

**COMMENTS ON NITI AAYOG’S GUIDING PRINCIPLES FOR ONLINE FANTASY SPORTS
PLATFORMS IN INDIA BY KAUTILYA SOCIETY, HNLU**

To Honourable Ms. Anna Roy,

We, at the Kautilya Society, HNLU, are writing to you with utmost humility to offer our comments on the NITI Aayog’s draft discussion paper on Regulation of Online Fantasy Sports Platforms in India. The Kautilya Society, HNLU is a collaboration between students at Hidayatullah National Law University, Raipur and Vidhi Centre for Legal Policy. The Society endeavours to increase student participation in legislative processes towards the making of better laws.

While appreciative of the need for a national-level regulatory framework for online fantasy sports platforms adhering to guidelines that are consistent and based on well-recognised principles, we feel there are certain outstanding issues that need to be addressed. We have listed out some of these issues based on our preliminary research and would be more than happy to supplement this with a follow-up should you find these. Our comments have been attached below for your kind reference.

Background

On September 15, 2017, The Hon’ble Supreme Court dismissed a Public Interest Litigation¹ filed against the order of Punjab and Haryana High Court in the case of *Varun Gumber vs. Union Territory of Chandigarh*², which legitimized the Online Fantasy Sports industry by differentiating it from gambling and finding that such games involve “exercise of considerable skill, judgment and discretion.” In 2018, the 276th Law Commission Report³ too affirmed the above opinion and provided legal legitimacy to the Fantasy Sport Industry.

¹ SLP Diary No. 27511 of 2017.

² Judgement dated 18th April 2017 in CWP No. 7559 of 2017.

³ Law Commission of India, report dated July 2018, Report Number 276, ‘Legal Framework: Gambling and Sports Betting Including in Cricket in India’.

While States like Nagaland⁴ have understood the economic potential of Fantasy Sports and Online Gaming by formally passing legislations to regulate such industry, there are some states which have banned⁵ Online Fantasy Sports by construing them as online gambling which infringes the Constitutional Protections guaranteed under Article 19(1)(g).

Subsequent to these developments, Hon'ble Prime Minister of India, on August 30, 2020 recognized the potential of the Indian Gaming Industry, which has given traction to the idea of a uniform pan India legislation to legitimize and regulate Fantasy Sport in India.

These Submissions are in response to the NITI Aayog's Draft for Discussion on Regulations of Online Fantasy Sports Platforms (OFSP hereinafter) in India, which provide the draft guiding principles for a Uniform law regulating OFSP in India.

The guidelines are a long-needed step in the right direction, however, many gaps need to be filled which we analyse in our present comments. We, by no means, aim to downplay the significant lacuna that these guidelines will fill but only intend to point out inconsistencies and discrepancies from a vantage point of law.

Suggestions

- Fee structures that allow small operators to remain viable in the state and prevent the domination of a few big players.
- There should be express regulations regarding the privacy of the players and their financial information instead of the operator providing assurances.
- Numerous studies have also found a link between OFSPs and the rise in gaming addiction and eventual mental health problems. There should be provisions to remove players spending an excessive amount of time on the app by way of a time cap.
- The cases where athletes are charged with altering their performance to affect the results of OFPS matches should be dealt *pari materia* to match-fixing penalties of the respective Sports Authority.

⁴ The Nagaland Prohibition of Gambling and Promotion and Regulation of Online Games of Skill Act, 2015 (Nagaland Act No.3 of 2016).

⁵ The Wire News article titled, 'Andhra Pradesh Bans Online Gaming, Betting; Asks Centre to Block Access to 132 Apps in State' available at: <https://thewire.in/tech/andhra-pradesh-ban-online-gaming-betting>

- **Point 3** mentions that “all necessary safeguards to protect minors must be instituted”, however, the mechanism for enforcing/instituting such safeguards have not been elaborated. Such vague or open-ended restrictions would not act as a strong enough enforcement function to ensure compliance.
- **Point 4** mentions that “A fantasy sports contest should generally relate to and emulate an entire real world officially sanctioned sports contest as closely as possible and not infuse elements of chance that are not present in the real-world contest, provided that this requirement may be waived by the independent evaluation committee in cases it deems fit.” Waiving off such a requirement by the independent evaluation committee should be warranted by a reasoned order in writing, which may be appealed against before the courts.
- The constitution/composition of the “grievance redressal mechanism” as addressed under **point 5** should be free from any executive/legislative interference; such a body/committee should be independent and parties aggrieved by any of their orders should be allowed to appeal to the High Courts or the Supreme Court against such orders.

Yours sincerely,

Kautilya Society, HNLU

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