

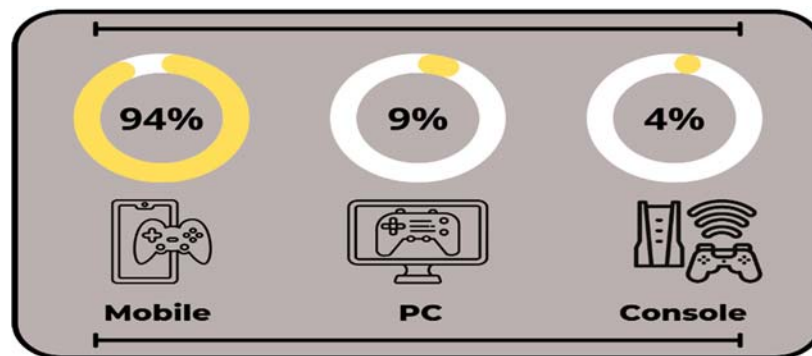
Fantasy Sports



Fantasy Sports –
Analysis with an
edge.

INTRODUCTION

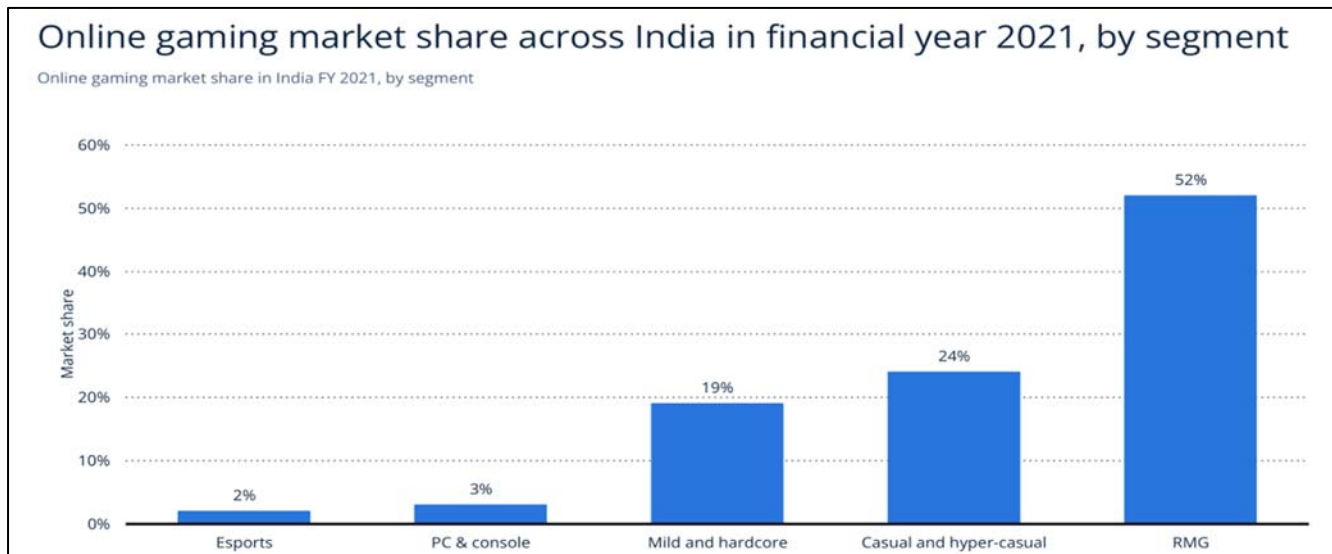
Fantasy Sports are virtual sports engagement platforms, where participants create virtual teams composed of proxies of real players of a professional sport. These teams compete based on the statistical performance of those players in real time (actual games). Therefore, Fantasy sport gives its participants the experience of a coach or team manager who has the power to appoint, drop or trade a proxy player of his liking. India has now overtaken the United States to become the largest Fantasy Sports Market in the world.¹ Increasing popularity of Fantasy Sports can be attributed to the Smartphone penetration, low data costs, hassle free money transfer, and the advent of emerging competitions namely; the Indian Premier League (IPL) and the Pro Kabaddi League. As per a report by Ficci-EY, the Indian Fantasy Sports industry is growing at a 32% compound annual growth rate and is projected to be worth \$3.7 billion by 2024.



