



Himachal Pradesh National Law University, Shimla (India)



Journal Articles

ISSN:2582-1903

Shimla Law Review

Volume-III (2020)

GAME OF SKILL VS. GAME OF CHANCE: The Legal Dimensions of Online Games with special reference to Dream11

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Recommended Citation:

Urvi Gupta & Uday Mathur, *GAME OF SKILL VS. GAME OF CHANCE: The Legal Dimensions of Online Games with special reference to Dream11* III SML. L. REV. 115 (2020).

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GAME OF SKILL VS. GAME OF CHANCE: The Legal Dimensions of Online Games with special reference to Dream11

*Uroi Gupta & Uday Mathur**

[Abstract: Gaming industry in India has been witnessing a tremendous growth in various facets of gaming. This has been possible not only due to easy accessibility of technology which acts as catalyst to a global village but also inclination towards innovation, preferences and varied consumption patterns. The interface of technology with gaming has helped by carving a way for virtual gaming in the form of fantasy sports. Virtual gaming allows consumer to take a real-life experience and invest financial interests in these gaming modes. Daily Fantasy Sports have been recognized as Games of Skill throughout the world. These games are governed by one's skill for the game and not by his chance or luck. The fine line of distinction has been laid down by the judiciary over and over again. The functioning of these games is principally dependent upon a player's superior knowledge, training, experience, attention, adroitness, with slight dependence on chance but predominantly of skill. The results of any of these games is never certain, but doubtful which keeps these Games of Skill outside the ambit of Games of Chance. This distinction between skill and chance has been reasonably carved out by the court through its judgments. Dream11 has passed this predominance test of skill over chance as laid down by the Supreme Court and thus has been constitutionally protected. The decision was given on the reasons laid down by the Court in declaring horse racing to be a game of skill and not that of chance. Daily Fantasy Sports is a recent concept in India and is not fully developed. Considering the status of regulation and people's perception towards these games, it is required that policies, regulatory set ups which are in consonance with the standards of corporate governance, transparency, integrity, consumer protection, industry development and nation building, are set up, so that these games can be made more acceptable to the general public, upholding the sound judicial precedent laid down by the Court.]

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I

“A game preponderantly governed by skill is a game of mere skill and not of chance”.

Introduction

All work and no play makes Jack a dull boy. Games, virtual or physical are a source of entertainment to all and are enjoyed across the world. However, this is not all, gaming has become a source of money and livelihood for many, globally. When this is done with the involvement of monetary risk or a risk associated with a valuable asset, it is colored unlawful as betting and gambling. This connotation is subject to the territory which is being referred and not all countries look at this practice from the same legal lens. However, in India where traces of such activities have been found in the mythological epics, the Mahabharata, where skills were tested through board and dice, and not just wars,¹ it does not find acceptance in the legal paraphernalia in the contemporary context. Lately, this is changing and a slight transformation been witnessed wherein betting on games has been legalized to some extent. This has come into practice due to the paradigm shift in technology by introduction of digital and online gaming systems.

Digital India has led to an improvement of the entire infrastructure in India, with the penetration of internet, availability of mobile technology and its extension to remote and rural areas² which has ensured an easy access and incentivized use of such gaming sites. There has been a subsequent surge witnessed in online gaming sites and other fantasy sports in India.³ It has become an industry with high future prospects, higher contingency and higher profits, which makes it all attractive.

The International Centre for Sports Security claims Indian betting market to be worth US\$130 billion. Various foreign set ups have found India to be a potential explorable and profiting country in terms of gaming industry, where this has not been a legal practice and hence, has not been so easy as compared to countries like Macau, U.K., Nepal etc. where laws are not so stringent. The new rise has been with recognition of betting on games as ‘Games of Skill’ and hence, should not be prohibited.

It was in July 2018 that the Law Commission of India in one of its reports recommended that sports betting where the result depends substantially on the skill

¹ Devdutt Patnaik, *JAYA – AN ILLUSTRATED RETELLING OF THE MAHABHARATA* 218 (2010).

² As of January, 2021, there were 624.0 million internet users in India. Digital 2021, DATAREPORTAL (11 Feb., 2021) available at: <https://datareportal.com/reports/digital-2021-india>.

³ Rajan Navani, *How India became number one in the global gaming industry*, THE PRINT (27 Feb., 2021) available at: <https://theprint.in/features/how-india-became-number-one-in-the-global-gaming-industry/612990/>.

of the participants should be legalized in India.⁴ This majorly led to the emergence of *daily fantasy sports* gaming industry in India to bring a stronger footing on legal terms. Though there had been cases that had been previously decided by the Supreme Court of India on issues of certain other games when there was a question of game of skill. These games involved physical and real games like horse racing, rummy, poker. However, with recent trends and changes, this scope has been extended to online gaming industry of fantasy sports. Though the future of any such new industry depends on the acceptance in the community. However, in the case of sports fantasy industry it can be seen growing manifolds. United States and United Kingdom has already become a sensation in this gaming industry since the past decades and now the wave is in India as well. There has been a rapid growth which has been seen in fantasy sport websites and daily fantasy sports.

Fantasy Sports are those games that allow a participant to play like in real game by forming or drafting a team from the available players, manage it as per his own knowledge, skill, attention, expertise etc. and become a part of any contest that is available, whether it is played with or without stakes.⁵ The game has certain stipulations, conditions, and limits that a user of the game has to adhere with. The game is governed by a specific scoring system which is laid down for each of the sports that the operators of the platform offer, after deduction of a certain fee that is chargeable under the GST law for the amount of services that they render. All these players have to then compete through their virtual teams against other players who are on the same platform and the one who accumulates the maximum points, is declared as a winner. This reward is distributed from the amount that is accumulated from each of the participant at the beginning of the game, as an entry pool and thereby is later distributed to the acclaimed winners on the basis of their score points.⁶

The issue of whether these online fantasy sports gaming activities are gambling or not has been much debated since inception. There are numerous platforms that provide online gaming fantasy sports, one of them which has remained in the forefront in India is Dream11, amongst others.⁷ There have been criminal

⁴ *Legal Framework: Gambling & Sports Betting including in Cricket in India*, Report No. 276, LAW COMMISSION OF INDIA (2018).

⁵ *What are fantasy sports?*, PHILANTHROPIC FANTASY SPORTS, available at: <https://sites.psu.edu/pfsports/what-are-fantasy-sports/> (last visited 06 Jun., 2020).

⁶ Aaron Kamath, Ranjana Adhikari, and Gowree Gokhale, *Fantasy Sports: Your 'Suitable Bet' in India*, *International Masters of Gaming Law*, AM. GAMING L. 20 (2016) available at: https://imgl.org/sites/default/files/media/publications/fantasysports-suitablebetinindia_kamath_adhikari_gokhale_agl_spring_2016.pdf.

