuals are free to indulge in. It could not sympathise with the State's contention that online games were invariably open to manipulation and no distinction need be made between games of chance and those of skill. However, it did remember to observe that appropriate legislation regulating betting and gambling activities is still possible, but something that conforms to constitutional propriety.