Gaming Segmentation as per Device

However, in India, the legality of Fantasy Sports is widely deliberated since there is an absence of a specific law governing Fantasy Sports. Although the Supreme Court of India has recognized Fantasy Sports as a game of skill thereby affirming its legality and distinguishing it from gambling, certain States in India have banned Fantasy Sports. In this article we deliberate on the growth, challenges, impact and legality of this emerging sector in India.

GROWTH OF THE FANTASY SPORTS INDUSTRY

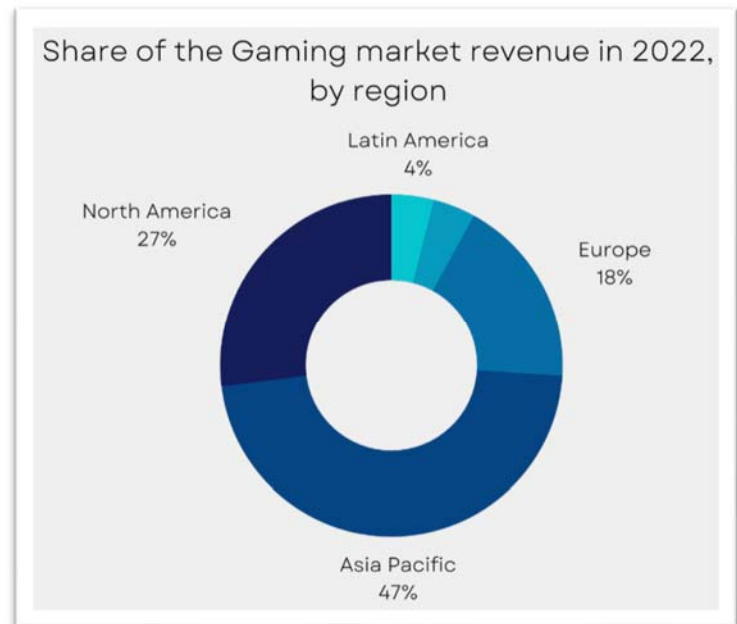


According to a report issued by the Federation of Indian Fantasy Sports (“FIFS”) in collaboration with Deloitte, “the Indian Fantasy Sports Industry has experienced significant growth over the past few years. With a market size of over INR 34,000 crore, buoyed by strategic investments, the industry now caters to over 13 crore registered users. Over a span of five years, the industry footprint has grown to become the largest in the world and customer acquisition is only ramping up in our nation filled with sports enthusiasts.

The effortless growth of Fantasy Sports in India can be attributed to the large number of sports fans, availability of digital infrastructure and engineering talent. With the staggering growth of this sector coupled with the attributes; India has the potential to emerge as a global hub for fantasy sports.

INDUSTRY POTENTIAL

The number of users participating in online fantasy sports in India has increased at a compound annual growth rate of 212 percent, from 2 million users in June 2016 to 90 million users in December 2019, according to KPMG India's study *The Business of Fantasy Sports* (July 2020). Additionally, the number of OFSP businesses has increased dramatically, from about 10 in 2016 to over 140 in 2019. According to the survey, this increase in users has caused the online fantasy sports industry's revenues to triple, going from about INR 920 crore in the financial year 2018–2019 to INR 2470 crore in the financial year 2019–2020.



In its *Federation of Sports Gaming – Report on Taxation of Online Fantasy Sports Gaming Market in India* (May 2019) report, PricewaterhouseCoopers India stated that the fantasy sports industry has created over 3000-3400 jobs both directly and indirectly through 100-200 ancillary businesses that help users of fantasy sports draught their teams and offer research, tutoring, and analytics services. In the next few years, the fantasy sports business has the potential to add 5000+ direct jobs and 7000+ indirect jobs. The OFSP business has brought in more than INR 250 crore for the advertising sector, and according to the PWC India Report, this amount will increase to INR 2000 crore in the coming years. The PWC India Report mentions that around INR 1,000 crore in foreign direct investment has gone into the fantasy sports sector. According to publicly available reports, technology and gaming conglomerates like Nazara Technologies and Delta Corp., as well as venture capital and private equity funds like Kalaari Capital, Tiger Global Management, Think Investments, Kae Capital, Multiples Alternate Asset Management, and Steadview Capital Management, have all invested in India's OFSP market. The industry predicts that over the coming years, the fantasy sports sector might bring in FDI worth more than INR 10,000 crore.

