

**Legal Issues**  
**in**  
*‘Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India’ (Draft for Discussion)*  
**&**  
**Recommendations made by ALG in its Firm Submissions in response thereto**

# Fantasy Sports

## **Fantasy Sports:**

- ❖ A gaming platform wherein gamers put together (“draft”) a virtual team of real sportspersons and compete with other fantasy gamers.
- ❖ *Examples:* EPL, Dream11

## **Features of Fantasy Sports:**

- ❖ Participants earn points based on the real-life performance of sports players in a real-life sports match.
- ❖ Success in the game depends on whether the participant has the requisite knowledge to keenly understand and follow player performances and strike the most lucrative winning combination.
- ❖ Fantasy Sports model the format on “free to play model” or “pay to play model.”

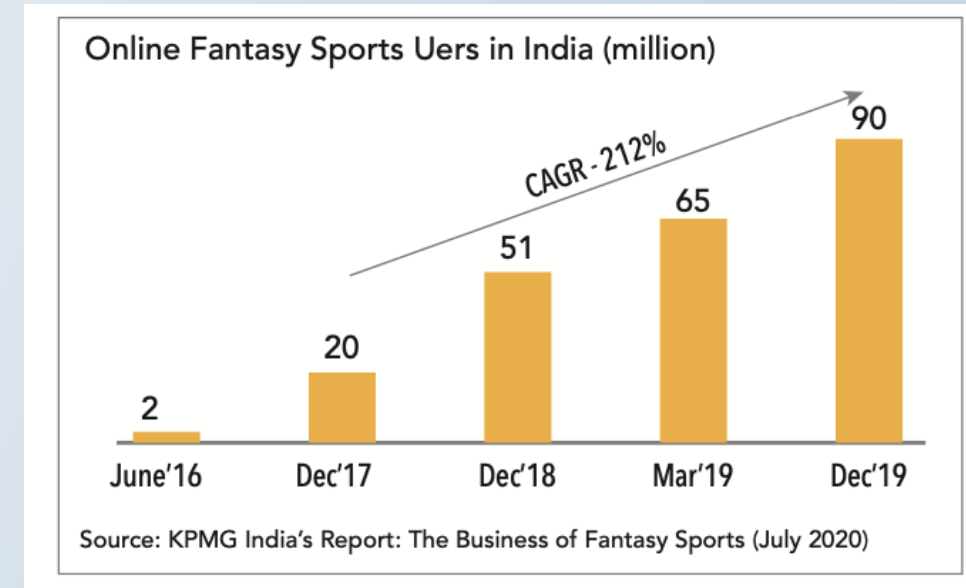
## **Online Fantasy Sports Platform (OFSP):**

- ❖ Digital platforms (app-based, website, etc.) offering versions/formats of Fantasy Sports.

## Growth Potential: Online Fantasy Sports Sector

Observations in KPMG and PricewaterhouseCoopers (PWC) Reports:

- ❖ Number of users participating in online fantasy sports in India have grown at a compounded annual growth rate of 212% between 2016 and 2019.
- ❖ Growth in the user-base translated into an exponential increase in the growth of revenues of the online fantasy sports industry.
- ❖ Fantasy sports industry generated over 3000-4000 jobs and received around INR 1000 crore in Foreign Direct Investment (FDI).
- ❖ Industry estimates: Fantasy sports industry has the potential to generate 1.5 billion online transactions by 2023.



*Graph taken from Niti Aayog's Report*

## Statutes Applicable to Gaming

- ❖ Two main enactments dealing with gaming in India –Public Gambling Act, 1867 (“PGA”) and the Prize Competitions Act, 1955 (“PCA”)
- ❖ As per the Seventh Schedule to the Constitution of India (Entries 34 and 62 of List II), the state governments have been authorized to make laws on gaming
- ❖ PGA prohibits game of chance but exempts game of skill – state laws are mostly in consonance with this
- ❖ No uniformity in law - if a state legislation on gambling exists, it prevails over the PGA, which is a central legislation promulgated earlier in time
- ❖ *Example:* Laws in Orissa, Assam, Nagaland
- ❖ Some states, such as Assam, Orissa, and Telangana, prohibit any gaming activity for money. The constitutional validity of the Telangana Act is pending challenge before the High Court of Telangana. Other states permit gambling with respect to games of skill.

