

FANTASY SPORTS AND RESPONSIBLE GAMING PRACTICES: AN INDIAN PERSPECTIVE

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I. INTRODUCTION

Fantasy Sports, as a form of online gaming where participants create virtual teams of real-life athletes and compete against each other based on the statistical performance of those athletes in actual sporting events, has gained immense popularity in recent years. The rise of fantasy sports platforms has revolutionised the way fans engage with their favourite sports, providing them with an interactive and immersive experience that goes beyond traditional spectatorship.

In India, fantasy sports have captured the attention of millions, offering an exciting blend of sports knowledge, strategy, and competition. Platforms like Dream11, MPL, and MyTeam11 have become household names, attracting users with the promise of virtual glory and real-world rewards. However, this rapid growth has also brought to the forefront several concerns regarding consumer protection and the potential risks associated with such platforms.

The present article explores the regulation of fantasy sports offerings in India and the concerns that have arisen due its use, specifically in the context of mental health and advertising. The authors examine the rise of fantasy sports in India. The authors proceed to then analysing the mental health concerns that have been noted due to its use in other jurisdictions, and the response by the Indian government and fantasy sports regulators to the same. The authors also explore the advertising concerns that exist in the context of fantasy sports, the

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regulatory framework and its effectiveness. In conclusion, the authors suggest ways that the present regulatory framework can be further improved in the context of responsible gaming practices.

II. ORIGINS AND REGULATION OF FANTASY SPORTS IN INDIA

A fantasy sport is a game that involves participants creating virtual rosters using in-game currencies, selecting real-life sportspersons, and competing against other participants' teams. Points are accumulated based on the performances of the chosen athletes in live, real-life sporting events. These points are derived from statistics, scores, results, and other relevant data. The team with the highest total points at the end of the event is declared the winner, with prize winnings allocated from the accumulated pool of registration fees. The service provider takes a cut of the registrations as compensation for facilitating the game.

To promote diversity in team selection, limitations are imposed on the number of players from each team, such as, through imposition of minimum requirements for each player category (e.g., batsmen, wicketkeepers, all-rounders, and bowlers in cricket), and formations (e.g., 3-5-2 or 4-4-2 in football). Additional complexity can be introduced by allowing participants to select players whose points are doubled for a specific round, adding strategic elements to team management.

Virtual fantasy sports have been prevalent since the late 60s in countries like the USA, where participants would engage in season-long fantasy sports events in their workplaces or via telephone.¹ It provided a sense of participation in real-life games to Fantasy Sports players. Fantasy Sports started to garner mainstream attention with the rise of internet usage.² In 2000, Yahoo started offering fantasy sports services, which brought Fantasy Sports to the mainstream attention.³

In India, fantasy sports gained popularity through early offerings on sports websites, enabling users to select teams for ODI and test match series. However,

¹ Adam Augustyn and Nathan Zegura 'Fantasy Sport' | Britannica (2 August 2023) <<https://www.britannica.com/sports/fantasy-sport>> accessed on 28 May 2023; John T Holden, Christopher M McLeod and Marc Edelman, 'Regulatory Categorization and Arbitrage: How Daily Fantasy Sports Companies Navigated Regulatory Categories before and after Legalized Gambling' (2020) 57 American Business Law Journal 113.

² Augustyn and Zegura (n 3).

³ Lukas Dorda, 'The Fantasy Sports Games Phenomenon - Johan Cruyff Institute' (21 January 2019) <<https://johancruyffinstitute.com/en/the-expert-corner-en/the-fantasy-games-phenomenon/>> accessed on 28 May 2023.

the real surge in popularity occurred with the emergence of private sporting leagues and the widespread adoption of smartphones and internet usage.⁴

India boasts a massive sports consumer base of at least 722 million, with cricket reigning as the most popular sport in the country.⁵ It is estimated that the television sports market will reach INR 9,830 crore by financial year 2026.⁶ The immensely popular Indian Premier League ('IPL') has been a significant catalyst in fuelling the growth of the industry. However, fantasy sports are not limited to cricket alone. The industry is gradually diversifying into other sports like hockey, football, basketball, and more, creating a broader interest in sports beyond cricket.

One of the primary drivers of the Indian fantasy sports industry is the widespread accessibility to smartphones and affordable mobile data. With over 600 million smartphone users in the country, coupled with a significant increase in broadband users, a large portion of the population now has access to fantasy sports platforms.⁷ This accessibility has opened up opportunities for enthusiasts to engage with their favourite sports through these platforms, leading to an upsurge in participation. This digitisation has created an ideal environment for fantasy sports platforms to thrive, as they offer a unique and interactive way for fans to engage with their favourite sports.

The growing adoption and use of digital payment platforms, particularly the Unified Payments Interface ('UPI'), have significantly contributed to the success of fantasy sports. The Reserve Bank of India's Digital Payments Index demonstrates a remarkable growth rate, indicating the increasing preference for digital transactions.⁸ Seamless and secure payment options have not only facilitated user engagement but have also enabled monetization within the fantasy sports ecosystem.