INDIAN FANTASY SPORTS PLATFORMS

Prior to 2017, only ten companies offered fantasy sports in India. Today there are more than 150 companies that offer fantasy games to players. Several games such as cricket, football, kabaddi, basketball, rugby, baseball and

The most popular fantasy sports platforms are as follows-

- **Dream 11** - It is the most popular fantasy sports platform in India. It offers many games like cricket, football, basketball etc.
- **Mobile Premier League (MPL)** - Founded in the year 2018, MPL became popular in a short span of time. MPL offers various fantasy games such as cricket, ludo, pool, bikeracing etc.
- **RummyCircle** - RummyCircle is an online platform that lets the players play rummy online.
- **A23** - A23 is another emerging fantasy sports platform in India which offers multiple games such as rummy, cricket and carrom.

hockey are hosted by the gaming platforms. Out of all the fantasy sports in India, cricket is the most played fantasy sport in India. The Indian Premier League, Big Bash, International T20 matches are the most common cricket tournaments amongst players.

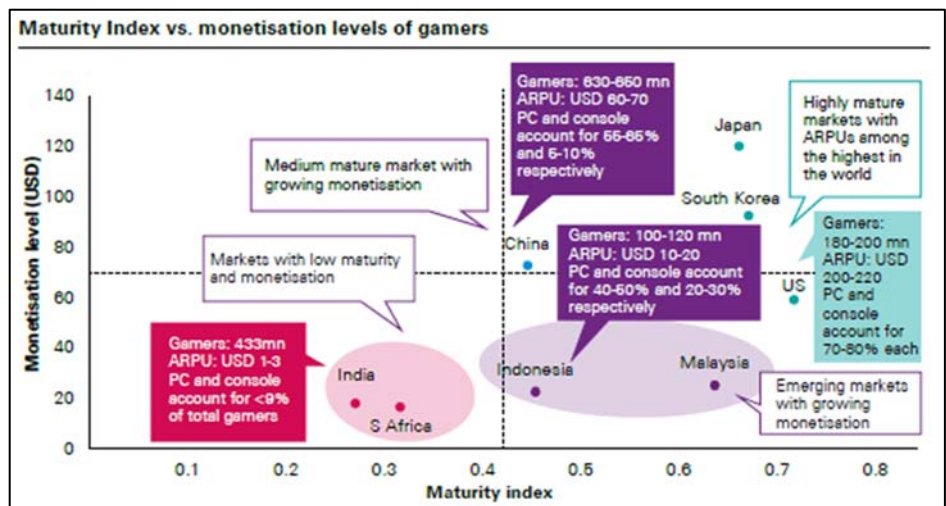
Value of the gaming industry in India from financial year 2007 to 2020, with estimates until 2022 (in billion Indian rupees)

Value of the gaming industry in India FY 2007-2022



FEATURES OF MULTI-GAMING PLATFORMS

- **Plethora of options** - These platforms offer games ranging from casual, hyper casual and fantasy-based games to their users.
- **Low barriers to entry** - Users can enter with amounts as low as INR 2, which is essential for a market like India



where microtransactions and in-game spent is still low.

- **Platform-wide tournaments** - Most of the platforms host e-sports tournaments for gamers across various games on the platform and offer cash prizes to the winning teams.
- **Platform-wide Leaderboards** - Multi-gaming platforms typically have common leaderboards across all games played on the platform and have daily/ weekly/ monthly prizes for players accumulating the highest points in these games.

