



The Dialogue™

INFORM ENGAGE IDEATE

THE REGULATION OF FANTASY SPORTS PLATFORMS IN INDIA

VIRTUAL CONFERENCE AND REPORT LAUNCH

AUGUST 6, 2021



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INTRODUCTION

The Dialogue, a New Delhi-based Think-Tank, held a Virtual Conference and Report Launch on “**The Regulation of Fantasy Sports in India**” on August 6th, 2021. We hosted the following panelists:

- Mr. Rameesh Kailasam, CEO & President of Indiatech.org
- Mr. Roland Landers, All India Gaming Federation
- Mr. Amrit Mathur, Member Advisory Council, Federation of Indian Fantasy Sports
- Ms. Nehaa Chaudhari, Partner at Ikigai Law
- Mr. Vaibhav Kakkar, Partner at Saraf and Partners
- Ms. Kriti Mahapatra, Partner at Shardul Amarchand Mangaldas & Co

The digital gaming industry has witnessed tremendous growth in India as a result of its ‘mobile-first’ population. The accelerated growth within the fantasy sports industry, commonly referred to as a ‘sunrise sector’ coupled with relatively slow regulatory developments, has led to the creation of a fair share of barriers and pain points for consumers and other stakeholders alike.

The primary issue at the centre of this regulatory tussle is whether fantasy sports are ‘skill-based’ or ‘chance-based.’ The Supreme Court, on August 8, dismissed a petition seeking a ban on a fantasy sports app. The Court deemed fantasy sports as an industry that isn't in consonance with mere gambling but requires skill and decision making equitable to other sports, and therefore, legitimate in the eyes of the law.

In examining international practices, the Report is mindful of the fact that India's culture varies significantly from countries that are far more open to embracing pay-to-play gaming, such as the United Kingdom. India, however, can develop a regulatory model that may influence the legislative approach of other countries, particularly those within Asia who are faced with similar challenges as India's policy-makers. The economic potential of this industry, in addition to the knock-on effect of innovation and increased sports engagement provide several opportunities for growth.

The event was centred on the following themes:

Need for a Central Legislation

At present, 'betting and gambling' is a part of the State List (Entry 34) of the Indian Constitution. Several states have determined that fantasy sports are games of chance and therefore must be State regulated under Entry 34. Mr. Vaibhav Kakkar highlighted his experience litigating against the laws made in the north where judgments from Courts of Punjab and Haryana have ruled in favor of fantasy sports as a 'game of skill', while courts down south have been hesitant to grant legal legitimacy. Thus, the varied regulatory approach across the country has led to fragmentation within the industry and created a fair share of uncertainty.

The panel unanimously highlighted the need for central legislation within the industry to maximise the potential of the industry and encourage responsible gaming. The example used was that of RERA, where the centre developed model guidelines that the states could individually adopt. Model guidelines, therefore, can be adopted as an interim measure which would then pave the way for a central legislation in the future.

The enactment of central guidelines will also allow for a parent Ministry to take ownership of this sector. Mr. Kazim Rizvi, Founding Director of The Dialogue noted that ..*“When it comes to [a parent] Ministry, logically, one would go to the Ministry of Electronics and Information Technology, although the Ministry of Youth Affairs and Sports also has a stake so [maybe] this could be a hybrid model ... multiple ministries will have a [role] to play. When you look at e-commerce, it’s as important for the Ministry of Electronics and Information Technology as it is for DPIIT.”*

The Need for an Objective Test to Determine Skill

Ms. Nehaa Chaudhari discussed the need for objectivity in determining the presence of skill in any game. She argued that the current test is highly subjective, which not only affects those within the industry but also leads to judicial ambiguity; Court’s will have to operate on a ‘case-to case’ basis.

She emphasises the need for a ‘**standard objective test**’ that takes into consideration factors like the potential to get better at the game, the value of practice or experience like any other sport etc. The panel unanimously agreed that such a standard must be enforced in order to harmonise regulations and help boost innovation.

Self Regulation and Taxation of the Fantasy Sports Industry

In the week preceding the conference, the GST Council ordered the formation of a special Group Of Ministers to formulate a report on how to tax the fantasy sports industry. Currently, while the taxation levied on the industry is 18%, most in the industry want clarity over whether the same should be levied on platform fees or on Gross Gaming Revenue.