From a regulatory perspective, until recently, fantasy sports have been analysed from the perspective of game of skill vs. game of chance debate, which is linked to the question of whether fantasy sports amount to gambling under

⁴ Deloitte, 'Fantasy Sports: A Catalyst for the Sports Economy', Federation of Indian Fantasy Sports and Deloitte (April 2023) <<https://www2.deloitte.com/content/dam/Deloitte/in/Documents/in-tmt-FIFS-Fantasy-Sports-Industry-Report-noexp.pdf>> accessed on 28 October 2023.

⁵ PTI, 'TV Sports Market to reach Rs 9,830 Crore by FY26 as Cricket Dominates Viewership: Report' (16 November 2022) <<https://news.abplive.com/business/tv-sports-market-to-reach-rs-9-830-crore-by-fy26-as-cricket-dominates-viewership-report-1563762>> accessed on 31 May 2023.

⁶ *ibid.*

⁷ Saurav Anand, 'India has Over 1.2 bn Mobile Phone Users: I&B Ministry' (*Mint*, 16 November 2022) <<https://www.livemint.com/technology/gadgets/india-has-over-1-2-bn-mobile-phone-users-i-b-ministry-11668610623295.html>> accessed on 12 March 2023.

⁸ Pranav Dixit, 'UPI Transactions Expected to Account for 90% of Retail Digital Payments by 2026-27: Report – Business Today' (28 May 2023) <<https://www.businesstoday.in/technology/news/story/upi-transactions-expected-to-account-for-90-of-retail-digital-payments-by-2026-27-report-383167-2023-05-28>> accessed on 31 May 2023.

Indian laws. However, the judiciary upholding fantasy sports as games of skill, and thus, the legality of certain fantasy sports models and associated organisations has been critical. This has had the effect of fostering greater investor confidence and encouraged the entry of new operators into the market. More recently, the Cabinet Secretariat notified an amendment to the Government of India (Allocation of Business) Rules, 1961, in December 2022. As per the amendment, Ministry of Electronics and Information Technology ('MEITY') would regulate matters relating to online gaming. After the amendment, MEITY notified the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2023 ('Amendment Rules'). The Amendment Rules are important as they, for the first time, lay down a governance structure for online gaming in India, including fantasy sports.

Further, the advertising of fantasy sports is governed by the Consumer Protection Act, 2019 ('CPA') along with the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 ('CCPA Guidelines'). More specifically, online gaming advertising, including fantasy sports, is governed by Advertising Standards Council of India's ('ASCI') Guidelines on Online Gaming for Real Money Winnings ('Advertising Guidelines').

Thus, what can be seen is that the regulatory framework is slowly responding to the business innovations that have been taking place in India over the last few years. However, despite the regulator responses, there are still several concerns that exist regarding the regulation of fantasy sports offerings. Some of these concerns have been discussed in this section.

III. HEALTH AND BEHAVIOURAL CONCERNS

The first of these concerns is in the context of the health and behavioural impact that the playing of fantasy sports can have on the participants. In other jurisdictions, several exploratory studies, discussed hereinbelow, have been undertaken on the health impact of fantasy sports, especially daily fantasy sports ('DFS'). These studies indicate that DFS is likely to promote excessive play due to its regular occurrence, giving more frequent opportunities for users to participate.⁹ Further, these studies have indicated a correlation between fantasy sports usage and behavioural and mental health challenges, especially in the context of Gambling Disorder, Problem Gambling and Internet Addiction.

The first of these issues, Gambling Disorder ('GD'), is defined in the fifth edition of the Diagnostic and Statistical Manual as an addictive condition

⁹ Sarah E Nelson and others, 'Patterns of Daily Fantasy Sport Play: Tackling the Issues' (2019) 35 *Journal of Gambling Studies* 181.

characterised by “*persistent and recurrent problematic gambling behaviour that generates clinically significant impairment or distress.*”¹⁰ The definition of what amounts to gambling in the mental health context has been defined differently by different scholars. Potenza and others define gambling as “*an activity that involves placing something of value at risk in the hopes of gaining something of greater value.*”¹¹ However, Macey and Hamari focus on the chance aspect and define it as “*taking money or something of material value on an event having an uncertain outcome in the hope of winning additional money and/or item of material value.*”¹²

Irrespective of the definition, it must be noted that GD results in disruption of personal, family and/or occupational activities,¹³ and people suffering from GD report a significantly lower quality of life.¹⁴ Further, it is reported that persons suffering from GD may have suicidal behaviours at a higher risk as compared to the general population.¹⁵ A person suffering from GD is likely to feel a constant urge to continue gambling despite the harm that it causes to the person. GD is found to co-occur with other disorders, such as substance-use, anxiety and impulse-control disorders.¹⁶

Further, it appears that only limited studies that have been conducted in the context of Problem Gambling (‘PG’). However, the results do appear concerning. In a study of college students in Kerala, it was noted that 7.4% of the participants reported PG.¹⁷ Another study undertaken in the context of high school students in Kerala reported that 7.1% of the participants were problem gamblers.¹⁸ Further, PG was found to be associated with higher substance use.¹⁹ It must be noted that in India, there appears to be a discussion in medical sphere on whether concerns regarding fantasy sports must come within the ambit of GD or gaming disorder, given the legal uncertainty surrounding it.²⁰ However, given that a number of fantasy sports are played for money, discussion on GD in the context of fantasy sports has been discussed.

¹⁰ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (5th edn, American Psychiatric Association Publishing 2022).