⁷ Gowree Gokhale & Rishabh Sharma, *The 'Skill' Element in Fantasy Sports Games* in THE LAWS RELATING TO FANTASY SPORTS GAMES IN INDIA, (The Sports L. and Pol'y Ctr., ed., 2018) available at: <http://www.sportslaw.in/reports/FantasySportsPublication-Web.pdf>.

proceedings initiated against it, when certain participants of the platform on losing their money to the game have said that it is carrying out gambling activities. The case came up before the Punjab and Haryana High Court, followed by the Bombay High Court and thereby a Special Leave Petition filed in the Supreme Court.⁸ All these decisions that were given by the courts were in favor of Dream11.

However, this is not a green flag for every such gaming operator. The court has not laid down any general law in respect of online gaming platforms and operators. Each case is to be judged independently and judicially on its own merits. The court still has the question of determination of whether a particular game is skill oriented and dominated. It requires to fulfill the predominance of skill test as laid down and reiterated by the courts on the basis of the decisions given in other foreign jurisdictions. Until a legal supervisory body which is recognized by the government comes into existence, the law and the situation cannot be considered to be stable and settled once and for all.

II

"Games that involve application of skill, judgment, analysis and adroitness of a player are not gambling/betting/wagering."

Judicial perspectives on Online Fantasy Sports in India

It is essential to draw a difference between *games involving betting* and *games of skill*. There are various sports or games where betting is allowed as game of skill and hence, are not considered to fall within the ambit of gambling. A change can be seen, keeping in mind the decision rendered by the Punjab & Haryana and the Bombay High Court, which has recognized 'game of skill' as distinct from gambling.⁹

Daily Fantasy Sports

It involves online betting system where stakes are put in sports that are physically taking place. To consider the game of Dream11, a form of fantasy sport which involves real life betting on specific games. The High Court of Punjab & Haryana,

⁸ Angad Makkar, *Dream11 Saga concluded as Supreme Court deals with SLPs filed against Bombay HC Order*, IPRMENTLAW (25 Dec., 2019) available at: <https://iprmentlaw.com/2019/12/25/dream-11-saga-concluded-as-supreme-court-deals-with-slps-filed-against-bombay-hc-order/>.

⁹ Nandan Kamath & R Sheshank Shekar, *Paid Fantasy Sports Games – Recent Developments under Indian Law* in THE LAWS RELATING TO FANTASY SPORTS GAMES IN INDIA, (The Sports L. and Pol'y. Ctr., ed., 2018) available at: <http://www.sportslaw.in/reports/FantasySportsPublication-Web.pdf>.

in the case of *Shri Varun Gumber v. UT of Chandigarh & Ors.*,¹⁰ has recognized the fantasy sport to be a game of skill. This was also upheld in the case of *Gurdeep Singh Sachar v. Union of India*¹¹ by the Bombay High Court.

To differentiate between the concept of skill and betting related to sports in India, the Indian judiciary had introduced the words 'mere skill' to identify games of skill preponderantly, where success in the game depends on skill and does not classify it to be 'gambling'. Despite the involvement of an element of chance or luck where skill predominates the game, it would be considered a 'mere skill' game.¹² Hence, these cases are cases of strict judicial scrutiny where the question of predominance of skill, chance, or luck is a question of fact, to be decided in each and every case. These games are offered through virtual mediums (like internet and mobile) and do not fall within the ambit of regulation of the gambling legislations in India. This is not a new interpretation of the Indian judiciary. In the case of *State of Andhra Pradesh v. K Satyanarayanana & Ors.*¹³, where the question before the Court was on determination of Rummy as a skill game or otherwise. The Court declared that keeping in view how the game is played, it involved predominance of skill rather than chance, the game requires skill as the fall of the cards in the game, needs to be memorized and the holding and discarding of cards requires anticipation, and skill. Though the element of chance cannot be eliminated but the predominance of skill cannot be overlooked. However, despite this, playing rummy for stakes amounts to an offence of gambling as under the Kerala Gambling Act, 1960, as was stated in the case of *Play Games 24*7 Pvt. Ltd. v. Ramachandran K & Anr.*¹⁴. The review petition in the matter was also dismissed on the same ground. The court recognized that, *the manner in which games are conducted, how it is being conducted through online methods, and what are the stakes involved in the matter are all issues which arise for consideration.*¹⁵ Though this judgment speaks volumes about the attitude of the courts in such cases, there is still a lack of clear jurisprudence on the subject of game of chance.

States have the power to legislate in gambling and gaming laws, which most of the states do have. However, skill games do not form a part of the said law and neither do they define the meaning and scope of 'game of skill', but the apex court of the country has clarified and brought certainty in this matter.

Some of these games of chance have been recognized as 'games of skill' in a few states within the country. They are excluded from the purview of 'games of chance or

¹⁰ *Varun Gumber v. UT of Chandigarh & Ors.*, Cri. L.J. 3827 (2017).

¹¹ *Gurdeep Singh Sachar v. Union of India*, 75 GST 258 (2019).

¹² *State of Bombay v. R.M.D.Chamarbaugwala*, 699 AIR (1957).

¹³ *State of Andhra Pradesh v. K. Satyanarayanana & Ors.*, 825 AIR (1968).

¹⁴ *Play Games 24*7 Pvt. Ltd. v. Ramachandran K & Anr.*, 4 KLT 542 (2019).

¹⁵ *Id.*

gambling activities' within such states. Following is the approach adopted by certain states towards legalizing such games as 'games of skill.'

Online Gaming

The only state in India that has enacted a statute to regulate online gaming is the state of Sikkim through the Sikkim Online Gaming (Regulation) Act 2008 (hereinafter referred to as the Sikkim Act of 2008).¹⁶ As per the Sikkim Act of 2008, the person who wants to conduct online games from the list of Black-jack, Bingo, Casino Brag, Roulette, Poker, Poker dice, Pontoon, Keno, Baccarat, Super Pan 9, Chemin de for, as mentioned is required to take a 'license' for the purpose of conducting these games.¹⁷

In the case of offline games or the games played in a physical form, games of skill played for stakes are out of the scope of the state gaming legislations. However, the question comes for such games in an online platform and distinction has to be drawn between a game of skill and a game of chance. In order to determine if it is skill that governs a gameplay, various courts have rendered decisions that surround around the following parameters:

- a) Strategy in gameplay
- b) Learned or developed ability
- c) Knowledge
- d) Technical expertise
- e) Physical co-ordination

Though the view of courts towards these games has changed over time and online games which are predominantly governed by skill have been declared to games of skill and are thus not liable to penalized as an offence. Keeping these opinions, the courts had said that as far as online gaming is concerned, the courts could not be compared to real or physical games until they pass the 'skill' test within them.¹⁸

Status of Fantasy Sports – Punjab & Haryana

In a recent ruling given by the Punjab and Haryana High Court, fantasy sports have been sanctioned as legal by declaring them as imminently and predominantly skill based games.¹⁹ This ruling of the Court has aided and given relief to the various operators of fantasy leagues who were put under various prohibitions after the

¹⁶ Act No. 23 of 2008.

