

IV. FANTASY SPORTS INDUSTRY IN INDIA: FILLING THE REGULATORY VOID

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ABSTRACT

In the last few years, the fantasy sports industry has witnessed major growth in India. The online fantasy sports industry like any other sector has its own unique challenges. Currently, the industry is governed by The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023 which was notified last year. However, these rules are yet to be implemented and are inadequate to deal with the challenges posed by the industry. This paper tries to fill the regulatory void in the online fantasy sports industry by drawing from global best practices on regulation of online fantasy sports especially the USA, the UK and Australia. It provides a few guidelines for sector-specific regulation of online fantasy sports in India which will help in mitigating unique challenges associated with the industry.

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I. INTRODUCTION

The Indian gaming market is growing with each passing day. As per a report, the Indian gaming market is estimated at \$2.6B at the end of 2022 and is projected to go up to \$8.6B in 2027.¹ With the aim of regulating the growing industry, the Indian Government notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023 on 6th April 2023. The Amendment introduced a self-regulatory body that was tasked with approving real money games and making relevant rules along with creating a Grievance Redressal Mechanism.² However, the government has recently expressed its intention to move away from the self-regulatory model of governance and is looking to establish an independent regulator for online gaming.³

At the forefront of the real money games, is the fantasy sports industry which is actively gaining traction in the Indian market. Loosely, fantasy sports can be defined as online contests in which participants assemble their virtual teams of real players of a professional sport and these teams compete on the real-world performance of the players, based on which the participants win or lose.⁴ This may be taken as working definition

¹ 'India: Gaming Industry Market Size 2027' (*Statista*) <<https://www.statista.com/statistics/740983/india-gaming-industry-market-size/>> accessed 22 March 2024.

² Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023.

³ Himanshi Lohchab, 'NLU Preparing Recommendations for a Online Gaming Regulator, to Submit to MeitY Soon' *The Economic Times* (25 March 2024) <<https://economictimes.indiatimes.com/tech/technology/govt-plans-independent-regulator-for-online-gaming/articleshow/108754450.cms?from=mdr>> accessed 6 April 2024.

⁴ Federation of Indian Fantasy Sports and Deloitte, 'Fantasy Sports: Creating a virtuous cycle of sports development' (2022) 11 <<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/technology-media-telecommunications/in-tmt-fantasy-sports-industry-report-noexp.pdf>> accessed 16 November 2024.

for understanding fantasy sports for now, though a more technical definition will be provided later in the paper for regulatory purposes. For better understanding, we can take example of Dream11 which is an online fantasy sports platform providing fantasy contests for cricket and other games.⁵ Here participants make virtual teams of 11 players for cricket tournaments, playing from both the competing real-world teams, and win rewards based on fantasy points earned by each player for their real-world performance.

In this study, we shall focus on the regulation of Fantasy Sports as this form of real-money games is unique in that it depends heavily on the performance of real-life players and teams. This factor brings forth unique challenges like insider trading that are not present in other forms of real money games. While there have been a lot of debate on whether fantasy sports are games of skill or chance,⁶ there has not been a comprehensive study on how the sector should be regulated. As multiple courts in India have already decided upon the legality of Fantasy Sports,⁷ this paper only briefly discusses this aspect and does not focus much on the nature of Fantasy Sports and their legal status in India. Assuming that these are games of skill, it moves on and focus on filling the void in literature on the potential regulation of Fantasy Sports in India.

⁵ Dream11, (*Home Page* 2024) < <https://www.dream11.com/>> accessed 16 November 2024.

⁶ Anthony N. Cabot et al., Alex Rodriguez, A Monkey, and the Game of Scrabble: The Hazard of Using Illogic to Define Legality of Games of Mixed Skill and Chance, 57 *DRAKE L. REV.* 383, 393; Nathan Rott, 'Skill Or Chance? Question Looms Over Fantasy Sports Industry' *NPR* (25 November 2015) <<https://www.npr.org/2015/11/25/457279313/skill-or-chance-question-looms-over-fantasy-sports-industry>> accessed 11 January 2024.

⁷ Varun Gumber v. UT of Chandigarh & Ors., 2017 SCC OnLine P&H 5372; Gurdeep Singh Sachar v. Union of India, 2019 SCC OnLine Bom 13059; Chandresh Shukla v. State of Rajasthan & Ors., D.B. Civil Writ Petition No. 6653/2019; Avinash Mehrotra v. The State of Rajasthan & Ors., SLP (Civil) Diary No.(s) 18478/2020.

This paper shall draw from global best practices on the regulation of fantasy sports and recommend a unique model of regulation. Specifically, we look at the regulations in USA, both at the federal and the state levels, UK and Australia where Fantasy Sports is legal and is subject to comprehensive regulations. In order to do the same, this paper is divided as follows: Part II shall discuss the jurisprudence surrounding their legality and existing regulation in India and identify the problems with it; Part III shall discuss the global best practices on the regulation of fantasy sports; Part IV shall draw from the global best practices to suggest appropriate regulations for the sector.

II. JURISPRUDENCE AND REGULATION IN INDIA

Online Fantasy Gaming Market is taking big leaps in India with growing technological percolation.⁸ However, concerns regarding their legality have always been raised as they involve prediction and staking money. This chapter goes on to outline their legality by briefly tracing the debate between game of chance vs game of skill in India and then fitting fantasy sports in it. The second section discusses the regulatory framework issued by the Central government for online gaming market and the third section shows how the current regulatory framework is inadequate to deal with the domain of fantasy gaming.

A. Status of Fantasy Sports in India

1. Game of Skill v. Game of Chance

⁸ Niti Aayog 'Guiding Principles for the Uniform National-level Regulation of Online Fantasy Sports Platforms in India: Draft for Discussion' (2020), 1 < <https://www.niti.gov.in/sites/default/files/2023-03/Guiding-Principles-for-the-Uniform-National-Level-Regulation-of-Online-Fantasy.pdf>> accessed 22 March 2024.

From the British era gambling has been prohibited in India by the Public Gambling Act of 1867.⁹ However, this prohibition excludes games of '*mere skill*' that can be legally played under Section 12 of the Act.¹⁰ After independence, the subjects of 'gambling and betting' were included in entry 34 of the State List recognizing exclusive jurisdiction of the states to regulate these activities.¹¹ Since then, most states have enacted their own legislations to regulate the field and they have taken the Public Gambling Act of 1867 as their model. Hence, in most states, though 'betting and gambling are prohibited, they have created an exception for games of '*mere skill*'.¹²

This exception created for mere skill has led to number of cases and wealth of jurisprudence in the country as operators of variety of games have reached the courts to get legal validity under it. The Supreme Court since 1950s has interpreted games of '*mere skill*' as a game dominated by the element of skill.¹³ The Indian courts in various cases has adopted this preponderance of skill test which is used by the US courts to evaluate games as game of chance or skill.¹⁴ Applying this test, they have held, rummy, horse racing, etc. as legally permissible to play and have kept them out of the ambit of prohibitory laws which ban gambling.¹⁵ They reason that every

⁹ Public Gambling Act 1867.