¹¹ Marc N Potenza, ‘Pathological Gambling’ (2001) 286 JAMA 141.

¹² Joseph Macey and Juho Hamari, ‘Gamblification’: A Definition (2022) New Media & Society.

¹³ Marc N Potenza and others, ‘Gambling Disorder’ (2019) 5 Nature Reviews Disease Primers 51.

¹⁴ Jon E Grant and Suck Won Kim, ‘Quality of Life in Kleptomania and Pathological Gambling’ (2005) 46 Comprehensive Psychiatry 34.

¹⁵ See Bahram Armoon and others, ‘Suicidal Behaviors and Associated Factors among Individuals with Gambling Disorders’: A Meta-Analysis (2023) 39 Journal of Gambling Studies.

¹⁶ Potenza and others (n 13).

¹⁷ Sanju George and others, ‘A Cross-Sectional Study of Problem Gambling and its Correlates among College Students in South India’ (2016) 2 BJPsych Open 199.

¹⁸ TS Jaisooriya and others, ‘Do High School Students in India Gamble? A Study of Problem Gambling and its Correlates (2017) 33 Journal of Gambling Studies 449.

¹⁹ George and others (n 19); Jaisooriya and others (n 20).

²⁰ Yatan Pal Singh Balhara and Swarndeep Singh, ‘Fantasy Sports: Current Status, Implications and Way Forward’, (2022) 1(2) Postgraduate Journal of Pediatrics and Adolescent Medicine 16-20.

A study conducted by Martin and Nelson²¹ reported that 26.9% of the participants who played fantasy sports for money endorsed > 1 DSM-5 GD criteria. Further, 14.9% of the participants who played fantasy sports without money endorsed the > 1 DSM-5 GD criteria. The results further indicated that fantasy sports participants were over five times more likely to endorse the > 1 DSM-5 GD criteria. Within this, participants who played fantasy sports for money were “*significantly more likely*”²² to face gambling-related problems than the participants who did not play fantasy sports for money. Another study bolsters this finding by showing that participation by college students in fantasy sports correlated with gambling in the last year, and experiencing gambling-related problems.²³ A further study noted that playing fantasy sports increased the chance of gambling, and more frequent gambling, and that participants playing pay-to-play fantasy sports endorsed more DSM-5 GD criteria than others among college students.²⁴ A limited study conducted by Nower and others in New Jersey indicated that DFS participants experience higher rates of comorbid and mental health difficulties as compared to average gamblers.²⁵ In addition, Marchica’s study indicated that participation in DFS was the strongest predictor of at-risk gambling behaviour among 13-15 year old students.²⁶

PG is defined as a “*progressive disorder characterized by irrational thinking, loss of control, preoccupation with gambling, and/or the continuation of behavior despite negative consequences.*”²⁷ Potenza and others have defined it as “[R]ecurrent and interfering patterns of gambling of a range of severities, typically including individuals with subdiagnostic problems and possibly those meeting criteria for a gambling disorder diagnosis.”²⁸ Studies have shown that PG is linked to negative emotional

²¹ Ryan J Martin and Sarah Nelson, ‘Fantasy Sports, Real Money: Exploration of the Relationship between Fantasy Sports Participation and Gambling-Related Problems’ (2014) 39 *Addictive Behaviors* 1377.

²² *ibid.*

²³ Ryan J Martin, Sarah E Nelson and Andrew R Gallucci, ‘Game on: Past Year Gambling, Gambling-Related Problems, and Fantasy Sports Gambling among College Athletes and Non-Athletes’ (2016) 32 *Journal of Gambling Studies* 567.

²⁴ Ryan J Martin and others, ‘Daily and Season-Long Fantasy Sports Participation and Gambling-Related Problems among a Sample of College Students at Three Universities’ (2018) 18 *International Gambling Studies* 395.

²⁵ Lia Nower and others, ‘Daily Fantasy Sports Players: Gambling, Addiction, and Mental Health Problems’ (2018) 34 *Journal of Gambling Studies* 727.

²⁶ Loredana Marchica and others, ‘Understanding the Relationship Between Sports-Relevant Gambling and Being At-Risk for a Gambling Problem among American Adolescents’ (2017) 33 *Journal of Gambling Studies* 437.

²⁷ Brendan Dwyer, Stephen L Shapiro and Joris Drayer, ‘Daily Fantasy Football and Self-Reported Problem Behavior in the United States’ (2018) 34 *Journal of Gambling Studies* 689.

²⁸ Potenza and others (n 15).

and psychological effects.²⁹ Further, persons suffering from PG may have negative health correlates similar to persons with mild substance-use disorders.³⁰

In the context of PG, a study by Dwyer and others on self-reported behaviour by DFS consumers found that around 38% of responses indicate moderate to high-risk tendencies for behaviours associated with PG, and that PG risk is comparable to other online gaming activities.³¹ High-risk DFS consumers exhibit problem gambling behaviour similar to consumers of other gambling activities. It was noted that the number of entries made by the high-risk group could be indicative of chasing behaviour. However, it must be noted that that DFS is a pro-social activity, unlike other forms of gambling. Similarly, another study indicated that nearly all sports bettors in PG category had engaged in fantasy sports.³² Nower and others have undertaken a study which indicates that a substantially large number of DFS participants were high-frequency gamblers, and reported higher levels of behavioural issues and mental health challenges.³³ Further, Edson and others have reported that big wins for certain DFS players lead to increased engagement, including potentially risky engagement behaviours, which may lead to financial loss.³⁴