¹⁷ *Id.* S. 3.

¹⁸ Vinay Vaish, *India: Online Gaming and Gambling Laws in India*, MONDAQ (30 Oct., 2014) available at: <https://www.mondaq.com/india/Media-Telecoms-IT-Entertainment/350824/Online-Gaming-And-Gambling-Laws-In-India>.

¹⁹ *Varun Gumber v. UT of Chandigarh & Ors.*, Cri. L.J. 3827 (2017).

applicability of the central act in the State of Punjab and Haryana through the Punjab State Enactment in the year of 1929.²⁰

The petitioner in this case was a player/ customer of the respondent company i.e. Dream 11 Fantasy Private Limited, which operated through an online platform by providing interested people a platform through their website <https://fantasycricket.dream11.com.in>. He claims to have fallen a prey to their alleged gambling business, which hitherto he himself had jumped into. The facts of the incident are as follows. The player had lost the amount he had put in the game, infuriated by which he approached the court for starting criminal investigations against the respondent company alleging that the business Dream 11 is interested in, is nothing by gambling. The player had created virtual teams for the sport of cricket and football as offered by the respondent company. He had selected those teams as per his preference and betted an amount of INR 50,000/- on them, in total. However, he lost that amount to other players and upon this he alleged the respondent's business as that of gambling. He argued that the game was not based on skill but only chance and hence should be categorized as gambling.

The defendants/respondents had taken the stand that the activities involved in the game are preponderantly skill based. Dream11 carries the nature of a fantasy sport and thus cannot be equated to gambling. The game involves integral skills by a player to effectively form a team and take part in the various leagues that are offered. It requires application of mind for such drafting. The view of Dream 11's arguments in establishing that it is a skill based game and how skill plays the major role over chance in fantasy games is as follows:

The participants before they finalize their teams, have to look at the following factors in their formation:

- a) Evaluate the worth of the players, assess their potential, their history, availability, position against other players, potential and talent of players and the kind of field they are to play in;
- b) Limit themselves to the upper limit of the selection of players in the different categories of their specialization. There are various restrictions that are imposed on the selector to ensure that the team does not substantially or majorly or entirely is composed of players of a single type or a single side, or country;
- c) These restrictions ensure that the player doesn't create a situation so similar to that of illegal betting or gambling by making a team from a single real world.
- d) The selector needs to evaluate the statistics, evaluate in anticipation of his credibility and potential. In the case of a batsman in a cricket fantasy game,

²⁰ The Public Gambling Act, 1867, was made applicable to the State of Punjab and Haryana via the Public Gambling (Punjab Amendment) Act, 1929.

factors like his total score, his average, number of centuries, existing circumstances, age of the player, injuries etc. are to be calculated and anticipated, on the basis of which that player may get selected. The evaluation about his future performance has to be done on the basis of past statistics to ensure efficiency in the game. The game is not absent from luck or chance, but that is not what predominates it, the existence of skill ensures efficiency and that is what predominates the game.

The participant is given the opportunity to monitor the scores of his players from time to time and make substitutions wherever necessary. It offers test trials or what it terms it is *Free to Play* variants to test the player's individual capacity and efficiency in player selection. It helps him in testing his skills and thereby gain experience before it can take part in the actual leagues. In the instant case too, it was the player's lack of efficiency and experience in selecting the right team members that made him lost his money in the game. He had failed to exhibit the aforementioned skills in the game.

The judgment was given by relying on another landmark judgment of the apex court in the case of *K.R. Lakshmanan v. State of Tamil Nadu*²¹ (hereinafter referred to as the Lakshmanan Case) where it was declared that betting on horse races was a game of skill and did not constitute gambling. The judgment was given on the similar lines that various factors had to be judged before a person places a bet on the horse, these include capacity, strength, potential, variety of the animal, capability of the jockey, the fitness and form of the horse, the length of the field, the distance and the previous performance of the horse and the jockey etc. These factors had to be assessed by the race gores before placing a bet on the horse. Hence, it was declared that horse racing betting was a game of 'mere skill'. This was taken by the Punjab and Haryana High Court in establishing the fact that even the apex court had given a green signal to the kinds of competitions which are fair in terms of providing an opportunity to the participants to place bet on the basis of their knowledge and efficiency and not just luck. It was held that competitions in which success or winning depended upon a *substantial degree of skill was not gambling* and thus despite existence of some element of chance, if the game is preponderantly skill based, it would be a game of 'mere skill.'²² Based on the same lines, the Punjab and Haryana High Court also ruled Dream 11 is conducting a business activity which is valid, legal and constitutional as under Article 19(1)(g)²³ of the constitution and the offering of such a game was upheld in the eyes of law.

²¹ *K.R. Lakshmanan v. State of Tamil Nadu*, 1153 AIR (1996).

²² *Id.*

²³ Constitution of India, 1950, article 19(1)(g).

Through the lens of Bombay High Court – Inapplicability of GST

The Bombay High Court reiterated the observation by the Punjab & Haryana High Court, in the case of *Gurdeep Singh Sachar v. Union of India*.²⁴ This judgment was delivered in lieu of a question of applicability of GST on the game, where the court observed that the rules applicable on GST would only be limited to the service fee charged by the online platform for the services that are provided by it and not on the entire amount pooled in by the players of the game, holding the game as legal. Both these judgments held that these fantasy games are not game of chance. The result in these games as provided by Dream 11 was not dependent upon winning or losing of any particular team in the real world, on any given day, in any part of the world. Hence, it was also ruled that Goods and Service tax shall not be applicable on the entire amount that was put in/ pooled in by the players of the online game but on the amount which actually fell within the category of supply of goods or services or both within the online platform, as required by the GST law.

This case before the High Court of Bombay was filed as a criminal public interest litigation that stemmed out against the activities of Dream11. Dream 11 is a fantasy sports platform which is based in the territory of India for its operation that allows users to play games in a virtual world. These games are fantasy cricket, hockey, kabaddi, football and basketball. It was alleged by the complainants that Dream11 was carrying out online gambling and betting activities under the garb of online fantasy sports games and thus requires to be penalized under law under the Public Gambling Act, 1867. It further read that the online fantasy sports gaming platform of Dream11 was carrying its activities in violation of the Central Goods and Service Tax Act, 2017 read with the Central Goods and Service Tax Rules, 2018 Rule 31A.