¹⁰ *ibid*, s 12.

¹¹ The Constitution of India 1950, Schedule VII List I, entry 34.

¹² Aayush Kapoor, 'The gambling law review: India' (2023) Shardul Amarchand Mangaldas <<https://www.amsshardul.com/insight/the-gambling-law-review-india/>> accessed 15 November 2024.

¹³ *State of Bombay v. R.M.D. Chamarbaugwala*, AIR 1957 SC 699.

¹⁴ Gowree Gokhale and Rishabh Sharma, 'The 'Skill' Element in Fantasy Sports Games' Nisith Desai Associates <https://www.nishithdesai.com/Content/document/pdf/Articles/180406_A_Legality_of_Fantasy_Sports_India.pdf> accessed 16 November 2023.

¹⁵ *State of Andhra Pradesh v. K. Satyanarayana*, AIR 1968 SC 825; *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, AIR 1996 SC 1153.

game has some inherent element of chance included in it and just because of this reason, it cannot be all together prohibited.¹⁶ Any game which passes the preponderance of skill test is permissible and providing services to play it is constitutionally protected right under Article 19(1)(g).¹⁷

2. *Fantasy Sports as Games of Skill*

This reasoning has been extended to fantasy sports provided through online platforms as well. In series of cases, the Punjab & Haryana, Rajasthan, and the Bombay High Courts have held them to be a game of skill satisfying the preponderance of skill test.¹⁸ The Supreme Court has heard several appeals against these decisions of the High Courts dismissed them.¹⁹ In *Avinash Mehrotra*, while dismissing the SLP against Rajasthan High Court judgment of *Chandresh Sankhla*, the Supreme Court noted that the issue of legal validity of Fantasy Sports has been no longer *res integra*. It noted that the prior dismissal of SLPs against the Bombay and Punjab & Haryana High Court judgments have settled that the Fantasy Sports have preponderance of skill involved and hence, fall under the exception of games of mere skill.²⁰

It is observed by courts in these cases that playing Fantasy Sports involves a level of skill and judgment. It involves selection of players, analysis of their performance, consideration of rules of fantasy sports, etc.²¹

¹⁶ Satyanarayan (n 8).

¹⁷ Chamarbaugwala (n 7); All India Gaming Federation v. State of Karnataka, AIR 2022 SCC OnLine Kar 435.

¹⁸ Varun Gumber (n 7); Gurdeep Singh Sachar (n 7); Chandresh Shukla (n 7).

¹⁹ Varun Gumber v. Union of India, in SLP (Criminal) Diary No. 35191/2019; Gurdeep Singh Sachar v. Union of India and Ors. in SLP(CrI) No. 11445/2019; Gurdeep Singh Sachar v. Union of India, Criminal Public Interest Litigation (St.) No. 22 of 2019; Avinash Mehrotra (n 7).

²⁰ Avinash Mehrotra (n 7).

²¹ Varun Gumber (n 7); Gurdeep Singh Sachar (n 7).

Also, players cannot be from a single real-world team which requires great skills in their selection, and a host of other statistics about a player and team has to be considered for making a fantasy team. Playing conditions, past track record and current form of the team and the player, all play a major role in making the judgment. Hence, fantasy sports are a game of skill and permissible in India.²²

However, it is always a question of fact whether a game has predominant element of skill or not and it has to be decided on a case-to-case basis. But those fantasy sports platforms which fulfil this criterion cannot be prohibited just because the fact that they can be played online and such online apps/websites have now made it easy for people to access them which is leading to problems of addiction, monetary loss, user harm, etc.²³

3. *Uneven Legal Landscape*

Though recognized by courts as games of skill, Fantasy Sports does not enjoy uniform legal status across the country. As noted earlier, gambling and betting is a subject under exclusive jurisdiction of the states. Many states have adopted the model of Public Gambling Act of 1867, some states have taken a different approach. The states of Orissa, Assam, Andhra Pradesh, and Telangana do not recognize the exception *mere skill* and prohibits all gaming activities in which money or an article of value is staked, notwithstanding any amount of skill involved.²⁴ This creates an

²² Varun Gumber (n 7).

²³ Law and Technology Society, 'Panel I: Online Gaming Regulation in India', *Consilience 2023: Event Report* (2023) 8
<https://www.ijlt.in/_files/ugd/066049_54b16e8338464046a7c7a85b23efad31.pdf>
accessed 13 January 2024.

²⁴ Odisha Prevention of Gambling Act 1955; Assam Game and Betting Act 1970; Andhra Pradesh Gaming Act, 1974; Telangana Gaming Act, 1974.

uneven legal landscape for Online Fantasy Sports across the country as they are not allowed to operate in these states.

This prohibition on operation of Fantasy Sports severely hinders the capacity of the residents of these states to participate in these games which are otherwise legal and allowed to operate in rest of the country. It also hinders the growth potential of the Fantasy Sports Industry and results in economic and revenue loss for the country. Moreover, this complete ban and lack of regulation of online gaming space allows illegal platforms to seep in that may harm consumer interests. Because these game operators may operate remotely, the state will not be able to enforce the prohibition properly. These problems arising from difference in legal status of Fantasy Sports across states are similar to that which stem from different regulatory regimes in some states. These are the primary reasons for which the authors endorse a regulatory spearheaded by center and not states. This is discussed later in the paper; however, here, it is sufficient to note that the difference in legal status hinders growth of the industry and also is not in interests of consumers.

Also, it is difficult to see how a complete prohibition on games of skill, that are constitutionally protected under Article 19(1)(g), is justified as meeting the reasonability requirement under Article 19(6).²⁵ However, the constitutionality of these prohibitions is outside the purview of this paper and, we move on to the regulatory framework for Fantasy Sports in India with assumption that they are games of skill and legal in majority of states.

B. Current Regulatory Framework

²⁵ The Constitution of India 1950, art 19.

As seen from the previous section, Fantasy Sports fall under the exception of games of mere skill and are legal in most states. Therefore, outrightly banning them is not an option. But they call for a more nuanced approach from the government for their regulation to mitigate the risks associated with them.²⁶ This sub-section delineates upon the existing regulations governing Fantasy Sports in the country. It takes into account efforts both at state and central level to regulate the industry.

1. State-Level Laws

The regulatory landscape for Fantasy Sports, and online gaming generally, varies across states. As noted previously, in some states like Telangana and Orissa, etc. they are completely banned and not allowed to operate, so no regulatory regime exist there. In most other states they are governed by existing gambling and betting that were enacted in pre-internet era and do not provide much for specific regulation of Fantasy Sports.²⁷ However, a few states such as Nagaland and Sikkim have enacted separate legislations to introduce a licensing regime for online gaming.

Sikkim requires online gaming operators to obtain a license before offering games of skill or chance in the State through the internet.²⁸ However, the laws in Sikkim do not differentiate between games of skill and chance and subjects all online games to the same regulations. This is not a good approach as the level of risk involved is substantially more in cases of games of chance and therefore, they should be treated differently.