The final concern relates to Internet Addiction ('IA') which is also referred to as Internet Gaming Disorder. As per DSM-5, it is an area for which further research is recommended. However, it is noted that the proposed criteria should include persistent and recurrent use of the internet to engage in games, which leads to clinically significant impairment or distress.³⁵ It involves a preoccupation with gaming and withdrawal when the same is taken away.³⁶

A study conducted among fantasy football participants reported IA between 17.5% and 24.9% depending on the cut-off point employed.³⁷ This was on the higher end of the epidemiological rates of expected IA for Europe. Thus, the

²⁹ Servane Barrault and Isabelle Varescon, 'Cognitive Distortions, Anxiety, and Depression among Regular and Pathological Gambling Online Poker Players. *Cyberpsychology, Behavior, and Social Networking*' (2013) 16(3) *Cyberpsychol Behav Social Network* 183-188.

³⁰ Potenza and others (n 15).

³¹ Dwyer, Shapiro and Drayer (n 29).

³² Híbai Lopez-Gonzalez, Ana Estévez and Mark D Griffiths, 'Internet-Based Structural Characteristics of Sports Betting and Problem Gambling Severity: Is there a Relationship?' (2019) 17 *International Journal of Mental Health and Addiction* 1360.

³³ Nower and others (n 27).

³⁴ Timothy C Edson and others, 'A Large-Scale Prospective Study of Big Wins and their Relationship with Future Financial and Time Involvement in Actual Daily Fantasy Sports Contests.' (2021) 35 *Psychology of Addictive Behaviors* 948.

³⁵ American Psychiatric Association (n 12).

³⁶ *ibid.*

³⁷ David Columb, Mark D Griffiths and Colin O'Gara, 'Fantasy Football (Soccer) Playing and Internet Addiction among Online Fantasy Football Participants: A Descriptive Survey Study' (2020) 20 *International Journal of Mental Health and Addiction*.

study indicated that the participants may be at a higher risk of developing internet addiction due to consumption of fantasy football-related content.

As noted above, the studies are limited and leave scope for further study. Secondly, the studies have not been undertaken in the Indian context, having been conducted in other jurisdictions, with different socio-economic and cultural conditions. Thus, the findings and the implications of the studies may not necessarily apply equally in the Indian context. However, these studies should cause concern for regulators as they indicate a correlation between fantasy sports consumers and health and behavioural concerns, including addiction.

The concern is even greater as the harm caused by online fantasy sports, may be greater as compared to its offline counterparts. Unlike offline fantasy sports, which may require a potential participant to physically visit a bank to withdraw money to then physically go and deposit with a fantasy sports service provider and enter a contest, online fantasy sports service providers and bank accounts can be accessed by a participant from anywhere at any point of time.³⁸ A person can also potentially participate with multiple service providers, which is difficult in the offline context, and thus spend a larger sum of money. Further, with the availability of data on the internet about any sporting league that may be ongoing at a point of time, a participant may not only be limited to a utilising fantasy sports services for a sanctioned league and/or a league within the national limits of the nation where the person stays. Theoretically, a service provider may even provide fantasy sports offerings in a league consisting of college, school or amateur athletes. This may lead to a person constantly checking for information on the underlying sport, the services and the results. On the other side, service providers may use targeted and tailored advertising for persons, who have participated previously, or may be the target audience, to induce participation.³⁹

In the absence of empirical data to the contrary, the authors argue that these studies should guide responsible gaming strategies when it comes to regulating fantasy sports offerings in India in the context of behavioural issues. These theories have formed the basis of general principles and minimal requirements of responsible gambling proposed by Blaszczynski and others.⁴⁰ In the context of gambling, they understand consumer protection as “*technical standards, minimum expected player percentage return rates, warning signage, and eliminating unaccept-*

³⁸ See Nerilee Hing and others, ‘How Structural Changes in Online Gambling are Shaping the Contemporary Experiences and Behaviours of Online Gamblers: An Interview Study’ (2022) 22 BMC Public Health 1620; Nerilee Hing and others, ‘“Immediate Access ... Everywhere You Go”: A Grounded Theory Study of How Smartphone Betting Can Facilitate Harmful Sports Betting Behaviours Amongst Young Adults’ (2022) International Journal of Mental Health and Addiction <<https://doi.org/10.1007/s11469-022-00933-8>> accessed on 22 May 2023.

³⁹ See Hing and others (n 40).