The CGST Act, Section 7 provides that certain activities as mentioned under Schedule III of the Act shall not be treated as a supply of good or of services and hence would be exempt from the levy of GST.²⁵ Schedule III set out that “*actionable claims, other than lottery, betting and gambling*” as one such activity for being out of the scope of applicability of GST. Rule 31A of the CGST Rules releases the method of calculation of tax by determining the method of calculation of value of supply in cases of lottery, betting, gambling and horse racing. According to this rule the value of supply of such actionable claims in the form of chance of winning is *100% of the face value of the bet amount or the amount paid in total*.²⁶ Hence, the petitioner contended that the entire amount pooled in by the participants should be taxed. The rate of such taxes is 28%. The petitioners claimed that:

- a) Fantasy games are means to attract and lure people into betting and gambling. It asks people to put their money by taking a chance for easy

²⁴ *Gurdeep Singh Sachar v. Union of India*, 75 GST 258 Bombay (2019).

²⁵ Central Goods and Services Tax Act, 2017, section 7.

²⁶ Central Goods and Services Tax (CGST) Rules, 2017, rule 31A.

money and quick earning. It involves chance taking and most of the participants end up losing their money in this entire process and hence it is nothing but a different form of gambling, betting, wagering as being different species of a general genesis of gambling.

- b) When this money is put in by these players in different contests, they receive a tax invoice which is issued to them to tax only the money that the gaming platform i.e. Dream11 keeps for its service of providing a platform to its players or participants. For the rest of the amount put in by the players, merely an acknowledgment of receipt is given to these participants. This acknowledged amount put in by the players is pooled in, collectively in an Escrow Account, which then ultimately gets distributed between the players as their claimed reward as per their position in the contest, at the conclusion of the game. Some people get in back more than what they had put while others lose the money they contributed.
- c) These nature of activities carry the characteristics of 'gambling' or 'betting', no matter what. Hence these activities should be taxed and treated as per Section 7, Schedule III of the CGST Act, 2017 and Rule 31A (3) of the CGST Rules, 2018.
- d) The games are no different from the game of horse racing and hence should be treated in a similar way. GST should be applicable @28% on the entire amount put in by the participants on the 100% amount collected by Dream11 irrespective of whether the amount is retained by Dream11 or not, and not just for its service of providing the platform as its service. Moreover, it should not be charged the current rate of 18%, which is also just paid on the amount retained by Dream11 for the service of providing the online platform.

Dream11 argued on the following points saying that:

- a) The games that are provided by the defendants do not carry the characteristics of betting or gambling or any such illegal activity as has been already declared by the Punjab and Haryana High Court, wherein the Court had specifically declared that games on Dream11 were governed by skill and not chance. The decision came in favour of Dream11, where it was said that these games required superior knowledge, judgment, anticipation and attention, as per their knowledge and skill and since these are not games of chance, their games are exempted from the application of the penal provisions as declared under Section 18 of the Public Gambling Act, 1867. They have also been protected as a fundamental rights provision under article 19(1)(g) of the Constitution of India. It was also held in the Lakshmanan case that playing fantasy sports games require the same level of skill, judgment and discretion as in the case of horse racing.
- b) A Special Leave Petition against the decision of the Punjab and High Court was filed but dismissed by the Supreme Court, by holding the decision of

the Punjab and Haryana High Court right and valid in law, vide order dated September 15, 2017.

- c) The way the game functioned was described in detail to the court in order to explain the use of skill and judgment to govern the game. The players in the game competed against other players through their virtual teams that were created by them respectively. The winners are decided by the statistical data that is computed on the basis of the scores or points earned by the players as per their teams formed. The performance of the team is dependent on the performance of the players in the real field. There are deadlines to be matched along with the real match. The participants don't bet on the outcome of the game/ match and just do something similar to that of the selectors in picking up the real team. Hence, these games are played on the platform are nothing different from 'game of skill' and not of chance and thus outside the application of the CGST Act and rules.

The High Court summarized the whole issue into following two broad points – firstly, *whether the alleged activities of Dream11 amount to gambling or betting or not*, and secondly, *whether GST Act and rules, in specific Rule 31A(3) would be applicable on the game*. The decision of the court was in favour of Dream 11 on similar lines as given by the Punjab & Haryana High Court and the Lakshmanan case. The game was declared to be game of skill. An explanation as to what constitutes as gambling or betting was clarified and reiterated by the court. The court ruled that if the end result of a game or a contest is determined only by chance and does not involve application of mind, and any money is put into it with a consciousness of risk involved with a hope to win and gain, is what constitutes as 'gambling or betting'. This is not what happens in the games offered in Dream11, seeing its functioning, it involves application of skill and the result is strictly and merely not determined by chance, it does not amount to gambling or betting. It disregarded the argument of extraneous factors put forth by the petitioner like, which player plays better on a particular day, how skillful he acts are all matters of chance.

On the question of application of GST, the court declared that Dream11 has not evaded the tax applicable under CGST Act. Since it is not a game of gambling or betting, it is not subjected to the applicability of Rule 31(A)(3) of the CGST Rules. Petitioner's arguments were erroneous on the point of law. There is no possibility of tax evasion if there is no gambling or betting. The amount put in the participants which get accumulated to the Escrow account is an actionable claim which is distributed to the fair winners of the game, as per the outcome, as per their skills involved and results. Since the GST law itself states that anything which is not a supply of goods or services or both, it cannot be taxed under it. Hence, there is no evasion in the instant case. The activities of Dream11 do not constitute supply of goods or services as per the GST law. The money pooled in by the participants is not thereby liable to be taxed under the GST regime. The decision was received with much elation.

It was welcomed by the industry as a move to erase doubts that had arisen despite the decision of the P&H High Court which was though in favour of Dream11 and clarified the position, giving a reasoned order. It was another landmark decision in establishing that Online Sports Gaming Platform should be considered as games of skill and not of chance. Hence, these should not be considered as betting, gambling, or lottery. The court's decision covered the aspects of

- Game of skill
- Applicability of GST
- Escrow Account
- Effect on industry players

This ruling has been important because since April 2017, the indirect taxation department of the country had started questioning the fantasy gaming companies to determine if these platforms as give a correct methodology to not to be taxed under the GST regime and whether their method to determine tax was correct or not.