²⁶ *ibid.*

²⁷ Ranjana Adhikari, 'Gambling Laws and Regulations: India 2025' (*iclg.com*, 19 November 2024) <<https://iclg.com/practice-areas/gambling-laws-and-regulations/india#:~:text=The%20Allahabad%20High%20Court%20in,of%20skill%20and%20not%20gambling.&text=On%20the%20other%20hand%2C%20the,the%20High%20Court%20of%20Gujarat.>> accessed 19 November 2024.

²⁸ Sikkim Online Gaming (Regulation) Act 2008.

The distinction is present in the *Nagaland Online Games of Skill Act, 2016*²⁹ that had introduced a licensing regime for operators providing games of skill. The license is granted after checking the relevant documents of the operator like Random Number Generation (RNG) certification and software certification of the operator. However, the law in the present form does not provide adequate protection for industry specific concerns related to Online Fantasy Sports such as Addiction, experienced players taking advantage of novice players who run the risk of huge financial losses, among others.

In this regard, it is the *Rajasthan Virtual Online Sports (Regulation) Bill, 2022*³⁰ provides a licensing regime for Virtual Online Sports including Fantasy Sports. The inclusion of a legislative definition of Fantasy Sports and the formation of a commission for overlooking the same are welcome steps of this bill. However, the bill suffers from the same problem as the Rules made by the center (discussed later) as it leaves too much power in the hands of the Self-Regulatory Body and do not lay down concrete standards. Further, the Bill has not been passed by the state legislature till date.

2. Central-Level Regulations

The account in previous section highlighted that there is no regulating regime for Fantasy Sports in most states. Laws there were enacted in pre-internet era and are inadequate to tackle the challenges presented by the online gaming market. Further, the unevenness in legal regime across states hindered the efficient operations of online gaming platforms including Fantasy Sports. The industry and market called for uniform central regulations to tackle the challenges provided by online

²⁹ Nagaland Online Games of Skill Act 2016.

³⁰ Rajasthan Virtual Online Sports (Regulation) Bill 2022.

gaming. Responding to these demands, the government amended, *The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021*³¹ in April 2023 to bring under the regulatory ambit online gaming including online fantasy sports.

The main highlight of the amendment, *inter alia*, was the introduction of a self-regulatory regime for the online gaming industry. The new rules proposed to establish Self-Regulatory Bodies (“SRBs”), the approval of which will be necessary for online real money games to operate.³² The SRBs have to primarily assess these gaming platforms on the criteria that the game does not involve wagering and is compliant with rules 3 and 4 requiring them to conduct due diligence, law relating to competence to contract and framework established by the SRB to verify them.³³

The rules introduced the requirement to conduct due diligence for the online gaming intermediary platforms regarding games hosted on their platforms. The service providers are also required to inform the users about the rules and regulations of their platform, its privacy policy, user agreement, etc.³⁴ The online gaming intermediaries need to further ensure that no online game which is not permissible is provided or advertised through their platform.³⁵

The real-money games are required to undertake further precautionary measures by appointing Chief Compliance Officer, Nodal Contact officer and Resident Grievance Officer and setup appropriate

³¹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023.

³² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, rule 2(qc) & 4A.

³³ *ibid*, rule 4A.

³⁴ *ibid*, rule 3.

³⁵ *ibid*, rule 3(1)(a).

mechanism to receive complaints, and complete voluntary user verification using mobile number, among other things.³⁶ In addition to the general publishing requirements under rule 3, they are also required to publish their policy regarding deposit and withdrawal of money form, measures to protect those deposits, KYC information, and framework made by the SRBs for their verification and functioning.³⁷ Further, before accepting any deposit, online real money game providers are required to conduct user verification in accordance with Guidelines applicable for RBI-regulated entities.³⁸ They are also not allowed to finance their users by way of credit to play the game.³⁹

Apart from these rules, the SRBs need to further develop the framework for approval and governance of permissible online games. The framework should ensure that the games not a threat to national security, and should include safeguards against user harm, child-protection measures, and measures directed towards prevention of addiction and financial loss and financial fraud.⁴⁰

C. Persisting Problems

The previous sections detailed the current legal as well regulatory landscape prevailing in India with regard to Fantasy Sports and also highlighted the efforts made to introduce reforms in the field. However, the current regulatory framework is vastly inadequate to address the challenges posed by Online Fantasy Sports.

³⁶ *ibid*, rule 4.

³⁷ *ibid*.

³⁸ *ibid*.

³⁹ *ibid*.

⁴⁰ *ibid*, Rule 4A.

1. Inadequate Regulations

As has been discussed earlier, most of the states govern fantasy sports under pre-internet era laws that do not adequately address the unique problems of Online Gaming. The few states like Nagaland and Sikkim that do govern online gaming through specific legislation do not adequately address the unique challenges posed by Fantasy Sports like addiction, insider trading, chances of fraud among others. The proposed Rajasthan Bill is also inadequate because it provides too much discretion to the self-regulatory body setup. Further, as a result of varied legislations and laws in different states, the cost of compliance substantially increases for the Fantasy Sports operators which includes the cost of obtaining licenses in different states. Also, it becomes difficult to enforce these regulations optimally specially when online gaming operators provide their services remotely from other jurisdictions.

To address these problems, the introduction of rules for Online real money games by the Centre is a step in the right direction. However, the rules lack the necessary powers to address some of the unique challenges posed by Fantasy Sports. The SRBs that are supposed to be set up under the rules have not been established even after almost 2 years from notification of the rules.⁴¹ The rules also leave a lot of discretion in the hands of the SRBs in terms of developing framework to deal with framework for the online gaming platforms. As seen from the previous sub-section, it is for the SRB to create framework for verification of games and ensure that they are

⁴¹ www.ETGovernment.com, 'Govt Mulls over Setting up Independent Regulator for Online Gaming - ET Government' (*ETGovernment.com*) <<https://government.economictimes.indiatimes.com/news/governance/govt-mulls-over-setting-up-independent-regulator-for-online-gaming/108760311>> accessed 23 November 2024.

not causing user harm and are protecting against addiction and financial losses. Except for the general criteria that the games should not be in form of wager, the Government has not provided any set criteria on which online real-money games need to be evaluated. Nor has it provided any fixed definition of what wagering is, how to determine it. Given the complex nature of Fantasy Sports formats, a deep analysis of each is required to evaluate whether they are a game of skill and includes wager on any outcome or not. Most of these requirements are left for the SRB to determine.

2. Legal Challenges to Central Regulation

Apart from these, there are legal challenges to the rules introduced by the Central Government. The Central Government had introduced these rules in exercise of its powers under the Information Technology Act, 2000.⁴² However, concerns have been raised regarding the competence of the Central Government to regulate Online Games as they fall under exclusive jurisdiction of the states under Entry 34 of the State List under the category of *Gambling and Betting*.⁴³ Therefore, the Central Government does not have the power to make these rules.

On the other hand, it has been argued by supporters of the Central regulation that the Centre is only regulating games of skill so it will not fall under "*Gambling and Betting*."⁴⁴ Online gaming will fall under Entry 31 of the Union List that gives power to the Centre to legislate upon

⁴² The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021.