MONETISATION MODELS

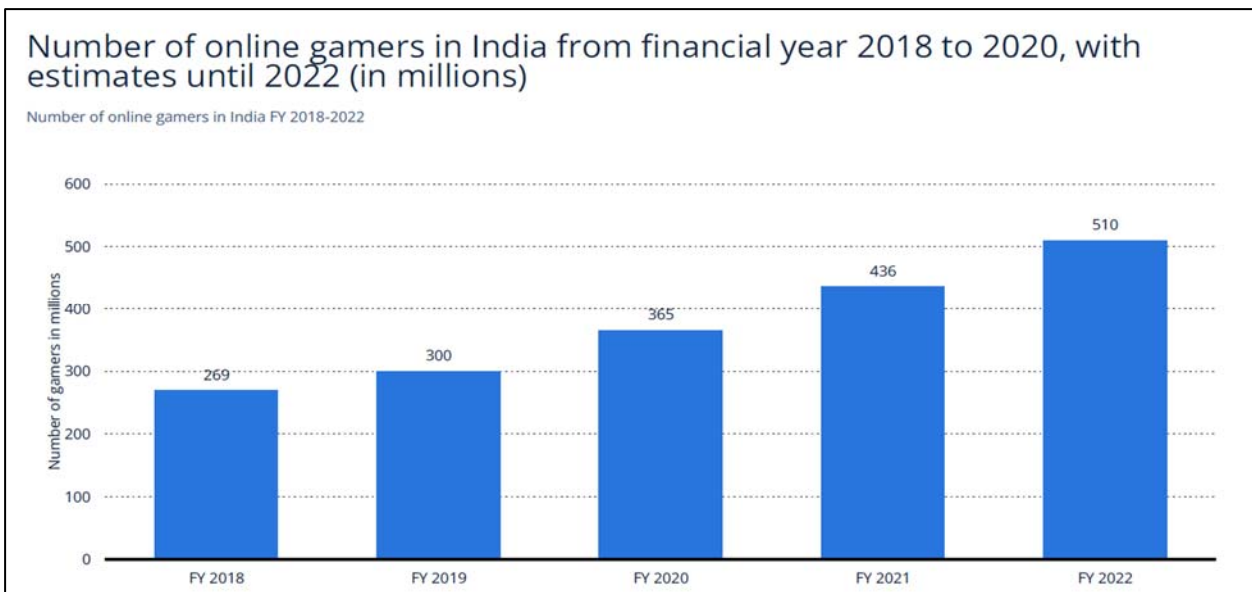
- **Battles** - This format typically includes short duration player versus player (multi-player battles also included based on type of game) matches where each player pays a small entry fee and the winner takes the prize while the platform retains a

percentage of the entry fee, typically between 15-25 per cent as commission.

- **Leaderboards** - These are daily and weekly contests where a pre-disclosed categories of battles count towards an

overall score of the player on the leader boards and the top players receive monetary rewards.

- **Tournaments** - These are typically held for multiplayer games like Free Fire, PUBG, COD Mobile etc. where players pay an entry fee to take part and the top players win the prize money. The typical commission grossed from these tournaments is 25 per cent of the entry fee pool. This part of the multi-gaming platforms is in effect an esports for the masses.



LEGAL PROVISIONS RELATED TO GAMING IN INDIA

Online Gaming is a multi-crore industry in India. Despite this fact, there is no dedicated Online Gaming Law in India. Currently, the legal provisions governing gaming laws are-

- **Constitution of India-** The Indian Constitution has placed betting/gambling in the States List (Entry 34, List II of Seventh Schedule). Accordingly, the States have been empowered to have exclusive legislative competence to enact laws within their respective State in a subject relating to Gambling.
- **The Public Gambling Act, 1867 ("PGA")** - The law relating to Gambling in India is governed by the PGA. The PGA is the central enactment, and other states have enacted their own legislation/laws to govern gaming/gambling activities within their respective states. Interestingly, **PGA does not apply to games involving skills** furthermore, since the legislation was enacted prior to the Internet era, there is no mention of online gaming platforms under this legislation, thus, this legislation does not govern Fantasy Sports.
- **Prize Competitions Act, 1955 ("PCA")** - The Prize Competitions Act, 1955 was introduced for the control and regulation of prize competition. The Prize Competitions Act defines "prize competition" as any competition (whether called a crossword prize competition, a missing word prize competition, a picture prize competition or by any other name) in which prizes are offered for the solution of any puzzle based upon the building up, arrangement, combination or permutation of letters, words or figures.

In *Bimalendu De v. Union of India (UOI) and Ors. ("KBC Case")*, the Calcutta High Court held that game shows on TV are not covered within the definition of a prize competition and that the Prize Competitions Act had a narrow and

limited meaning and is not inclusive of skill games and competitions such as Kaun Banega Crorepati. The reasoning given by the court was that the Prize Competitions Act, 1955 only covers competitions in which prizes are given for solving any numerical or alphabetical puzzle and Kaun Banega Crorepati is not such a game.