Reiteration by the Rajasthan High Court

The decision given by the Bombay High court and the Punjab and Haryana High Court was reiterated in the recent decision given by the Rajasthan High court. The order was given by a division bench of the court, comprising of Chief Justice Indrajit Mohanty and Justice Ashok Kumar Gaur, after a PIL was filed by a resident of Ajmer.²⁷

The petitioner argued that the respondents were engaged in betting and gambling activities, which should be stopped by the government by immediate interference and action and by initiating criminal proceedings against the company so that the crime of betting and gambling is not conducted by the respondents in any other part of the country. The petitioner impleaded against the Home Secretary, Government of Rajasthan, State of Rajasthan and the founders of Dream11 i.e. Harsh Jain and Bhavit Seth as respondents.²⁸ The court relied on the judgment of the Punjab and Haryana High Court and reproduced the relevant portion of the same that had laid down the rationale of the decision of the High Court to hold the games offered by Dream11 to be games of skill. It was stated by the Punjab and Haryana High Court in the case of *Varun Gamber v. Union Territory of Chandigarh & Ors.*—²⁹

The respondent company's website and success in Dream 11's fantasy sports basically arise out of users exercise, superior knowledge, judgment and attention.... Equally so, before I conclude, I must express that gambling is not a trade and thus, is not protected

²⁷ *Infra* note 28.

²⁸ Abhimanyu Chopra, *Game of 'Skill' vis-a-vis Game of 'Chance' with Special Reference to Online Fantasy Sports/Games*, AZB AND PARTNERS (05 Mar., 2020).

²⁹ *Id.*

by Article 19(1)(g) of Constitution of India and thus, the fantasy games of the respondent-company cannot said to be falling within the gambling activities as the same involves the substantial skills which is nothing but is a business activity.

The court also emphasized on the ruling of the Bombay High Court in the case of *Gurdeep Singh Sachar v. Union of India & Others* and reiterated that –

Only if the result of the game/contest is determined merely by chance or accident, any money put on stake with consciousness of risk and hope to gain, would be ‘gambling’ or ‘betting’. There is no merit in the submission that the result of their fantasy game/contest shall be considered as merely by chance or accident notwithstanding involvement of substantial skill.

The Rajasthan High Court concluded by saying that “*the issue of treating the game “Dream 11” as having any element of betting/gambling is no more res integra in view of the pronouncements by the Punjab and Haryana High Court and Bombay High Court and further the SLPs have also been dismissed against the orders of these High Courts.*”³⁰

III

International Perspective on Fantasy Games

The question of determining the precise nature of online fantasy sports has been a debatable issue not just in India but across the globe. There have been a few cases internationally where the courts have taken into account this issue on the basis of the recent academic studies, legal precedents on the given issue, and have also held that the fantasy sport games to be games preponderantly based on skill and not chance games which are subjected to chance alone along with certain conditions.

In the Unites States of America, the issue was decided in the case of *Humphrey v. Viacom*³¹ (hereinafter the Humphrey case). In this case, the plaintiff had claimed that the fantasy sport gaming platforms are indulging in wagering and betting, where the winners are predominantly decided on factors of chance, as whatever happens in the game is dependent on circumstances and chance. This plaint of the plaintiff was dismissed by the district court and held that fantasy sports games are games of skill, as the game is highly dependent on the participant’s or users skill in selection of players of the team, addition and dropping off the players during the course and thereby deciding the line up of their players.

Analytical studies have been carried out by various academic professors and analysts. In a data report prepared by an expert Prof. Zvi Gilula it has been shown

³⁰ *Chandresh Sankhla v. State of Rajasthan & Ors.*, 2020(2) RLW 1601 (Raj.).

³¹ *Humphrey v. Viacom*, BL 38423 (2007).

how skill is used and governs the fantasy sports games.³² The report shows in the following way as to how fantasy sports games use skill, and delineates the following factors: a) the kind of player selected which has a direct effect on the contest result and how does it work, b) statistical results to show how skilled, well informed players perform better in relation to other set of players in a set period and style of games, and c) how over a period of time, any participant can get better and then is likely to win in a better ratio by applying analysis, skill, awareness and other skills acquired over time by them. The report uses the results of the two most prominent companies in the United States that offer fantasy sports games to show differences in the winning rates over an average period of time. It shows proportion of contest won over time. These two companies are FandDuel and Draft Kings. The result showed how a skilled participant was likely to win over any relatively non skilled person, who merely played a game as a game of chance over the other who applied skill. The study by Prof. Gilula showed there were large differences in performance across Draft King's clients, where certain consistent and skill applying participants were outperforming other players over time. The exercise showed that over each week, an 'average performer' and the 'top performer' participated in about ten guaranteed pool prize contests. Whereas, on one hand the average performer's probability of success rate was found to be @19%, that of the top skilled performer was found to be 47% for the same period. This large gap difference between the rate of winning between these two category of players was found to be statistically and practically significant to determine the result and to show how skill is the governing factor of the game and not chance. This research study and analysis was held to be of good accompanying source for the court to determine the factor test of skill over chance in fantasy sport games. It further puts forth the idea that these high differences cannot come due to merely factor of chance and not skill.

Hence, any player or participant who has been consistently winning the fantasy sports game and has a good understanding of it and players against others as a competition of knowledge and skill who has little knowledge over the game, i.e. against a person who randomly selects players and line up for the game, the person who is more skilled and consistent is likely to win over. *The ability to consistently find players who over-perform when compared to their salary value is a critical element denoting the skill involved in fantasy sports.*³³

³² *Fan Duel v. Schneiderman*, N.Y. Sup. 161691 (2015).

³³ Gowree Gokhale & Rishabh Sharma, *The 'Skill' Element in Fantasy Sports Games* in THE LAWS RELATING TO FANTASY SPORTS GAMES IN INDIA, (The Sports L. and Pol'y Ctr., ed., 2018) available at: <http://www.sportslaw.in/reports/FantasySportsPublication-Web.pdf>.

IV

The case of Dream11: A Daily Fantasy Sports Platform in India

All over the world fantasy sports are played on an online platform. Fantasy Premier League is the official gaming platform of England's famous and most awaited Premier League of Football. It has around 6 million users worldwide and is a free to play game. However one difference that exists in India and U.K. (Britain) is that in Britain, if a player forgets to meet the time limit of forming a team the last team that they had formed automatically gets updated to become the present team by the player, while in India every game is a independent, however the player is free to form different teams.

The current position and format in India of Dream11 hasn't been the same consistently. The first version of the game was modelled in 2008 on a free to play game basis, season long cricket game in a graphical format. This continued for almost four years when it was realized that it wasn't meant for India. They tried to understand the approach of the Indian public which was a low attention span where they did not want to fall behind in ranks if they forget to change their team and then it gets updated to the same team in the new game. They were in need of immediate gratification. So in 2012, after about four years, Dream11 pivoted to a separate format of '*daily fantasy sport*'. The format of the game was changed, advertisements were removed, revenue model was changed from a free to play to one where users had to put money on their teams. It became a 'pay to play' platform. Then came the format which is currently applicable in the game. The amount so put in by the players is collected from all users in a pool. Then after the conclusion of the match, the users whose team had got the highest points would win the money as per the set reward list after the deduction of requisite service fee by the platform.