⁴³ Shrutanjaya Bhardwaj, 'Regulating the Online Gaming Industry: Legislative and Executive Competence' (2023) 5 Nat'l LU Delhi Stud LJ 216 <https://heinonline.org/HOL/Page?handle=hein.journals/nludslj2023&collection=journal_s&id=222&startid=&end=235> accessed 19 November 2024.

⁴⁴ *ibid.*

“Telephones, wireless, broadcasting and other like forms of Communication”. As these games are usually played by players sitting in different states, it can also fall under Entry 42 of the Union List that provides power to the Centre to legislate upon “*Inter-State Trade and Commerce.*”⁴⁵

For the purposes of this paper, it is not necessary to delve into the constitutionality of the rules. However, the authors endorse the view that the Centre has competence to promulgate the rules for regulation of online gaming as has been discussed by other authors.⁴⁶ We discuss the detailed reasons for central regulation of Online Fantasy Sports in Chapter 4.

3. *Looking Forward*

Recently the Government is looking to move away from the proposed self-regulatory model to a more direct governmental regulation through an independent regulator. This shift in Government’s stance comes after the proposals received for SRBs are found to be extremely industry dominated which could not have worked as a neutral body.⁴⁷ Hence, the MeitY is looking to form a new framework with independent educationists, psychologists and experts from other relevant fields.⁴⁸ Further, multiple forms of real-money games exist that are very different from each other, one of them is fantasy sports which also have a variety of formats.⁴⁹ The

⁴⁵ *ibid.*

⁴⁶ *ibid*; Tanisha Khanna, Aarushi Jain & Gowree Gokhale, ‘The Time for a Central Law for India’s Online Gaming Industry is now’ (4 March 2022) Nisith Desai Associates <<https://nishithdesai.com/SectionCategory/33/Gaming-LawWrap/12/45/GamingLawWrap/5394/1.html>> accessed 19 November 2024.

⁴⁷ Lohchab (n 3).

⁴⁸ ‘No SRO for Online Gaming, Govt to Act as Regulator’ (*Financialexpress*, 12 February 2024) <<https://www.financialexpress.com/business/brandwagon-no-sro-for-online-gaming-govt-to-act-as-regulator-3391156/>> accessed 6 April 2024.

⁴⁹ Anthony N. Cabot & Louis v. Csoka, ‘Fantasy Sports: One Form of Mainstream Wagering in the United States’ (2007) 40 J Marshall L Rev 1195, 1208.

skill factor in different forms of the game may be different and consequently, certain formats of the same game may be games of skill while others are a game of chance. Therefore, setting out an umbrella regulation for all online real money games is not sufficient and the Government needs to come up with specialized regulations for different forms of real money games.

Further, there are unique consumer protection challenges like insider trading⁵⁰ in the fantasy sports industry that the current rules at the Centre or the state level laws completely overlook. The problem of insider trading creeps in because the Employees in the Fantasy Sports Operators may have access to information like the teams selected by the players for a specific contest which an outsider would not have access to. Now, if the employee is also allowed to participate in the same contest after having access to teams made by different contestants, then they may be able to manipulate the contest in their favour. A similar allegation was raised against an employee of DraftKings who had allegedly won \$350,000 using information that was not available in public.⁵¹

These problems are unique to the industry and the Consumer Protection Act may not be sufficient to address these specific needs. Given the nature of the industry and the potential of large risks, the Government needs to come up with broad guidelines that the SRBs or the proposed

⁵⁰ Marc Edelman, 'The Daily Fantasy Sports Scandal: Why Insider Trading May Be Just Tip Of The Iceberg For DraftKings' (*Forbes*) <<https://www.forbes.com/sites/marcedelman/2015/10/15/the-daily-fantasy-sports-scandal-why-insider-trading-may-be-just-tip-of-the-iceberg-for-draftkings/>> accessed 22 March 2024.

⁵¹ Joe Drape and Jacqueline Williams, 'Scandal Erupts in Unregulated World of Fantasy Sports' *The New York Times* (5 October 2015) <<https://www.nytimes.com/2015/10/06/sports/fanduel-draftkings-fantasy-employees-bet-rivals.html>> accessed 20 November 2024.

independent regulator need to keep in mind before drafting the specific rules for fantasy sports. Therefore, a detailed regulatory regime is imperative for consumer protection and the growth of this industry. A broad set of guidelines will also help the SRBs/Independent Regulator operate and draft specific rules.

In the following Part, we shall look at the regulatory regimes followed by different countries to regulate online gaming, especially fantasy sports. We shall specifically focus on the best practices that suit the socio-legal landscape of India.

III. GLOBAL BEST PRACTICES ON REGULATION OF FANTASY SPORTS

From the last part it is clear that fantasy sports are permissible to operate in India as these are considered games of skill. However, there is a need to regulate them and bring their activities under governmental oversight to mitigate the risks associated. Many countries where fantasy sports are allowed to operate have realized the need to tackle the problems associated with them and have created extensive regulations to control the activities of online gaming industry, including the fantasy sports industry, to curb their negative impacts.

This Part looks at a few such regulatory regimes developed in different jurisdictions to identify and analyze best practices from there to see their suitability and incorporate them in the Indian regime. It primarily considers the regulations of the U.S.A., the U.K., and Australia, as these have a large fantasy sports market and have developed extensive regulations for monitoring the industry to reduce the risks associated with it.

A. USA

The USA has a huge market for fantasy sports. The huge market has led to regulation of the fantasy sports industry. There is a two-tier of regulatory regime governing Fantasy Sports in the USA, one at the state and another on the federal level. In Sub-section I we discuss the federal law that provides a few conditions on fantasy sports that a game operator has to adhere to. Sub-Section II points out some of the problems that are prevalent in the Fantasy Sports industry and the relevant state regulations that tackle the same.

1. Federal Law: An Exception for Fantasy Sports

Congress passed the *Unlawful Internet Gambling Enforcement Act, 2006* (“UIGEA”) to regulate gambling on the Internet. UIGEA explicitly exempted seven activities that closely resembled gambling from the purview of this act. Among the seven activities were Commodity trading, share trading, insurance, and fantasy sports among others.⁵² Therefore, fantasy sports were legalized and were held as not gambling as per the federal legislation subject to a few conditions. The conditions are: (1) Prizes and awards must be declared and should be made known to the participants before the game and the value of prizes must not depend on the number of participants or the amount of fees paid by those participants; (2) Winning outcomes must reflect the knowledge and skill of the participants; (3) Winnings should not be based on the score or performance of a single individual in a match or a sporting event or a single real-world team.⁵³ However, there are other concerns related to the fantasy sports industry like the possibility of insider trading, consumer protection, and addiction among others, for which, the states have adopted various regulatory regimes which

⁵² 31 U.S.C. §5362 (1)(E)(i)-(viii)

⁵³ *ibid.*

shall be discussed in the next sub-section.