## Statutes Applicable to Online Gaming

### ❖ **The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015**

This is the first legislation to enlist “virtual fantasy games” as a “game of skill” under Schedule A of the statute.

### ❖ **Sikkim Online Gaming (Regulation) Act, 2008**

This Act regulates the operation of online games by granting licenses to applicants with prescribed rules and regulations. The online games with respect to which such licenses can be granted include games of skill as well as games with a combination of skill and chance defined under Section 2(d) of the Sikkim Act.

### ❖ **The Telangana Gaming Act, 1974**

Post the enactment of the Telangana Gaming (Amendment) Act 2017, The Telangana Gaming Act 1974 has expressly included online gaming under its applicability.

## Game of Skill v. Game of Chance

- ❖ Game of Skill:
  - A game in which success predominantly depends upon the knowledge, training, personal traits, experience and capabilities of the player.
  
- ❖ Game of Chance:
  - A game that is determined entirely by mere luck, the result of which is wholly uncertain and doubtful, and a human being cannot apply his/her mind to estimate the result.
  
- ❖ Whether a game is of chance or of skill is a question of fact to be decided on the basis of facts and circumstances of each case [*Manoranjithan Manamyil Mandram v. State of Tamil Nadu, AIR 2005 Mad 261*]

## Judicial Precedents: Game of Skill

- ❖ **State of Andhra Pradesh v. K. Satyanarayana [1968 SCR (2) 387] and Dr. K.R. Lakshmanan v. State of Tamil Nadu [1996 SCC (2) 226]**
  - Followed an earlier decision [*RMD Chamarbaugwala & Anr. v. Union of India & Anr. 1957 SCR 930*]
  - No game is a game of pure skill alone and all games involve an element, even if minute, of chance
  - “*Dominant factor test*” or “*predominance test*”: This test requires “assessment” of whether chance or skill is the dominating factor in determining the result of the game
  - Assessment includes analyzing if the organization conducting the game is making any profit or gain from the activities (in excess of any nominal charge levied for the services provided)
  - *Examples of games of skill*: Rummy, Poker, Horse Racing
  - Logical inconsistencies:
    - Organization making profit or gain should be inconsequential if game of skill squarely falls under an exemption
    - Difference between physical and virtual worlds; same yardsticks cannot always be used for both

## Judicial Precedents: Online Fantasy Sports Platforms

### ❖ **Shri. Varun Gumber v. Union Territory of Chandigarh & Ors. [2017 Cri LJ 3827]**

The High Court of Punjab & Haryana held that playing fantasy sports calls for considerable skill, judgment, and discretion, as the user has to judge the athleticism and dexterity of the players, comparing their strengths and weaknesses against other players, and accounting for other (non-athletic) characteristics, such as biases and prejudices. The Court held that fantasy sports possess an element of skill that predominantly affects the outcome of the games and, as such, are not gambling activities but are games of skill. A challenge against this judgment before the Supreme Court was summarily dismissed.

### ❖ **Gurdeep Singh Sachar v. Union of India [(2019) 75 GST 258 (Bombay)]**

Before the Bombay High Court, the legality of Dream11 was questioned again. The Court observed- *“The participants do not bet on the outcome of the match and merely play a role akin to that of selectors in selecting the team. The points are scored by the participants for the entire duration of the whole match and not any part of the match.”*



## Judicial Precedents: Online Fantasy Sports Platforms

### ❖ **Ravindra Singh Chaudhary v. Union of India [CW 20779/2019]**

The Court had occasion to consider the effect of the Supreme Court's order staying the judgment of the High Court of Bombay. The Court observed that, despite the interim order of the Supreme Court, the stand of the Union of India and the GST department before the Court was that fantasy sports are a game of skill and do not amount to betting and that the 276th Law Commission Report has opined that fantasy games, such as fantasy football, would be considered as "gaming," as opposed to betting.

Court observed that the users are not gambling on the outcome of any game, since the result achieved by a participant of online fantasy sports is wholly independent of the result in the real-life game. Considering these factors and the presence of industry regulators that place checks and balances on operators, the Court arrived at an independent view that fantasy sports are a game of skill.