The panel unanimously agreed that the opportunity of establishing a self regulatory organisation is worth exploring. Mr. Landers highlighted the fact that **a well-functioning SRO helps ensure compliance with standards** such as KYC and age-gating across the industry, despite the lack of formal legislation. He further stressed on the importance of self-governing bodies as part of the roadmap towards comprehensive nationwide regulation coming into place.

Mr. Landers also shed some light on how self-regulatory bodies are currently tasked with protecting their consumer base. He described the manner in which SROs are occasionally inundated with consumer complaints, considering the rapid growth in this user base over the past few years. Based on these factors, he underlined the need for state intervention to handle redressal better.

The Impact of Fantasy Sports on the Indian Sports Ecosystem

Mr. Amrit Mathur was the first to highlight the importance of fantasy sports and its contribution to increasing sports engagement in India. He said that while the economic impact of fantasy sports is often highlighted to show how lucrative the industry is, the impact that they have had on sporting culture as a whole in the country is rarely discussed. In furtherance of this argument, Mr. Mathur highlighted that fantasy sports have brought due recognition to sports such as kabaddi and hockey in India, which have historically been overshadowed by the popularity of cricket in. Further, he asserted **the role of fantasy sports in building interest in sports that don't occupy the mainstream**, and ensuring not just viewership but engagement with players, tactics and other factors. This results in an **increase in overall enjoyment of the sport, as well as a proportionate increase in viewership and recognition at a national and global level.**

Mr. Mathur highlighted that increased engagement for fantasy sports also encourages OFSPs to invest in the sport ecosystem, including traditional sports. MPL and Dream 11, both fantasy sport operators, have been involved in sponsoring events such as the Indian Premier League and the Indian Test Cricket team, which have traditionally been sponsored by companies with a limited direct link to the sport. This creates a self-fulfilling incentivised circular model, ensuring the sporting ecosystem in the country receives steady investment.

Need for Educating the Public

Mr. Kailasam and Mr. Mathur both pointed out that in the eyes of the public and legislators fantasy sports are often equated with 'betting'. The recent Madras High Court judgement highlighted the adverse aspects of this viewpoint stating that legislators often have a "moral high ground without looking into the merits of the industry and their business models." Further, they highlighted that **a lack of understanding of the industry has a detrimental effect on industrial growth, investment and innovation which raises the entry barriers within the industry.**

In furtherance of his argument, Mr. Kailasam also mentioned that he had worked extensively in highlighting the key differences between betting and fantasy sports and the involvement of skill in the latter; which was widely disseminated in the policymaking sphere. He mentioned that many people were surprised with the amount of nuance involved in fantasy sports and recognised that their preconceived notions of the industry simply arose due to a lack of knowledge.

ACTION POINTS AND THE WAY FORWARD

Having established the foundational aspects of this subject, the discussion and the report highlight the following recommendations which can help further the discourse towards an enabling regulatory ecosystem over the coming years:

1. The **enactment of a central legislation** will introduce *regulatory clarity* across the country with regard to the fantasy sports industry. The panel established that model guidelines can provide for a definition of games of skill and basic principles that state legislatures can adopt. An SRO can help enforce these model guidelines and maintain industrial autonomy.
2. There is a grave need for *educating the public* about the nuances involved in fantasy sports and how the same is not equitable to gambling but is a ‘game of skill’ that requires practice and effort.
3. *Standardized objective tests* are needed to determine whether a sport is a game of chance or skill to distinguish which tax bracket they must fall under as well as to reduce the legislative burden on the courts to determine these questions on a case to case basis.
4. In order to strengthen sporting culture within the gaming community, OFSPs can **deepen their engagement at the grassroots level** by actively sponsoring youth and grassroots sport. Community engagement will not only increase user engagement, but will also boost innovation and business growth within the industry.

The Dialogue is a public-policy Tink-tank with a vision to drive a progressive narrative in India's policy discourse. Founded in 2017, we believe in facilitating well-researched policy debates at various levels to help develop a more informed citizenry, on areas around technology and development issues.

The Dialogue was ranked amongst the Top-Ten think-tanks in the world to watch out for by the Think-Tank Civil Societies Programme, Lauder Institute, University of Pennsylvania, in their 2020 and 2021 ranking index.

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