Legal opinion was taken on this format of playing before it was introduced in India. This was because online gaming has not been excluded from the applicability of the gambling legislations in the Indian states. In states like Assam, Odisha and Telangana, one cannot play a game of skill for money at all. Hence, fantasy sport games are completely banned or illegal in these states. To add to this, the company had later introduced, a freemium model in 2012 as a part of its current format wherein the players could play on a free basis, labelled as 'practice contest' and hence players are on their wish to put money or not in the game. This freemium model ran successively smoothly in India for a period of five years i.e. till 2017, wherein one of the users of the game Varun Gamber, who had placed money in the game and had lost 50,000 INR to the game, decided to sue the company in the Punjab and Haryana High Court, rest as discussed is the history above.

India still faces the problem of the regulation of this industry as it is not so socially acceptable in India yet. It is self regulated by the Indian Federation of Sports

Gaming, which was formed in 2017 and is chaired by the Co Founder of Dream11, Jain himself.³⁴ It is currently comprising of 17 members. Hence, it is a private body to govern the fantasy sports game in India. It is not yet recognized by the Indian government. But it is much needed for the existence of a government regulated body to make rules and promote this platform. At a point where individual states have not come up with their respective state legislations on this aspect, a central governing body is necessary in order to promote this trade. The only thing that the existing body has hence to ensure is that the game does not take the aspect of game of chance over being a game of skill.

After USA legalized sports betting, the Supreme Court of India had asked the Law Commission to study the position of legalizing betting in India, especially after the IPL betting and spot fixing scandal that came up in 2013. The report of the commission strictly told the government that the situation and proposal was not desirable in India. However, these did not prohibit games of skill to be played, even for stakes as long as they remain to be games of skill. Out of the total base of players of Dream11 i.e. about 45 million users, only about 15% of participant have played for money, which compose about 6 million users that are the only revenue account for Dream11 with a certain charge of service fees, and no advertisements on the platform, which is not even proposed to happen anytime soon, as said by the CEO.³⁵ After its continuous struggle in acceptance and social debates, Dream11 is the official fantasy gaming partner of the International Cricket Council, the Big Bash League, the Caribbean Premier League, the Pro Kabaddi league, the Indian Super League, the International Hockey Federation and the National Basketball Association. These are the various games that the gaming platform provides for its players to participate in.

Dream11 holds the substantial portion of online fantasy sports gaming industry. It has recently increased its funding base due to its wide publicity worldwide and rising revenue. In September, Dream11 recently raised \$100 million in a funding by the Chinese multinational investment holding conglomerate called Tencent. Dream11 hold 90% of the market share of the fantasy sports industry in India.

Dream11 as a Game of Skill

Before the platform for the fantasy sport begun in India, it has been skeptical to be proceeded with, due to existing gambling laws in the country and the narrow approach towards the sport. There was lack of judicial jurisprudence, precedence and absence of any legal clarity on the same. It had been a passive progress for the sport for at least 10 years when the idea of the sport begun. Numerous problems were faced especially while accumulating funds for the same. The idea to begin with

³⁴ Federation of Indian Fantasy Sports, *FIFS Charter*, available at: <https://fifs.in/charter/>.

³⁵ *Supra* note 16, GLAWS.

the sport initiated with the belief that it is a game of skill and hence should be exempted from the gambling laws of the country and hence should not be prohibited per se. However, it was only when the High Court of Punjab and Haryana declared the format of Dream 11, the fantasy sport to be legal and outside the permit of the gambling laws of the country, as it is one that requires considerable analyzation, skill and judgment which thus makes it to fall under the aspect of a legitimate business under the Constitution of India, when a participant in the game filed a case in the court demanding the game to be declared as illegal. The idea propagated was further ratified and upheld by the Supreme Court of India.

This brought a waiver of change in the entire industry and has arisen scope for future enterprises and start ups to operate in this space. The success rate of this industry has been far more than that was projected. Dream 11 has about 95% share in the markets.³⁶ This format of game has evolved and has gained enough market for its sustenance. The regulatory board for the game is the Indian Federation of Sports Gaming (IFSG), which is the regulatory body to protect, regulate the consumer interest in this evolving industry of the nation. The acceptance by the judicial body of the country has a far reaching consequence in ensuring the legality of the sport.

Dream11 is a sports and a gaming platform, based in India which allows participants to play hockey, football, cricket, kabaddi, and basketball. It is a Mumbai based platform which got a push to continue with its operations after a Bombay High Court decision, upholding its games to be games of skill. It was declared not to encompass the characteristics of gambling, betting or wagering. The confusion related to these games has ended by a decision of the High Court which has brought fantasy online game providers like Dream11, Fantain, Starpick and MyTeam11 amongst others a great relief. The user base of these playing units has crossed levels more than anyone could think of, despite such strict norms and reception of betting, gambling and such other activities in India. As per a report published by KPMG in collaboration of the Indian Federation of Sports Gaming (IFSG), the user base of these fantasy gaming platform has crossed 70 million in 2018. Indian participants have spent around INR 11,880 crore (approximately \$1.73 billion) on this game in 2018-19 and still there are people for whom this game amounts to betting and gambling which makes them not to participate in it.³⁷

Tencent backed Dream11 offers online fantasy games platform where participants can create different virtual teams, consisting of players in real life games. The

³⁶ Mughda Variyar, *Greenlight From The Court Kept Our Dream11 Alive*, THE ECONOMIC TIMES, (25 Oct., 2017).

³⁷ Pranbihanga Borpuzari, *Is Dream11 A Gambling & Betting Site? This GST Ruling Settles The Case*, THE ECONOMIC TIMES (18 Jul., 2019).

participant selects these players from both those competing teams which are playing in real life. Based on his knowledge and skill, the participant makes selection and hopes for a win. These players compete against other users through their teams that they have created virtually. The winners of the game are decided on the basis of the points scored, statistical data which is generated by the real life performance of a particular player in actual life i.e. on the field. For the game to begin, the users have to put in an acknowledgment amount which is then collected and pooled in with other players to be kept in an Escrow account which is specifically created for this purpose. This amount is later on the conclusion of the game, distributed among the winners of the game. In addition, the users have to pay a platform fee for which the Dream11 platform issues a GST invoice too which is duly made to discharge the liability arising under the GST law. The game involves certain percentage of chances or luck but is not clearly based/ dependent on it. The reasoning given by the Bombay High Court was fair enough in this regards. The judges held that the result of the contest participated in, is not at all dependent on the winning or losing of any particular team of the competitive teams in the real world game. Hence, these fantasy games are not to fall in the category of gambling or betting. Success in this game is dependent on a user's superior extent of knowledge, attention, judgment and not dependent on the victory or failure of any particular team.