- **The Information Technologies Act, 2000 (“IT ACT”)** - The IT Act per se does not regulate the online gaming industry. However, the IT Act puts an embargo on Gambling. Rule 3(1)(b)(ii) of Information Technology (Intermediaries Guidelines) Rules, 2021 framed under sub-section (1), clauses (z) and (zg) of sub-section (2) of section 87 of the IT Act, 2000 read with Section 79(2) the IT Act requires ‘intermediaries’ including social media intermediary and significant social media intermediary not to host or transmit any content which *inter alia* relates to or encourages Gambling.

Most states have adopted the PGA while other states have enacted their own legislations to regulate and govern gaming activities within their territory. The States of Sikkim, West Bengal, Goa and Nagaland have formed their own laws to regulate such acts. Since PGA has been enacted during the pre-Independence period and both PGA and PCA being enacted before the advent of Virtual/online gaming hence these legislations primarily refer to gaming/gambling activities at the physical premises thus shall not apply to Fantasy Sports.

TUSSLE: GAME OF CHANCE VS. GAME OF SKILL

At this point, it is important to understand the difference between “gaming” and “gambling”. The New Encyclopedia Britannica defines gambling as the betting or staking of something of value with consciousness of risk and hope for gain on the outcome of a game, a contest or an uncertain event the result of which may be determined by chance or accident or have an unexpected result by the reason of the bettor’s miscalculations. According to the Black’s law dictionary “gambling involves not only chance but a hope of gaining something beyond the amount played.” Hence, gambling is payment of a price for a chance to win a prize. In gambling, a winner is determined by a lot or chance and a participant has no opportunity to exercise his reason, judgement, sagacity or discretion.

Games may be of chance or of skill or of skill and chance in combination. A game of chance is determined entirely or in part by lot or mere luck. The throw of the dice, the turning of the wheel, the shuffling of the cards are all modes of chance. In these games the results are wholly uncertain and doubtful. No human mind knows or can know what it will be until the dice is thrown, the wheel stops its revolution or the dealer has dealt with the cards. A game of skill on the other hand, is one in which success depends

The Indian law holds a game to be a game of skill, even with the element of chance it depends upon:

- Superior knowledge.
- Training.
- Attention.
- Experience.
- Adroitness of the player.
- Element of Skill predominates over the elements of chance.

principally upon the superior knowledge, training and attention, experience and adroitness of the player. Although the element of chance necessarily cannot be eliminated. Golf, Chess and even Rummy are considered games of skill. The courts in India have held that a game of chance is one in which the element of chance predominates over the element of skill, and a game of skill is one in which the element

of skill predominates over the elements of chance. Hence, it is the dominating element i.e., skill or chance that determines the character of the game.

In the case of *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, the Supreme Court held Horse-racing is a sport which primarily depends on the special ability acquired by training. It is the speed and stamina of the horse, acquired by training, which matters. Jockeys are experts in the art of riding. Between two equally fast horses, a better trained jockey can touch the winning-post. It was held that wagering or betting on horseracing is a game of skill.

It can thus be concluded that only the Games of chance (where element of chance predominates over element of skill) fall within the ambit of the gambling acts of the states and are largely prohibited. The games which base success upon the existence of skill are largely allowed.

TUSSLE: GAME OF CHANCE VS. GAME OF SKILL

- In the case of *Shri Varun Gumber v. Union Territory of Chandigarh and Ors.*, an Advocate claimed himself to be a victim of alleged illegal gambling activities of the Respondent Company carried out by them through their website https:

[//fantasycricket.dream11.com.in](https://fantasycricket.dream11.com.in) and therefore requested the Punjab and Haryana High Court for criminal prosecution and punishment under the penal provisions of Public Gambling Act, 1867. The Punjab and Haryana High Court held that the respondent company's website and success in Dream 11's fantasy sports arises out of users' exercise, superior knowledge, judgment and attention. The element of skill has predominant influence on the outcome of the Dream11 fantasy than any other incidents are and therefore, the same constitutes a game of "mere skill" and not falling within the activity of gambling for the invocation of the Public Gambling 1867 Act

An appeal was filed before the Hon'ble Supreme Court of India against the aforesaid judgment