⁴⁰ Alex Blaszczynski and others, ‘Responsible Gambling: General Principles and Minimal Requirements’ (2011) 27 Journal of Gambling Studies 565.

able business practices, excessive inducements, or exposure to unfair products”,⁴¹ and harm reduction as “strategies aimed at restricting potential losses within sessions; setting maximum bets size, restricting note acceptors, and imposing breaks in play.”⁴² Harm minimisation is understood as “staff training in identifying and responding to patrons exhibiting high risk behaviours, educational campaigns, and player tracking systems.”⁴³ Consumer choice requires gambling providers to be responsible so as to ensure that gamblers are aware of the risks, while leaving the ultimate choice with the consumers.⁴⁴

In order to prevent gambling-related problems, they propose six areas that prevention should address, which are company policies to promote transparency and avoid predatory practices, features of games which allow for more information about the game to consumers to enable them to make a choice, environmental features to ensure participants cannot spend impulsively, informing players about the impact of gambling and ways to seek help, location of the venue considering accessibility by different population groups, and marketing gambling in the community which seeks to address advertising practices.⁴⁵

It must be noted that the IT Amendment Rules provides measures for protection of participants from the aforementioned concerns. The industry-led regulatory body, which is to be established to certify an online real money game as permissible, is required to develop a framework for verifying an online real money game which includes, *inter alia*, safeguards against user harm, and measures to safeguard users against risk of gaming addiction and financial loss, which provides for “repeated warning messages at higher frequency beyond a reasonable duration for a gaming session and provision to enable a user to exclude himself upon user-defined limits being reached for time or money spent.”⁴⁶

The requirement contained in the Amendment Rules appears to be similar to the requirement provided in certain US states. For example, the state of Tennessee requires that an applicant service provider show that they limit an individual participant to deposit not more than \$2,500 per month, unless the participant shows, via certification or proof, that their deposit limit should be increased.⁴⁷

Further, even prior to the IT Amendment Rules, the self-regulatory bodies, such as the Federation of Indian Fantasy Sports (‘FIFS’) and All India Gaming

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ *ibid.*

⁴⁴ *ibid.*

⁴⁵ *ibid.*

⁴⁶ Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, r 4A(8)(d).

⁴⁷ Fantasy Sports Act, S.B. 2109, s 1, §47-18-5603(b)(7)(A) (Tenn 2016).

Federation ('AIGF'), have incorporated certain measures for protection. AIGF requires its members to allow users to set daily, weekly and monthly deposit limits.⁴⁸ Members are also required to make information readily available on its platform to its users on how to game responsibly, and access information about responsible gaming practices.⁴⁹ This should contain specific information on the potentially deleterious effects of gaming.⁵⁰ They are also required to facilitate access to a self-administered test for gaming addiction and provide information on and contact addresses for treatment centres.⁵¹ Members are also required to provide a time-out facilities for specified durations, during which they are to refuse service to the individuals who have opted for the same.⁵²

Similarly, FIFS requires its members to comply with the Responsible Gaming Policy.⁵³ However, unfortunately, the website of FIFS does not provide details of the said Charter. From the website of Dream11, which is the founding member of FIFS, it appears that the same includes alerts in the Dream11 app at financial milestones.⁵⁴ However, further details appeared unavailable on the website. Further, FIFS requires that paid contests on fantasy sports platform are not to be offered to users under the age of 18 years.⁵⁵ The Dream11 website further promises that all personal information shared by participants is not disclosed to outside parties or vendors.⁵⁶

Thus, it appears that the government and self-regulatory bodies are aware of the behavioural concerns that may arise with the usage of fantasy sports offerings, and have taken steps to minimise the harm and address the area of company policy, features of games and informing players as highlighted hereinabove. However, as will be argued hereinbelow, the regulations can be further strengthened to protect consumers.

IV. ADVERTISING CONCERNS

The next concern, which is linked to behavioural concerns, is related to advertising of the fantasy sports offerings. The flourishing fantasy sports industry has contributed to a surge in the amount of money spent on advertising to

⁴⁸ General Principles, Online Games of Skill Charter, All India Gaming Federation, para F(vii), s 2, pt A.

⁴⁹ General Principles, Online Games of Skill Charter, All India Gaming Federation, para F(viii), s 2, pt A.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² General Principles, Online Games of Skill Charter, All India Gaming Federation, para F(ix), s 2, pt A.

⁵³ Charter for Fantasy Sports Platforms, Federation of Indian Fantasy Sports, para 5.2.

⁵⁴ Dream11, 'FairPlay Policy | Dream11' <<https://www.dream11.com/about-us/fairplay>> accessed on 28 May 2023.

⁵⁵ Charter for Fantasy Sports Platforms, Federation of Indian Fantasy Sports, para 3.3.

⁵⁶ Dream11 (n 56).

existing and potential participants. This has led to investment and job creation.⁵⁷ The sponsorships have extended to sponsoring sporting leagues, team and individual sponsorship and endorsement. According to a report, for Indian Premier League, 2023 (“IPL 2023”) the share of fantasy sports advertising was 18%.⁵⁸ According to a report, fantasy sports service providers spent more than INR 5,000 crore for advertising their services in the financial year 2022.⁵⁹

However, the advertising has also led to concerns related to the aggressive marketing tactics employed by platforms and the potential for false advertising. As these platforms compete for users and seek to capture their attention, the line between legitimate promotion and misleading claims will likely become increasingly blurred. This complex landscape poses challenges for regulators, industry players, and users alike. Some of these concerns are addressed hereinbelow.

One of the major implications of aggressive marketing in the fantasy sports realm is the prevalence of unrealistic winning claims. Advertisements often highlight extraordinary cash prizes, luxury rewards, and extravagant experiences, creating an illusion that participating in fantasy sports can lead to instant wealth and grandeur. These exaggerated promises can mislead individuals into believing that winning is guaranteed and downplay the risks and skills required to succeed in these contests.