2. State Laws: Insights for Consumer Protection

In this subsection, we shall *firstly*, look at some of the problems that have been identified in the fantasy sports sector in the USA; *Secondly*, go over the different state regulations on fantasy sports to understand how they tackle the problems. The US state laws provide some great insights for promoting consumer protection and preventing consumer harm.

3. The Problems

Supporters of the Fantasy Sports industry have often argued that participating in fantasy sports is similar to trading shares in the stock market.⁵⁴ The similarity with the stock market, however, brings with it the similar problem of insider trading. An allegation of insider trading (as has been discussed in Chapter II) was levelled against an employee of DraftKings which is one of the biggest fantasy sports companies in the USA.⁵⁵ Along similar lines, a report highlighted that only a small fraction of the participants who are the experts in the game win the greatest number of games and win big money while the beginners are usually the losers.⁵⁶ Although this supports the skill element of the game, this raises consumer protection concerns where a few experts can exploit beginner or amateur players.

⁵⁴ Muralee Das, “International Regulation of Fantasy Sports: Comparative Legal Analysis of United States, Australian, and Asian Laws” (2018) 8 UNLV Gaming Law Journal 93.

⁵⁵ ‘Scandal Erupts in Unregulated World of Fantasy Sports - The New York Times’ <<https://www.nytimes.com/2015/10/06/sports/fanduel-draftkings-fantasy-employees-bet-rivals.html>> accessed 17 November 2024.

⁵⁶ ‘All the Reasons You (Probably) Won’t Win Money Playing Daily Fantasy Sports - The Washington Post’ <<https://www.washingtonpost.com/news/the-switch/wp/2015/10/12/all-the-reasons-you-probably-wont-win-money-playing-daily-fantasy-sports/>> accessed 17 November 2024.

The above report is also in contrast to how fantasy sports manufacturers often advertise their contests by promoting the idea that any casual sports fan can win big fat cheques by playing fantasy sports. This raises concerns about deceptive advertisement and unfair trade practices.

4. The Regulatory Frameworks

The state of Massachusetts provides a well-rounded regulatory mechanism to tackle at least some of the above-stated problems.⁵⁷ The regulations provide a minimum age restriction of 21 for fantasy sports.⁵⁸ It also provides for restrictions on the advertising practices of daily fantasy sports⁵⁹ and the amount of money a particular individual can deposit in their fantasy sports account.⁶⁰ It also provides a strict ban on the participation of employees and other affiliates of fantasy sports companies in in the games offered by these companies either directly or indirectly through the account of some other persons.⁶¹ Along similar lines, it mandates fantasy sports companies to have separate contests for beginners and experienced players. An experienced player is not allowed to participate in the beginners' contest either directly or through some other person.⁶² This more or less takes care of the unique challenges mentioned in the previous part on “problems.”

Virginia also regulates fantasy sports under *The Fantasy Contests Act*. It requires Fantasy Sports operators to have a license from a Government Department and a registration fee of \$50,000 for the license. The conditions for getting a license require the operator to have a certain

⁵⁷ Daily Fantasy Sports Contest Operators in Massachusetts, 940 MASS. CODE REGS. 34.00 (2016).

⁵⁸ *ibid* 34.

⁵⁹ *ibid* 34.07-34.09.

⁶⁰ *ibid* 34.10(6).

⁶¹ *ibid* 34.12.

⁶² *ibid* 34.12(6).

age verification policy⁶³ and require the funds deposited by the participants to be separate from the company's operating funds.⁶⁴

US has an elaborated regulatory framework as web of different state and federal laws dedicated specifically to monitor the activities of fantasy sports. It provides a few important lessons to tackle some deep-rooted problems with the fantasy sports leading to unfair activities and consumer exploitation.

B. UK

1. Regulatory Body and Licensing Regime

In UK the fantasy sports are considered as gambling and come under the regulatory ambit of the Gambling Act 2005.⁶⁵ More specifically they are considered as pool betting under Section 12 of the Act.⁶⁶ *In pool betting the stakes are pooled and the amount of money won by the successful customers is calculated by dividing the total pool (minus commission) by the number of winners.* As the fantasy sports follow a similar format they are covered under this definition.⁶⁷

The Gambling Act establishes the Gambling Commission which is the overarching body for regulating gambling activities in UK.⁶⁸ Unlike self-regulatory approach proposed in India, the UK regime envisages strict governmental regulation of the sector.

⁶³ Code of Virginia 2022, § 59.1-557.

⁶⁴ *ibid.*

⁶⁵ Gambling Act 2005.

⁶⁶ *ibid.*, s 12.

⁶⁷ 'Remote pool betting licence' (*Gambling Commission*, 9 February 2023) <<https://www.gamblingcommission.gov.uk/licensees-and-businesses/licences-and-fees/remote-pool-betting-licence>> accessed 17 November 2024.

⁶⁸ Gambling Act 2005, s 20.

Every operator providing any form of gambling services is required to obtain license from the commission and without such license providing and advertising such services is an offence and is dealt with strict penal actions.⁶⁹ Online fantasy sports platforms are required to obtain remote pool betting license before providing their services in UK. This is regardless of whether the operations of the platform are conducted from the territory of UK or outside. The operator needs to pay application fee for applying for the license and after obtaining the license, the operators are required to pay annual fee for holding the license. These fees are calculated according to size of the operator based on gross yield from services provided.⁷⁰

To obtain license, the operators are required to furnish host of details about their business and types of services provided. They relate to finance and investment details, business structure, compliance details, software information, system diagram (working of the game from registration to end delivery support), rules of the game, data hosting information, terms and conditions, etc.⁷¹ The applicant is also required to provide an address in the UK.⁷² The Commission assesses the application and after the evaluating its suitability grants license.⁷³ Information of the licensed operators is added in

⁶⁹ 'Do I need a licence?', (*Gambling Commission*, 23 December 2022) <<https://www.gamblingcommission.gov.uk/licensees-and-businesses/page/do-i-need-a-licence>> accessed 17 November 2024.

⁷⁰ Remote pool betting licence (n 62).

⁷¹ 'What you need to send us when you apply for an operating licence' (*Gambling Commission*, 9 January 2024) <<https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/what-you-need-to-send-us-when-you-apply-for-an-operating-licence>> accessed 17 November 2024.

⁷² Gambling Act 2005, s 69; 'How we assess operating licence applications' (*Gambling Commission*, 7 June 2021) <<https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/page/how-we-assess-operating-licence-applications>> accessed 17 November 2024.

⁷³ *ibid.*

the public register and is displayed on the Commission's website.⁷⁴ If the Commission denies any application it has to provide reasons for such denial and an appeal may be made against its decision.⁷⁵

A license holder, such as online fantasy gaming operator, is required to comply with the conditions prescribed by the Commission. The operator has to display the license status and number on its platform.⁷⁶ It has to comply with all the technical standards issued by the Commission with regard to the software used.⁷⁷ The operators are required to provide services in confirmation with other applicable laws including the anti-money laundering, and consumer protection laws.