Indian Position – Analysis of Daily Fantasy Sports

It all began with the state of Nagaland in 2015 which introduced a regime of license for skill games under the *Nagaland Prohibition of Gambling and Promotion and Regularization of Online Games of Skill Act, 2015* called as the *Nagaland Gaming Legislation*. Prior to this legislation of the state of Nagaland, fantasy sports games were not expressly held to be 'games of skill' in any Indian judgment or legislation. Though the existing legislations on prohibition of gambling, were declared no to apply to skill games but there not explicit legislations for the same. The Nagaland Gaming Legislation expressly recognized by stating '*virtual sport fantasy league games*' and '*virtual team selection games*' as skill games. The legislation mentions the skill preponderance test specified in the definition of the '*Games of Skill*' in the Nagaland Gaming Legislation.

Hence, it can be said on the basis of the foregoing attempts and discussions that there are legal precedents for Indian and in world which can persuasively establish that fantasy sports games which have been recognized and there success depends on a substantial degree of skill. However, not all fantasy sports have been declared to be games of skill, yet. The way a particular game is played, the factors that need to be analysed by a player determine whether a fantasy sport or any game is a game of skill or not. Various factors that are assessed by the player keeping in mind the different conditions, circumstances, scoring metrics, statistics that are used in drafting of a team, restrictions of the game, uppers caps and other limits if affect the result of a game, and play a critical role in the game it is called as a game that

involves substantially skill to monitor and play. Hence, the gameplay of each fantasy sports game needs to be analysed before declaring it to be game of skill as in the instant case, on the basis of the principles and guidelines as given by the different courts from time to time.

In India, gambling is prohibited and regulated by the Public Gambling Act which was constituted in 1867 which extends to East Punjab, Delhi, United Provinces and the Central Provinces and specifically prohibits public gambling or running common gaming house. In addition to this, legislatures of states of India have been given exclusive power to make laws in relation to gambling and betting. The Public Gambling Act's applicability in certain states stands repealed in respect of those states which have regulated gambling in their state by their own respective legislature by virtue of the power vested as per the Constitution of India.

As per the state legislation on gambling or the Public Gambling Act, as the case may be, any individual or entity who engages in any of such gaming activity whether with or without stakes have to comply with these provisions which are in force in the different states and in India as a whole. The state legislature of Delhi has enacted the Delhi Public Gambling Act, 1955 to regulate and prohibit gambling activities in the union territory of Delhi but it also excludes from its application the 'games of mere skill'. Due to the existence of this Act, the Public Gambling Act as enacted by the Union legislature stands repealed for application in the union territory of Delhi.

Similar to this, the state of Goa has made special enactment for its own state, but to rather allow gambling activities in the state. The only state to allow online gaming is the state of Sikkim. However, it has certain restrictions. In India, there are hence provisions and enactments that allow games of skill to be played online, and which are not equated to gambling. Various courts have examined the difference between the game of chance and games of skill, in order to differentiate between what is gambling and what is not.

Other sports gaming platforms similar to Dream11 that though have a different format of gameplay and functioning can be seen as under. In this current table, an analysis of about eleven such fantasy sports operators (mapped out of the current platform and members of IFSG – federation of the fantasy sports in India), to see whether they fulfill the criterion as held under the judgment of Dream11 or not.

Judgments by the Supreme Court of India

The following pronouncements have been made by apex court in the context of legality of gambling *vis.-a-vis.* the game of skill.

- a) In the *State of Bombay v. R.M.D Chamarbaugwalal* the court has declared that games which involve competition that is based on a substantial degree of skill in its functioning do not fall within the category of gambling. Despite

there being an element of chance, if it is pre dominantly a game of skill, it would still be a game of 'mere skill'.³⁸

- b) In the case of *State of Andhra Pradesh v. K. Satyanarayana & Ors.* the apex court held that playing rummy is not gambling activity. The court explained that –

Rummy requires certain amount of skill because the fall of the cards has to be memorized and the building up of Rummy requires considerable skill in holding and discarding cards. We cannot, therefore, say that the game of Rummy is a game of entire chance. It is mainly and preponderantly a game of skill.³⁹

- c) In *M.J. Sivani & Ors. v. State of Karnataka*, the apex court held that –

Even a skilled player in a game of mere skill may be lucky or unlucky, so that even in a game of mere skill chance must play its part. But it is not necessary to decide in terms of mathematical precision the relative proportion of chance or skill when deciding whether a game is a game of mere skill. When in a game the element of chance strongly preponderates, it cannot be game of mere skill. Therefore, it is not practicable to decide whether particular video game is a game of skill or of mixed skill and chance. It depends upon the facts, in each case.⁴⁰

- d) In *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, while defining what constitutes as a game of skill said that –

Games may be of chance, or of skill or of skill and chance combined. 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 result is 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 - although the element of chance necessarily cannot be entirely eliminated - is one in which success depends principally upon the superior knowledge, training, attention, experience and adroitness of the player. Golf, chess and even Rummy are considered to be games of skill. The courts have reasoned that there are few games, if any, which consist purely of chance or skill, and as such 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 element of chance. It is the dominant element - "skill" or "chance" - which determines the character of the game.⁴¹

³⁸ Megha Mandavia, *Fearing Backlash, India's Skill Gaming Startups Ensure Users Don't Get Addicted Playing Online*, THE ECONOMIC TIMES (27 Jul., 2018) available at: <https://economictimes.indiatimes.com/tech/internet/fearing-social-backlash-online-companies-go-for-counselling/articleshow/65157620.cms?from=mdr>.

³⁹ *State of Andhra Pradesh v. K. Satyanarayana & Ors.*, 825 AIR (1968).

⁴⁰ *M.J. Sivani & Ors. v. State of Karnataka*, 6 SCC 289 (1995).

⁴¹ *Dr. K.R. Lakshmanan v. State of Tamil Nadu*, 1153 AIR (1996).

Thereby on the basis of these judgment delivered by the apex court, it can be said that games of skill are defined by various factors for the game to be considered as a game of skill, these include the mechanics, nature of game, rules, mode of playing etc. These factors determine the requirement of application of skill preponderates the element of chance and here success depends principally and majorly on training, knowledge, attention, adroitness and experience of a player or a participant. Hence, these games of skill do not fulfil what constitutes gambling as per the legislations of the various states in India and hence these are kept out of the application of the state gambling acts.