Insufficient disclosure of risks is another issue associated with aggressive marketing in fantasy sports. Advertisements may not adequately inform users about the probability of winning, the chances of losses, or the skills required to achieve success. This lack of transparent disclosure can mislead individuals, particularly those who are new to fantasy sports, into underestimating the potential risks involved. Studies in the United States indicated that it is only a limited number of participants who are regular ‘big-winners’ of the fantasy events.⁶⁰ The estimated number of these persons has ranged from 0.1% in one study to 9.6% in another.⁶¹

This concern could be noticed in the *Draftkings* and *Fanduel* settlements in a number of states in the United States of America, where lawsuits had been filed

⁵⁷ ‘Fantasy Sports: A Catalyst for the Sports Economy’, Federation of Indian Fantasy Sports and Deloitte, April 2023.

⁵⁸ Mayank, ‘Fantasy Sports Category Tops TV Advertisements during First Half of IPL 2023’ (*G2G News*, 2 May 2023) <<https://g2g.news/fantasy-sports/fantasy-sports-category-tops-tv-advertisements-during-first-half-of-ipl-2023/>> accessed on 28 May 2023.

⁵⁹ Harsh Upadhyay & Kunal Manchanda, ‘Top 15 Fantasy Gaming Apps in India Spent over Rs 5,000 Cr on Ads in FY22’ (*Entracker*, 8 May 2023) <<https://entracker.com/2023/05/top-15-fantasy-gaming-apps-in-india-spent-over-rs-5000-cr-on-advertising-in-fy22/>> accessed on 28 May 2023.

⁶⁰ Edson and others (n 36).

⁶¹ *ibid*.

alleging deceptive advertising.⁶² The investigation led by the Attorney General in the State of New York found that the companies had misled casual and novice players about the advantages that regular and professional players had over them.⁶³ This included usage of computer “scripts” and advanced statistical and game theory along with giving false and misleading statistics about the likelihood of winning cash prizes and earning a return on initial spend.⁶⁴

As noted above, CPA, 2019 is the primary legislation governing consumer protection in the context of misleading advertisements. It defines and prohibits ‘misleading advertisements’ as an advertisement which, inter alia, is likely to mislead consumers as to the nature, substance, quantity, or quality of a service or deliberately conceals important information.⁶⁵

The CCPA Guidelines further build upon this definition and set out conditions for non-misleading and valid advertisements. The CCPA Guidelines apply to all advertisements regardless of form, format, or medium and state that must contain truthful and honest representations, avoid exaggerating accuracy, and comply with specific and applicable laws.⁶⁶

Considering the essential role that disclaimers play in limiting the responsibility of advertisers from a consumer perspective, the CCPA Guidelines stipulate that such a disclaimer should not attempt to conceal material information with respect to any claim made in such advertisement.⁶⁷ The omission or absence of such a disclaimer is likely to make the advertisement deceptive or conceal its commercial intent.⁶⁸ Further, it provides that, a disclaimer shall be in the same language as the claim made in the advertisement and the font used in a disclaimer shall be the same as that used in the claim.⁶⁹

Thus, the CCPA Guidelines aim to protect consumer’s interests by bringing in more transparency and clarity in the way advertisements are being published,

⁶² David Purdum, ‘Fantasy Sports Operators DraftKings and FanDuel Settle with Massachusetts Attorney General’s Office - ESPN’ (*ESPN*, 8 September 2017) <https://www.espn.in/chalk/story/_/id/20622347/fantasy-sports-operators-draftkings-fanduel-settle-massachusetts-attorney-general-office> accessed on 28 May 2023; Hill Kerby, ‘DraftKings Settles Years Long Class Action Lawsuit’ (*Betting USA*, 16 March 2021) <<https://www.bettingusa.com/draftkings-class-action-lawsuit-settlement/>> accessed on 28 May 2023.

⁶³ The Office of New York State Attorney General, ‘AG Schneiderman Announces \$12 Million Settlement with Draftkings and Fanduel’ (25 October 2016) <<https://ag.ny.gov/press-release/2016/ag-schneiderman-announces-12-million-settlement-draftkings-and-fanduel>> accessed on 28 May 2023.

⁶⁴ *ibid.*

⁶⁵ Consumer Protection Act, 2019, s 2(28).

⁶⁶ Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022, Department for Consumer Affairs, Guideline 4.

⁶⁷ *ibid.*, Guideline 4.

⁶⁸ *ibid.*

⁶⁹ *ibid.*

so that, consumers can make informed decisions based on facts rather than false narratives and exaggerations.