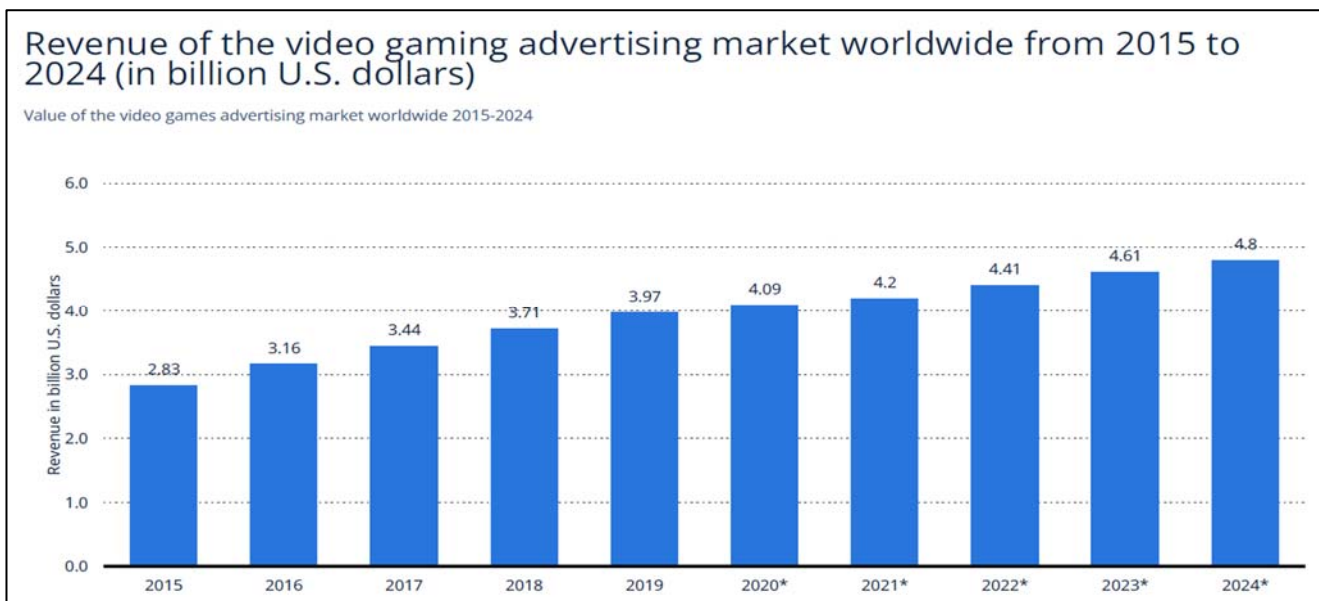
passed by the Punjab and Haryana High Court. However, the Supreme Court upheld the validity of the judgment and summarily dismissed the appeal.

- In the case of *Gurdeep Singh Sachar Vs. Union of India*, the Bombay High Court also ruled in favour of Dream11 and rejected the contentions of the Petitioner. The Bombay High Court relied on the decision of the Punjab and Haryana High Court and the *K.R.Lakshmanan v. State of Tamil Nadu*, case to rule that the games played on the platform were games of skill and not games of chance.
- In the case of *Chandresh Sankhla Vs. the State of Rajasthan*, the Rajasthan High Court noting the aforesaid rulings of the Punjab High Court and Bombay High Court in relation to the Dream11 Online Fantasy Sports gaming platform, concluded that the issue of treating the gaming platform of Dream11 as having any element of betting or Gambling is no more res integra. On this basis, Rajasthan High Court also dismissed the matter and upheld the legality of the Online Fantasy Sports gaming platform of Dream11.
- In the case of *Avinash Mehrotra v. State of Rajasthan & Ors.*, the Hon'ble Supreme Court dismissed an appeal against the aforesaid decision of the Rajasthan High Court, which held that the online fantasy sports platform, Dream11, involves skill and is not Gambling.

Thus, the general stand taken by various courts with respect to its legality is that fantasy sports is a Game of Skill and hence is legal. The Supreme Court has on a case-by-case basis upheld the legality of fantasy sports, however there is no law formally recognizing it. The Delhi High Court has recently sought responses from the Central government and the Delhi Government on a petition seeking the constitution of a regulatory body to decide what constitutes a game of skill and what can be categorized as betting or gambling. With the rapid growth of this sector, there is an emergent need for the formal recognition of this sector to enable its structured growth.