2. Consumer Protection

The license holders are also required to take steps and implement practices that promote consumer welfare and reduce the risk of money laundering and are required to report any criminal activities promptly.⁷⁸ Further, they are under obligation to report any security breach in their software which threatens the consumer data privacy or other software malfunctions relating to wrong distribution of prices to the Commission. Also, any information which influences the business operations of the operator shall be communicated to the Commission along with the

⁷⁴ 'Public registers and datasets' (*Gambling Commission*) <<https://www.gamblingcommission.gov.uk/public-register>> accessed 17 November 2024.

⁷⁵ 'Appeal against a decision made about your licence or application' (*Gambling Commission*, 7 June 2021) <<https://www.gamblingcommission.gov.uk/licensees-and-businesses/guide/page/appeal-against-a-decision-made-about-your-licence-or-application>> accessed 17 November 2024.

⁷⁶ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Operating License Conditions, condition 8.

⁷⁷ *ibid*, condition 2.3.1.

⁷⁸ *ibid*, condition 3, 7, 12, & 15.

information about any legal or regulatory proceeding involving the operator.⁷⁹

The operators are required to provide the consumers with proper information regarding rules of the game and shall communicate to them all the information regarding deposits and withdrawal of money along with the details required from the consumers for undertaking these actions.⁸⁰ Before providing services, the operators are required to undertake consumer identity verification in accordance with the rules.⁸¹ If there are more than one account of a consumer, operator is required to identify them, impose limits on them as required by the rules and monitor them aggregately.⁸² They are also required to keep record of all the games played, bets made, winnings, payments made and other information about the game on their platform.⁸³ The money received from the consumers shall be kept in separate account and all the information about its security and shall be provided to the consumers.⁸⁴ The operators also need to identify underage users and disable their accounts.⁸⁵

Along with the above requirements, the operators shall make policy and take steps to provide the consumers the option of self-exclusion and if this option is exercised by the consumer, then restrict their account and

⁷⁹ *ibid*, condition 15.

⁸⁰ *ibid*, 7, 17; Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Code of Practice provisions, provision 4.2.9.

⁸¹ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Operating License Conditions, condition 17.

⁸² Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Code of Practice provisions, provision 3.9.

⁸³ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Operating License Conditions, condition 13.

⁸⁴ *ibid*, condition 4.

⁸⁵ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Code of Practice provisions, provision 3.2.8, 3.2.11.

avoid any targeted advertising to them.⁸⁶ Also, the operators are required to provide credit to the consumers for playing in responsible manner in accordance with the limits imposed by the rules and any bonus or incentive provided to the consumer shall also not be disproportionate and shall follow guidelines by the Commission.⁸⁷ The operators are required to have effective complaint mechanisms and shall have arrangements to resolve the grievances through ADR systems. Also, the operators are obligated to advertise their platform in accordance with the guidelines prescribed by the Commission.⁸⁸

3. Assessment and Oversight

There are regular assessments undertaken by the Commission to ensure that the conditions are being followed. The operators are required to file periodic reports such as annual financial statements, and other records with the Commission.⁸⁹ They are under general obligation to co-operate with the Commission and are required to furnish any information as demanded by it. With help of these regular updates, the Commission is able to evaluate the effectiveness of the regulations and identifies potential risks in the system and mitigate them.⁹⁰

UK has one of the most extensive regulatory regimes for gaming industry and presents itself as one of the most efficacious systems with centralized control. It provides many lessons for the Indian framework which is still in nascent stage and adopting the best practices from the UK

⁸⁶ *ibid*, provision 3.5.

⁸⁷ *ibid*, provision 3.7.

⁸⁸ *ibid*, provision 5.1.

⁸⁹ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Operating License Conditions, provision 13.

⁹⁰ Licence Conditions and Codes of Practice (Version Effective from 31 October 2023), Code of Practice provisions, provision 1.1.

can be beneficial for the country's gaming sector, including online fantasy sports.

C. AUSTRALIA

Australia is one of the biggest, most liberal and mature legal regulatory regimes for the gaming industry.⁹¹ It offers a few useful insights for regulation of online gaming industry and these can be particularly significant for developing a regulatory framework for Indian fantasy sports industry.

Australia has a two-tiered system for gaming regulations in which operators are required to comply with national (federal laws) at first tier and with the different state laws at the second tier.⁹² The *Interactive Gambling Act, 2001* (IGA) was enacted to regulate internet-based gambling at the central level.⁹³ Australian Media and Communications Authority (ACMA) is the body charged under the Act to regulate internet-based gambling.⁹⁴ Most of the gambling services provided through internet are prohibited under the Act, however exception is made for placing bets through wagering services on sports events.⁹⁵ These permitted activities are regulated under the Act and need to comply with the rules and regulations under the Act for providing services. Though there is a little debate, fantasy sports are

⁹¹ Das (n 51) 103; Eric L. Windholz, 'Fantasy sports in Australia: co-regulation and commercial accommodation' (2021) 21 *The International Sports Law Journal* 154, 163 <<https://link.springer.com/article/10.1007/s40318-021-00187-x>> accessed 17 November 2024.

⁹² Windholz (n 86), 157.

⁹³ *Interactive Gambling Act 2001*.

⁹⁴ Das (n 51) 105.

⁹⁵ *Interactive Gambling Act 2001*, s 8A.

generally considered to be falling under the sport event wagering exception of the IGA and permitted under the Australian regime.⁹⁶

Keeping this debate aside, the Australian regime provides a few important insights for regulation of fantasy sports. The extensive policy research done in Australia helps to provide a good working definition of the fantasy sports. In 2015 review of the IGA, the report defined fantasy sports as “*a game where participants assemble imaginary or virtual teams of real players of a professional sport. These teams compete based on the statistical performance of those players in actual games.*” It further distinguishes different formats of the game and says “*traditional fantasy sports are contested across a long time period (typically a season) across a number of formats. Daily fantasy sports, or DFS, are contested across a shorter period (typically a day or a week).*”⁹⁷ This definition can be used with suitable modifications for determining the gaming formats falling under the category of fantasy sports.

Further, Australia presents a unique hybrid model of polycentric regulatory mechanisms, especially for the fantasy sports.⁹⁸ The responsibility is shared by government both at central and provincial level, industry stakeholders and governing bodies of different sports. Under this model, the gaming service providers are under broader control of state authorities and require license from these authorities to provide their

⁹⁶ Australian Gov't, Dep't of Broadband, Communications and the Digital Economy, 'Final Report 2012: Review of the Interactive Gambling Act 2001' (2012) 154-155 <https://www.responsiblegambling.vic.gov.au/__data/assets/pdf_file/0003/23718/Final_Report_-_Review_of_the_Interactive_Gambling_Act_2001-2012.pdf> accessed 17 November 2024.

⁹⁷ Australian Gov't Dep't of Social Services, 'Review of Illegal Offshore Wagering' (2015) 5 <<https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling/review-of-illegal-offshore-wagering>> accessed 17 November 2024.

⁹⁸ Windholz (n 86), 163.

services.⁹⁹ However, the industry is free to make its own code and set standards for itself. These standards are to be registered with the ACMA and the government authority will only step in to regulate the service providers where there is no industry code or the code failed.¹⁰⁰ This presents a unique picture where government provides a flexible framework in which the industry can self-regulate itself.