In addition to the CCPA Guidelines, the Advertising Standards Council of India (**ASCI**) has issued specific Guidelines on Online Gaming for Real Money Winnings (**Advertising Guidelines**). These guidelines were introduced in December 2020 to regulate the advertising practices of online gaming for real money, including fantasy sports platforms.⁷⁰ The Advertising Guidelines were drafted on the basis of stakeholder consultations that included the Ministry of Information and Broadcasting, the Ministry of Consumer Affairs, ASCI, Indian Broadcasting Foundation, AIGF, FIFS and the Online Rummy Federation.⁷¹

The Advertising Guidelines require a gaming advertisement to carry a disclaimer, in its visuals and audio, that the game involves an element of financial risk and may be addictive, thus, the participants are to play responsibly and at their own risk.⁷² Further, the should not present 'Online Gaming for Real Money Winnings' as an income opportunity or an alternative employment option.⁷³ Further, the advertisement should not suggest any participant in gaming activity is more successful as compared to others.⁷⁴ Additionally, keeping in mind the concerns regarding adolescent usage of online gaming, no gaming advertisement can depict any person under the age of 18 years, or who appears to be under the age of 18, playing such games, or suggest that such persons can play these games.⁷⁵

However, it must be noted that the codes and guidelines released by the ASCI are not binding under law for internet/digital advertising.⁷⁶

It is noteworthy that, according to the Annual Complaints Report of the ASCI, the Real Money Gaming Sector had emerged as the largest violator in the preceding year.⁷⁷ This raises concerns about the online safety of consumers since an overwhelming majority of these advertisements had failed to include the required disclaimers on financial risk and addiction. Further, over half of the advertisements that needed modifications as per the ASCI did not adhere to the recommendations of the Consumer Complaints Council and therefore raise con-

⁷⁰ Ministry of Information and Broadcasting, Advisory on Advertisements on Online Gaming, Fantasy Sports, etc., 4 December, 2020, <https://mib.gov.in/sites/default/files/Advisory.pdf>.

⁷¹ *ibid.*

⁷² Guidelines on Online Gaming, The Advertising Standards Council of India, para 2.

⁷³ *ibid.*, para 3.

⁷⁴ *ibid.*, para 4.

⁷⁵ *ibid.*, para 1.

⁷⁶ Maryam Farooqui, 'ASCI comes up with Guidelines, but do they have the Teeth to Make Brands and Influencers Fall in Line?' (*Moneycontrol*, 2 June 2021) <<https://www.moneycontrol.com/news/trends/asci-comes-up-with-guidelines-but-do-they-have-the-teeth-to-make-brands-and-influencers-fall-in-line-6977051.html>> accessed on 31 May 2023.

⁷⁷ The Advertising Standards Council of India, Annual Complaints Report 2022-23, May 2023, <<https://www.ascionline.in/wp-content/uploads/2023/05/Annual-Complaints-Report-2022-23.pdf>>.

cerns about the effectiveness of the ASCI in controlling misleading advertisements relating to Fantasy Sports platforms.⁷⁸

Within the context of fantasy sports, from the annual report of ASCI, it appears that there were 260 advertisements from 7 service providers that required modifications.⁷⁹ In March 2023 itself, there were a number of complaints filed in the context of fantasy sports, with the issues pertaining to non-disclosure by the service provider of the communication being an advertisement and not carrying disclaimers warning that the game may be habit forming or financially risky.⁸⁰

The regulatory framework therefore requires fantasy sports operators to provide a disclaimer in their advertisements and their websites, repeated warning messages, and measures to protect themselves against financial and gaming addiction. However, the exact contours of the implementation appear to be left to the internal member rules to be propagated by the proposed regulatory bodies. As can be seen from the discussion above, there are fantasy sports service providers that are flouting the Advertising Guidelines and these concerns may only be greater in the context of social media, where the advertisements may not come within the notice of the regulators.

It is in this context the effect of the informational signs, disclaimers and other methods of responsible gaming must be discussed. It must be noted at the outset that the requirement is a welcome step in increasing consumer awareness but more is required from the governmental and the industry-led regulators. Disclaimers and warning labels are common in the context of gambling. The authors draw on the research in this sector.

In the context of gambling, it has been found that the static warning messages do not result in a change in gambling behaviour, a finding which is similar in the alcohol and cigarette consumption context as well. However, there are studies that indicate pop-up messages were recalled by participants at a higher rate as compared to static warning messages.⁸¹ Further, self-report questionnaires contained in the pop-up messages impacted gambling-related thoughts and gambling behaviour.⁸² This effect of pop-up messages with warning messages was

⁷⁸ Farooqui (n 78).

⁷⁹ List of Violators, Annual Complaints Report 2022-2023, The Advertising Standards Council of India, May 2023, <<https://www.ascionline.in/wp-content/uploads/2023/05/Annual-Complaints-Report-2022-23.pdf>>.

⁸⁰ Real11 Fantasy Sports LLP - Real11 Recommendation: Upheld, The Advertising Standards Council of India <https://www.ascionline.in/complaint-outcomes-details/?case_id=2023-2-2-6-C.6593> accessed on 28 October 2023.

⁸¹ Sally Monaghan and Alex Blaszczyński, 'Impact of Mode of Display and Message Content of Responsible Gambling Signs for Electronic Gaming Machines on Regular Gamblers' (2010) 26 *Journal of Gambling Studies* 67.

⁸² *ibid.*

further affirmed in other studies.⁸³ Further, a study indicated that only a small percentage of participants reported a significant or slight reduction in enjoyment.⁸⁴ Research has indicated that pop-messages informing the participants about their gambling and asking them to set time-limits were effective in getting participants to set such limits.⁸⁵ Similar findings were reported in the context of monetary limits.⁸⁶ However, as a caveat, it must be noted that not every participant had noticed the pop-ups.⁸⁷

A concern that is not taken care of by the aforementioned guidelines is the issue of targeted advertising and push notifications. *Hing* has reported the concerns by fantasy sports players who reported seeing advertisements on social media sites and their concerns that their data might be tracked.⁸⁸ Further, the participants also reported that they received push messages on their phones.⁸⁹ This had the effect of reminding the players about the activity and could bring them back while they take a break.⁹⁰ It must be noted that at present, India does not have a legislation governing the issue of targeted advertising and push notifications.