V

Conclusion & Suggestions

From the above discussion, it follows that fantasy sports are no longer an alien concept in India. There are various websites that provide a platform for promoting these games and investments in this sector in India is strengthening.⁴² Despite the surge on various fronts and the passion that these games have gained, there is still no concrete difference between games of skill and games of chance. The issue has been settled by use of various factors and interpretation of the court.

Considering the growing number of participants of the game for a serious profession or involvement in fantasy sports, their needs to be a regulation at the earliest. The implication of regulating these games is multifold – first, the extent of skill and chance need to be distinguished so that in the guise of skill, gambling is not promoted, legally; second, the powers that be must not be deprived of the revenue that this sector can generate and the potential of revenue that this sector has is immense, as can be seen from the multifold increase in the number of users of such platform; third with the increase in the number of consumers, the disputes in the future are bound to increase thereby requiring a consumer protection and dispute resolution mechanism; fourth, it will open the avenue newer forms of such fantasy sports in India thereby increasing competition in the market; and fifth, the need for regulation also finds importance in lieu of the borderless outreach of such platforms that may cause disputes in the nature of private international disputes.

This can be done after laying down industry wide guidelines for governing all fantasy sports platforms, forming a recognized body to govern and supervise the

⁴² Correspondent, *Dream11 Becomes India's First Gaming Unicorn With Investment From Steadview Capital*, BUSINESS TODAY (09 Apr., 2019) available at: <https://www.businesstoday.in/current/corporate/dream-11-gaming-unicorn-steadview-capital-dream-11-becomes-indias-first-gaming-unicorn-with-investment-from-steadview-capital/story/335465.html>.

gaming platforms and to determine as to who all will fall under this category of fantasy sports. However, in the presence of a legislation too, each game will have to be governed and judged independently.

Suggestions

a. Industry Initiatives

The industry is at the stage of self regulation and guidance in the gaming industry. The focus should hence be on policy advocacy, research, unanimous voice and providing a forum for all the stakeholders to discuss the concerns about the growth of the industry and the challenges to be resolved.

b. Association Initiatives

- An Association of operators must be formed to look and address the concerns of this industry.
- There must be certain parameters that must be laid down and fulfilling that criterion must be necessary for anyone to be made or categorized as an 'approved operator'.

c. Formulation of a Charter at the Central Level

- A charter can be formulated that lays down the essentials to be a member of this industry. It must carry the standards that must be followed by any operator. The standards should be such that increase and enhance consumer confidence and their reliability towards the operators.
- The charter should laid guidelines of software integrity, advertisement and other internal controlling standards of the operators.
- Due diligence standards must be set to protect interest of the organization as well as all stakeholders.
- Methods to increase valuable service being provided by the operators to its users.
- Standards for product certification must be set.

d. Partnering with Legal Advisors

- Opinion of the legal fraternity to understand the working and formulation of law in respect of online gaming.
- There should be involvement of international legal experts to understand the opinion of international legal scholars and judiciary functioning in other countries on similar issues.

e. Awareness Drives and Programmes

- Conference, newsletters, events, seminars must be conducted and released from time to time to keep the public abreast of the happening of changes and laws in the arena of games of skill and fantasy sports activities. It must be such that it addresses the concerns of all the stakeholders. Such a publication must be released by the organisation in supervision of fantasy sports gaming.

f. *Advisory Committees*

- Highly experienced professionals and experts from all the prospective fields such as judiciary, data analytics, academics, psychology, economics, finance etc. must be taken into power to give unbiased, practical, feasible solutions and suggestions to all challenges and predict growth and feasibility of changes to the industry and its impact on the economy.

g. *Fair Play and Responsible Gaming*

- Ensuring that the product, service and payment in relation to the games are a free, clear and transparent gateway. Such processes must be certified, dependable by any means like an appropriate seal, be undertaken by the operators as part of their initiatives.
- Violation of fair play policies must be penalized. There must be strict adherence to fair play rules and regulations by the operators.

h. *Data Privacy*

- These operators should not engage in taking any unnecessary personal information and even if taken it must be kept private to ensure that sensitive and confidential information of the operators is not only misused or leaked to be misused.

i. *Dispute Resolution*

- A lot of players come up with the contest participation and results that are released because people are sensitive about the money they have pooled in the game. The operators must ensure effective dispute/grievance redressal platforms to settle any disputes that may arise between the players and the operator or amongst the players.

j. *Player Verification*

- Ensuring compliance of Know Your Customer norms to ensure that there is more transparency and accountability of the players.

k. *Fiduciary Holding of Funds*

- Since the funds of people/ users are involved in this game, stringent guidelines must be formed to ensure complete protection and avoiding any misuse or misplacement of the funds of the operators. This can be done by taking measures like maintaining separate bank accounts, where complete access can be given to the user as well. Such funds should not be used by the organization for its own operational expenses. Certain terms and conditions must be laid down in this respect to ensure security of money of the players.

l. *Other ways*

- The industry is set to become one of the most potential industry in case of online gaming and hence is going to attract a lot of potential participants, it must be ensured that complete transparency must be maintained by the operating platforms.

- Fair play practices should be adopted to ensure a level playing field for all. The platform must ensure its utmost genuineness for all the functions and operations that it undertakes with the participants.
- Practice contests must be prepared and promoted by these online fantasy sports gaming platforms in order to boost up the skills of the participants and teach and train them through sessions of practice.
- There must be some support from the state legislatures and the government to bring up laws for online fantasy games, considering the potential user base it has. There is a legislation which is missing with respect to it and the states must undertake this task under the power given to them by the Constitution of India.
- There must be a government recognized body to regulate all these functions and supervise the online gaming industry, or the existing body of Federation of Fantasy Sports in India must be given due recognition and cognizance by the government so as to promote healthy operations under a legal body.
- Most of the population of the society related these gaming activities to betting, gambling, wagering or any such prohibited act by law and thus is not in favor of these. The government, and these platforms must be allowed to take enough steps to ensure that the people can easily differentiate and determine what are games of skill.
- The society needs to open its view and not be receptive to the idea of fantasy online gaming activities or fantasy leagues in India.
- The Law Commission of India should put in recommendations and formulate a law keeping in mind the interest of all the stakeholders.
- More discussions, conferences and opinions must be taken on these matters, especially before a law is formulated on the subject of online fantasy games/sports.
- The government, businessmen/operators, society and the judicial wing needs to work hand in hand if they want this industry to be promoted, as is the case in other countries of the world. It requires cooperation and a combined effort of all. No particular branch is burdened with this operation.