Further, the sport governing bodies are made co- or quasi-regulators of the industry and the fantasy sports platforms are required to get approvals from and sign an information-sharing agreement with these to operate. The sport governing bodies levy fee in respect of this.¹⁰¹ This is efficient way to regulate as these provide the sport governing bodies with the resources and data to monitor the integrity of fantasy sport. The experience and skills of the bodies are utilized to keep the sector in check and at the same time government resources are freed as the operators pay for these.¹⁰² There are possibilities of the collaboration between sport governing bodies and the fantasy sport companies extending beyond what is required by law such as to share statistics and for promotional purposes. Concerns are also raised with these extended collaborations. But keeping the question of close-knit collaborations aside, the regulatory framework involving sport governing bodies is effective and efficient as it decentralizes the framework and also helps in channelizing the expertise of these bodies.¹⁰³

Apart from this, the service providers are also required to follow the self-exclusionary laws in place which allows individuals to exclude themselves from these gaming activities. They are required to put in place

⁹⁹ Interactive Gambling Act 2001, s 104.

¹⁰⁰ *ibid*, Part 4.

¹⁰¹ Windholz (n 86), 163.

¹⁰² *ibid*, 164.

¹⁰³ *ibid*.

measures to not provide or advertise their services to individuals who are registered in self-exclusion register.¹⁰⁴ Also, the service providers are under obligation to advertise their services in accordance with the laws and abide by other applicable laws in providing such services.¹⁰⁵ ACMA is empowered to undertake penal actions if the rules are contravened in any manner.¹⁰⁶ Australia with its extensive and mature regulatory framework, makes for a good case to look for guidance in developing our own regulations.

1. Summing Up

From the foregoing discussion, we get an idea about the problems and risks that are unique to the industry like insider trading, addiction, chances of experts exploiting novice players, among others. The experiences from the US, the UK, and Australia can help us address these problems and serve as a good guide for the modelling our own regulations. India currently lacks a regulatory regime that can bring uniformity in the industry and ensure consumer protection. The insights provided by the comparative analysis of different regimes is good starting point to create a regulatory framework in India.

IV. RECOMMENDATIONS

From the discussions in Part II, it is well established that fantasy sports are games of skill. Nonetheless, strict regulations are required over the industry to tackle the problems and risks associated with it as highlighted in the paper above. Currently, the Indian regulatory framework

¹⁰⁴ Interactive Gambling Act 2001, Part 7B.

¹⁰⁵ Windholz (n 86), 157.

¹⁰⁶ Interactive Gambling Act 2001, Part 3.

is very uneven. In some states Fantasy Sports is prohibited all together, some states like Nagaland and Sikkim have their specific legislations to govern online gaming including Fantasy Sports, and in most states the legislations in the field are from pre-internet era and do not adequately regulate the Fantasy Sports sector. The newly introduced Online Gaming Rules which propose a self-regulatory regime for the governance of the sector lacks any teeth to provide strict regulation for the sector and leaves too much for the SRBs to decide on. Even the state-level regulations where ever they are present, do not adequately address the problems presented by Online Fantasy Sports, as highlighted in previous sections.

As seen in the above comparative analysis of foreign jurisdictions, the regulation of fantasy sports requires a nuanced approach with appropriate governmental oversight. This chapter after taking into account the proposed Indian frameworks and insights from the regulatory regimes of other jurisdictions recommends overhaul and development of the Indian regulatory structure to best suit the needs of the industry and socio-legal context of the country.

A. Defining Fantasy Sports

Fantasy sports present unique challenges as compared to other online real-money games because of their special connection with the real-world games and because of risks associated with them. However, to combat these risks and regulate fantasy sports, it is first important to define them and preciously point out what all games will fall under its definition.

As discussed, the Australian system provides a good definition for these purposes as it covers both traditional fantasy sports formats, which are contested over longer durations and modern shorter formation such as Daily

Fantasy Sports (DFS).¹⁰⁷ It defines it as a game where participants assemble imaginary/virtual teams of real players which compete based on statistical performance of those players in actual games. Similarly, the proposed Rajasthan Bill for regulation of Fantasy Sports define it as:

*"Fantasy Sports" means any Online Competition in which a contest is offered by the Fantasy Sports Platform where users are permitted to emulate selectors, coaches, captains of online teams, consisting of real-life players or teams, that compete against online teams of other users with-results tabulated on the basis of statistics generated by the real-life sportspersons in officially sanctioned sports matches, including but not limited to, pay-to-participate variants where users pay Entry Fee to participate in the contest on the basis that the contest's aggregate Prize Monies and Awards are contributed to by all the participating users;*¹⁰⁸

This definition further defines Fantasy Sports in more specificity than the Australian definition, and is suitable to include wide variety of Fantasy Sports formats offered. *It is recommended that this definition should be adopted to define online fantasy sports in India as distinct real-money gaming format, which should be subject to specialized regulatory regime as suggested below. Hence, any game that falls under the above definition, is provided through online means, and involves dealing in real-money in any manner shall be defined as Online Real-Money Fantasy Sport (ORMFS).*

¹⁰⁷ Australian Gov't Dep't of Social Services, 'Review of Illegal Offshore Wagering' (2015) 5 <<https://www.dss.gov.au/communities-and-vulnerable-people/programmes-services/gambling/review-of-illegal-offshore-wagering>> accessed 17 November 2024.

¹⁰⁸ Rajasthan Virtual Online Sports (Regulation) Bill 2022, s 2(k).

B. Regulating ORMFS

The ORMFSs shall be subject to a different and nuanced regulatory regime for their unique nature. The different models of regulation utilized the world over have both centralizing and decentralizing features, aim to exercise different levels of control over the service providers, combine the expertise of various stakeholders to monitor and facilitate fantasy sports, and provide for different levels of user protection and support.

After taking into account all these, the authors endorse a centralized regulatory framework, framed by the Central Government, for online Fantasy Sports in India. This will create a uniform licensing regime which will reduce the compliance cost for the operators. Further, a central regulatory regime will protect all the players of fantasy sports across the countries in a uniform manner which is necessary as players from different states compete with each other in Online Fantasy Sports. Apart from these, it is difficult for states to enforce their rules as the Fantasy Sports operators might be operating from a different state. The Centralized regulation model in the UK provides a good guidance for this.

In view of the above, three sets of recommendations are provided below: *first* for the formation and composition of regulatory bodies, *second* for developing a licensing regime for ORMFS and *third* for making broader guidelines for the licensed ORMFSs. Some of these provisions are already present in the current central regulation and some of the state laws. However, for effective protection of the Fantasy Sports players, it is necessary to have all the guidelines laid down below.

The current intention of the Government to move towards an independent regulator is the correct approach for this industry as the self-

regulatory body would have been prone to heavy influence of big industry players. Although the industry is in nascent stages, the possibility of a few industry players controlling the self-regulatory bodies could have later led to antitrust issues. Heavy industrial influence at regulatory is also not in best interests of the consumers. Hence, an independent regulator should be set up for regulating online games with a dedicated wing for online fantasy sports.