ADVERTISING ISSUES IN FANTASY INDUSTRY

Nearly 300 fantasy gaming company advertisements that were broadcast during the first week of the Indian Premier League (IPL) competition were deemed to potentially violate the ASCI's rules, according to the organization. Online real-money gaming businesses either neglected to include disclaimers in their marketing or distributed deceptive material that omitted to highlight the hazards associated with participating in such fantasy sports. Additionally, 285 social media advertisements from businesses that offer real-money online gambling were found to be in breach of the ASCI rule in just March.



In December 2020, the council issued regulations for gaming and fantasy sports enterprises that were supported by the information and media ministry. The following notice was required to be displayed by all advertisers: "This game may be addictive and entails a level of financial risk. Play sensibly and at your own risk, please." It said that such a disclaimer must take up at least 20% of the advertising space. The rules also stipulate those advertisements for video games cannot show people under the age of 18 playing an online game for real money "or imply that young players can access these games. Additionally, it stated that marketing should not imply that playing online video games offers a way to make money in place of finding a job or portray someone playing these games as being more successful than others.

GOVERNANCE OF THE FANTASY SPORTS INDUSTRY IN INDIA

In India, in the absence of a governmental regulatory body, it is the Federation of Indian Fantasy Sport (FIFS), a self-regulatory body, which focuses on the standard of operation and protection of the interest of the consumers dealing in fantasy sports. FIFS was formed in 2017. Any company that operates Online Fantasy Sports Platform based games-of-skill or provides technical, marketing, legal, policy-making, and other services to operators of sports-based games-of-skill are welcome to apply for Federation of Indian Fantasy Sports (FIFS) membership.

One of FIFS's top priorities is to protect user interests. One can contact the official FIFS Customer Complaint Cell at contact@fifs.in and share details of the operator and the nature of the complaint.

On the other hand, in order to develop laws for the online gaming industry and designate a nodal ministry to oversee the sector, the government has established an inter-ministerial council. CEO of the government think tank Niti Aayog and secretary of home affairs, revenue, industries and internal trade, electronics and IT, information and broadcasting, and sports are among the seven members of the panel. The group will examine a number of issues, including the promotion of online gaming, the creation of regulatory frameworks for the industry, player protection, and ease of doing business.

TAXATION OF FANTASY SPORTS IN INDIA

Fantasy Sports and online betting winning is taxable under section 115 BB of Income Tax Act 1961, under the head "Income from other Sources". Section 58(4) of the Income Tax Act 1961 provides that no reduction or expenditure is allowed to be claimed against such income. Income tax on prize winning money from this fantasy sport is taxable @ 30%-excluding cess and surcharge. The platform paying out the winning money will have to deduct Tax at Source u/section 194 B of Income Tax Act 1961 @ 30% if the prize-winning money exceeds Rs 10,000/. TDS deducted by platform at the time of payment will be displayed in form 26AS of the user- The user can take credit of TDS while filing his/her Income Tax.

At the moment, the GST rate that applies to online games that involve betting or gambling is set at

28%, while the rate for games that do not is set at 18%. The commission that the online gaming platforms receive for each game is also subject to an 18% tax.

W&S Takeaway

The Fantasy Sports Industry creates a number of opportunities for stakeholders such as generating employment for professionals in graphic design, motion design, creative writing, storytelling, user experience researchers, data analysts, software programmers and many more. Fantasy sports industry is also driving foreign investments, increasing revenue in the form of taxes and enabling massive innovation in the technology sector.

However, it is also pertinent to note certain areas of concern, recently, we have seen a rise in the advertisements of many online gaming platforms, which are endorsed by various celebrities, actors, models etc. but these advertisements are not regulated. Since, the online gaming industry is not regulated, there are chances of exploitation of the users by the online platforms with questionable legality in the guise of fantasy sports thereby tarnishing the image of the industry. In order to protect the interests of the users, it is important to regulate all aspects of fantasy sports including its advertising.

Presently, the Indian Authorities have a very limited power or control over regulating the harmful practices that may occur under the guise of fantasy sports. Therefore, time and again, there have been appeals in this regard seeking a concrete regulation governing fantasy sports. The Central Government has the power to prompt the development and growth of this flourishing industry by enabling a set of structured regulations, thereby not only ensuring the interests of the users are protected but also promoting India as a global hub of fantasy sports.

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