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## Judicial Precedent: Online Gaming Platform

### ❖ **D Siluvai Venance v State [Crl OP (MD) No. 6568 of 2020]**

The Madras high Court has called for stricter regulations for online games. This case primarily involved the issue in relation to determination of what constitutes gambling in a public place or a common gaming house. The Court showed concern by pointing out how youngsters are being attracted to play such online games where some prize money is involved. The Madras High Court also sent a notice to MPL ambassador Virat Kohli and My11Circle ambassador Sourav Ganguly for promoting online gaming apps. It is worth noting that the apps mentioned above not only include fantasy sport platforms, but they also have online rummy- which was the major point of contention in the Siluvai case.

## Issues Discussed by NITI Aayog

- ❖ No independent legal recognition of online fantasy sports contests
- ❖ No objectively definable test or regulatory guideline or administrative forum to assess and determine if a game will be characterized as a game of skill or a game of chance – chilling effect
- ❖ Differential state regulations lead to variation and uncertainty, raising compliance burden on OFSP players
- ❖ Inconsistent user experience and legal remedies; forum/jurisdiction shopping

### Notes from other jurisdictions:

- ❖ *United States of America*: “Safe-harbour” provision under the Unlawful Internet Gambling Enforcement Act (UIGEA)
- ❖ *Malta*: The Skill Gaming Regulations, 2017: Principles and criteria for the assessment and characterisation of games of skill, which include length of each game/match, differences in winning outcomes of a skilled player versus an unskilled player, possibility of skill being acquired through reading game-literature, etc.

## Report: Recommendations

- ❖ Fantasy sports should be identified and government-recognized as being distinct to other games of skill.
- ❖ Differential treatment faced by fantasy sports games across Indian States must be addressed through the creation of a uniform national-level safe-harbour for fantasy sports games.
- ❖ Principle guidelines to be issued, which must be recognised by relevant national and state-level institutions and organizations.
- ❖ A single self-regulatory organization for the fantasy sports industry should be recognized by the Government. It should have membership of those OFSP operators who, in aggregate, have as their registered users at least 66% of the registered fantasy sports users in India.
- ❖ The governance of the self-regulatory organization should be undertaken by an independent oversight board.
- ❖ All OFSPs that are members of the self-regulatory organization should enjoy the benefit of the safe-harbor exemption.
- ❖ The self-regulatory organization should establish an independent grievance redressal mechanism.

## Report: Guiding Principles

- ❖ OFSPs to be compliant with the applicable laws in India.
- ❖ Format of fantasy sports to be skill-predominant; formation of an independent evaluation committee.
- ❖ Age limit of consumers to be of 18 years (only for pay-to-play formats of fantasy sports).
- ❖ Requirement of the sports contest to not infuse any elements of chance that are not present in the real-world contest; exemption discretion with “independent evaluation committee”.
- ❖ Terms of Participation of the concerned fantasy sports contests should be fair and transparent and non-discriminatory.
- ❖ Creation of a grievance redressal mechanism for the redressal of the complaints of the consumers.
- ❖ Advertisements and promotions *vis-à-vis* the OFSPs should be fair and truthful and in compliance with the existing advertising standards of the Advertising Standards Council of India (or any other relevant body).
- ❖ Self-regulatory organization should send a communication to all the States for them to consider the grant of “immunity” to the OFSPs from criminal prosecution or sanction, if the OFSP is compliant with the guiding principles.

## ALG Recommendations

- ❖ Need to lay down clarificatory principles and guidelines with respect to game of skill vs. game of chance.
- ❖ Need to ensure that pay-to-play formats of fantasy sports contests are not offered to users below 18 years old.
- ❖ The scope of industry standardized policies needs to be well defined as the question of whether a particular game is a game of skill or change would be dependent on the modalities of each game.
- ❖ Need for legislative and judicial intervention, with states having different thresholds with respect to gambling, according to the local state laws.
- ❖ The requirement of 66% cap should be framed to ensure uniform and adequate representation of the smaller operators in the decision-making process.
- ❖ There needs to be legislative changes to ensure there is real and substantive uniformity in the working of OFSPs across India.

## ALG Recommendations

- ❖ The proposed draft guidelines should cover all online digital skill-based games.
- ❖ A wider consultation needs to be conducted to solicit suggestions and comments from state governments.
- ❖ There should be an express mention/clarification of whether OFSPs are allowed to run the platforms with the motive of profit-making.
- ❖ The composition of the independent evaluation committee should be delineated in the proposed guidelines.
- ❖ The scope of the oversight board and the distinct responsibilities, especially *vis-à-vis* the individual evaluation committee, should be determined.

# THANK YOU!

## Thoughts?

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