The present 2023 amendment rules already have provisions mandating the inclusion of independent experts in the field of public policy, and civil societies among others in the SRB.¹⁰⁹ However, the framework misses out on the importance of having a statistician on board for evaluating the probabilities in the game to determine whether the game is a game of skill or not. It also misses out on the inclusion of sports governing bodies which is important in view of the dependence of fantasy sports on real-life sporting events. Similar representation of sports governing bodies is present in the Australian regulatory framework as discussed earlier. The emphasis on independence of these members cannot be overstated for keeping aside any vested interests that might affect the working of the industry. Hence special provisions need to be incorporated to ensure independence of the members. When the independent regulator is set up, these problems should be addressed.

In view of the same, the following recommendations are being provided to the Government on the composition of regulatory bodies for the fantasy sports industry and providing broad working guidelines for it:

¹⁰⁹ The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules of 2023, rule 4A.

- An Independent regulatory body should be setup for the online gaming market with a special wing for regulating ORMFSs with industry stakeholders as well as independent experts in the fields of statistics, law, governance, technology, and civil societies working for the cause of responsible gaming.
- The special wing for ORMFSs should also have members from sport governing bodies like BCCI, and AIFF among others.
- The independent members should be appointed in consultation with the industry stakeholders. The exercise of appointment of independent members shall ensure that the members so appointed enjoy complete independence and work in the best interest of the public.

C. Licensing Regime

The present rules require the service providers to seek approval for every new online real money game from the SRB.¹¹⁰ However, the present rules do not provide any guidelines as to how such approvals should be given and what are requirements needs to be fulfilled for getting such approvals. It is also unclear as to whether new formats of the same fantasy sport will be considered as a separate real money game or as part of the same game. Keeping these in mind, we herein propose a two-prong licensing regime where the fantasy sport service provider has to obtain a separate license for running business in India (Service Provider License) and specific license for each separate format of a game (Game Operating License) from the independent regulator. A similar licensing regime is present in the United Kingdom as has been discussed earlier.

¹¹⁰ *ibid.*

The Service Provider License will help the regulator monitor the service providing company and make sure that they are not engaging in any unfair practices. On the other hand, the game operating license will make sure that every format of an existing game as well as new games are weighed according to the probabilities involved in it so that it does not violate the skill-test. In the following para, we provide a few broad guidelines and a few specific details around which these licenses should be granted.

The ministry should provide the regulator with the following broad guidelines for licensing within which the regulator should frame its detailed rules:

- No fantasy Sports service provider shall provide its services for ORMFS without a license from the regulator.
- The regulator should provide two kinds of license: 1) Service Provider License, 2) Game Operating License
- Each Fantasy Sports service provider shall require a service provider license.
- Every new format of the ORMFS provided by a service provider shall require a separate gaming license.
- For a service provider license, the operator shall provide details about the services that it is providing, the structure of its business, details on its investments, and other financial details and other relevant compliance details required, including office address within the territory of India. Whether it has adequate KYC mechanisms and protection to restrict underage players.
- For a Game Operating License, the following details shall be provided: information about the software used, system diagram,

rules of the game, statistical data used and its mode of data analysis, terms and conditions, and details of other relevant compliances and its service provider license.

- The regulator shall evaluate the gaming format based on the predominant factor test and should check that the game fulfills the requirements of all the other rules applicable.

D. Obligations of ORMFS

Apart from the licensing regime, the regulator need to actively monitor the functioning of the service providers to mitigate the risks associated with fantasy gaming. As and when the the independent regulator is established, the ORMFS wing should frame guidelines on the obligations of the fantasy sports industry. In the following paragraph, we have provided a non-exhaustive list of obligations that the regulator should require the service providers to comply with. These are provided keeping in mind the specific risks associated with the industry such as insider trading, money laundering, the possibility of a few experts exploiting novice players, misleading advertisements and addiction. Apart from these, online fantasy sports are heavily dependent on technology and software innovation which needs to be monitored by the regulator.

The regulator should further provide the following guidelines and check that the following are being met by the license holders:

- No employee of the service providers shall be allowed to play ORMFS either directly or indirectly through someone else's account.
- The money deposited by the participants shall be kept in a separate account from the ones where the company operating money is being held.

- The regulator should provide technical guidelines for the software used for the operation of the fantasy sport which shall be complied by the license holder.
- The service provider must keep records of all the games played, bets made by the participants, winnings, deposits and withdrawals, and other relevant information about their gaming services.
- There shall be separate Tier of games for experts, intermediate and beginner players and it should be ensured that players from different tiers are not competing against each other.
- There should be a limit on the amount of money that can be deposited by a participant in a day/week/month and credit shall not be provided to any participants.
- The service providers shall comply with the standards set by the regulator on advertisements and shall not engage in misleading advertisements.
- The service provider shall annually submit reports to the regulator on their financial details.
- The service provider shall be under a general obligation to cooperate with the regulator and provide any additional information as required by the regulator.

V. CONCLUSION

The fantasy sports industry in India is at a pivotal crossroads, with its rapid growth bringing immense economic potential alongside significant regulatory challenges. As highlighted in this paper, while fantasy sports have been classified as games of skill and enjoy legal recognition in most Indian states, the absence of a comprehensive, centralized regulatory framework has led to inconsistencies and inefficiencies in governance. This

regulatory void not only hinders the industry's potential but also exposes consumers to risks such as financial exploitation, addiction, insider trading, and inadequate grievance redressal mechanisms.

Drawing from global best practices in jurisdictions such as the USA, the UK, and Australia, it becomes evident that a well-structured regulatory regime can balance innovation with protection. For India, a centralized regulatory authority specifically tailored for fantasy sports is essential to address the fragmented state-level legal landscape. Such a body would ensure uniform licensing, monitor adherence to consumer protection standards, and provide clarity to operators and consumers alike. A two-tiered licensing regime—one for service providers and another for individual game formats—has been recommended to ensure thorough vetting and adaptability to the evolving nature of the industry.

Furthermore, strict regulations on key issues such as employee participation, financial transparency, tiered competition levels for players, and advertising standards will enhance the integrity of the industry. The introduction of safeguards, such as limits on monetary deposits and mechanisms to prevent underage participation, will address concerns about addiction and financial harm. These measures, combined with robust grievance redressal systems and compliance monitoring, will foster consumer trust and ensure fairness in the industry.

An effective regulatory framework will not only protect consumers but also create an equitable playing field for operators, driving healthy competition and innovation. Moreover, by incorporating insights from international regulatory models and tailoring them to India's socio-economic context, the country can set a global precedent in fantasy sports governance. The proposed regulatory approach ensures that the fantasy sports industry thrives sustainably while safeguarding the interests of all

stakeholders. By addressing the challenges with foresight and a commitment to responsible growth, India can position itself as a global leader in this dynamic sector, promoting economic development, consumer welfare, and technological innovation in equal measure. We hope that these recommendations will be a good stepping stone for further research and effective regulation in this field.