V. CONCLUSION

For a majority, fantasy sports are a way for enthusiasts to engage in a hobby and to stay connected with the sport that they love. However, there does appear to be a correlation between fantasy sports participation and mental health concerns. Thus, it is essential to provide protection and support for the persons affected. The self-regulatory organisations, such as FIFS and AIGF, have also attempted to play a role in consumer protection, but with no requirement upon a service provider to join such organisations before the Amendment Rules, it has led to certain concerning practices emerging in the industry.

While, as per the latest reports, MeitY has deferred the plans to form the self-regulatory bodies, for harmonisation of views among different ministries

⁸³ Katie Palmer du Preez and others, 'The Effects of Pop-Up Harm Minimisation Messages on Electronic Gaming Machine Gambling Behaviour in New Zealand' (2016) 32 *Journal of Gambling Studies* 1115.

⁸⁴ Alexander Blaszczynski, Sally Gainsbury and Lisa Karlov, 'Blue Gum Gaming Machine: An Evaluation of Responsible Gambling Features' (2014) 30 *Journal of Gambling Studies* 697.

⁸⁵ Hyoun S Kim and others, 'Limit Your Time, Gamble Responsibly: Setting a Time Limit (Via Pop-Up Message) on an Electronic Gaming Machine Reduces Time on Device' (2014) 14 *International Gambling Studies* 266.

⁸⁶ Melissa J Stewart and Michael JA Wohl, 'Pop-Up Messages, Dissociation, and Craving: How Monetary Limit Reminders Facilitate Adherence in a Session of Slot Machine Gambling' (2013) 27 *Psychology of Addictive Behaviors* 268.

⁸⁷ Palmer du Preez and others (n 85).

⁸⁸ Hing and others (n 41).

⁸⁹ *ibid.*

⁹⁰ *ibid.*

regarding the industry⁹¹ and concerns relating to major companies dominating the SRBs,⁹² the Amendment Rules coupled with the Advertising Guidelines is a welcome step as it recognises the same. For too long the debate regarding fantasy games has been caught up in legal nuances rather than focusing on the consumer interest and the impact that it has had on society. The Amendment Rules rightly recognise gaming, including fantasy sports, as a legitimate business activity and focus on consumer protection, drawing from experiences in other jurisdictions.

However, while the steps by the MEITY and industry are welcome, the authors do believe that the Amendment Rules and the verification rules, which will be issued by the self-regulatory bodies, can be further strengthened by the inclusion of certain practices, fitting the six areas prevention areas, as discussed above. Firstly, it must be required that the service providers identify high risk persons by their patterns of play. It is to these persons that the repeated warning message should be displayed as the first priority. Further, it should be mandated that the repeated warning message should be in the form of an interactive message that requires the user to take certain action to minimise the same and should contain self-report questionnaires along with helplines where a person may reach out. Players should also explicitly be reminded that they can set up a time and monetary limit on the play.

Additionally, while the requirement of allowing users to exclude themselves is a good practice, by using the KYC norms which have been mandated on gaming intermediaries, it must be ensured that one user can make only one account with one service provider. Lastly, the list of self-exclusion should be shared among the different service providers and it should be ensured that during the voluntary timeout period, the other service providers do not provide services to such persons or advertise to such persons by way of targeted advertising or push advertisements. This should also be followed in case of persons exhibiting high risk behaviour. In addition, the authors also propose that the fantasy sports service providers disclose important statistics to the players, such as the odds of winning a contest and the percentage of persons who actually win monetary sums, which will allow players to take informed decisions regarding their participation in the game.

In the context of advertising, it is recommended that either the MEITY incorporate the Advertising Guidelines within the Amendment Rules as a requirement in the certification process by the self-regulatory bodies. In the event the

⁹¹ Surabhi Agarwal and Aashish Aryan, 'MeitY defers plans to form gaming self regulator, seeks common ground' (*The Economic Times*, 29 September 2023) <<https://economictimes.indiatimes.com/tech/technology/meity-defers-plans-to-form-gaming-self-regulator-seeks-common-ground/articleshow/104025057.cms>> accessed on 28 May 2023.

⁹² Sourabh Lele, 'Govt may shelve self-regulation plan if egames majors dominate SRBs' (*Business Standard*, 25 September 2023) <https://www.business-standard.com/industry/news/concerned-over-capture-of-srbs-govt-may-go-back-to-e-games-certification-123092501082_1.html> accessed on 28 May 2023.

service provider does not follow the Advertising Guidelines despite warnings, the certification of such service providers may be cancelled. This will give teeth to the existing guidelines.

In the meantime, further studies, especially in the Indian context, are needed on the impact that playing fantasy sports has on the participants. In this, the self-regulatory bodies and government should proactively collaborate with academia, public health professionals and external experts to understand the linkage between the concerns mentioned above and the steps that can be taken to minimise such harm. As the scientific understanding of the impact of fantasy gaming along with the steps for harm minimisation evolve, so too should the regulations that govern fantasy sports.