



THE
LAW
DESK

online GAMING

AN AMALGAMATION OF VARIED PERSPECTIVES

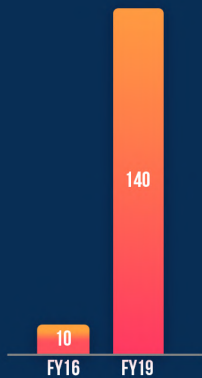
In recent years, the 'Online Gaming' industry in India has seen a major boom. Unlike earlier times when the term 'Sports' referred only and exclusively to physical/outdoor activity, things now are a lot different- owing to Online Gaming, amongst other factors. But what exactly is Online Gaming, and how does the phenomenon run so steadily that it has an entire industry flourishing beneath it.



WHAT CONSTITUTES ONLINE GAMING ?

In layman's language- online play (often with stakes involved), with the Internet in the background. The platforms often involve depiction of real-life sports (such as cricket), and/or novel play-like features (such as Fruit Ninja). One popular type is 'Real Money Gaming', wherein a type of game (e.g. casino, bingo, poker, sports or sporting events, skill games, etc.) is played through Online Media with real money at stake on the results of the game. Another popular platform is 'Online Fantasy Sports', where sports enthusiasts can play any live game of their choice virtually by selecting real life players to form a virtual team. Due to involvement of stakes, Online Gaming across the globe has often invited speculations of Gambling, Betting etc. However, the authorities (Administration, Court etc.) have by and large been succinct with regard to their stand towards Online Gaming. The US Government, for instance, deploys a specific mechanism involving three tests to check the true characteristics of the cash-based tournaments- the Predominance Test, the Material Element Test, and the Any Chance Test. The UK on the other hand has the Gambling Act, 2005 in place, as per which all Online Gaming operators ought to be licensed. Similarly, Australia has the Interactive Gambling Act, 2001 to regulate the industry. India, for the purpose of keeping a check on Gambling/Betting, relies upon the Public Gambling Act, 1867. However, no specific Central code is there to regulate Online Gaming.

THE ECONOMICS OF ONLINE GAMING



ONLINE FANTASY SPORTS PLATFORMS

It is a fact that Cricket is more of a religion than a sport in India. However, in addition to cricket, the rapid increase of domestic leagues across other sports such as Football, Kabaddi, Hockey etc. has prompted a rapid increase in the popularity of Online Gaming in India.

As per a report published by Statista Research Department, the user base of the Online Fantasy Sports industry in India by FY19 was about 72.2 million users.

72.2 M USERS

As per FIFS- KPMG 2020 report, the Contest Entry Amount (CEA) of the online fantasy sports market doubled to Rs. 16500 Crores in FY 20 from Rs. 6000 Crores in FY19.

167% GROWTH RATE



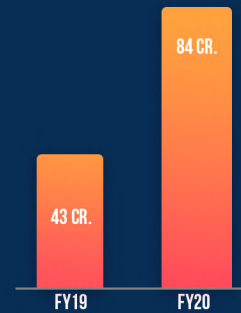
CONTEST ENTRY AMOUNT (CEA)

GROSS REVENUE ONLINE FANTASY SPORTS

924 CR. FY19

2,470 CR. FY20

Gross revenues of online fantasy sports operators stood at Rs. 2,470 crores (US\$ 340.47 million) in FY20 compared to Rs. 924 crores (US\$ 131.64 million) in FY19, up almost three times year-on-year. It is expected to be worth US\$ 3.7 billion by 2024, creating a huge opportunity for new entrants.



TOTAL REVENUE COLLECTION BY DIRECT EMPLOYEES

As per KPMG Analysis, the FDI inflow in the industry amounted to Rs. 1500 crore in the financial year ending 2019 and in respect of income tax paid by direct employees, the total revenue collection increased from Rs 43 crore in FY 19 to Rs 81 Crore in

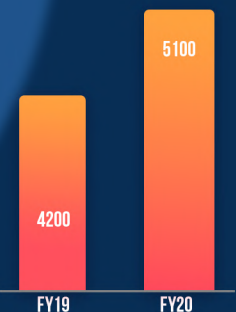
DIRECT EMPLOYMENT

2800 FY19

3400 FY20

In regard to employment creation by OFS operators, direct employment at the end of FY19 stood at 2800 employees, which rose to 3400 on-payroll employees by FY20.

Indirect employment creation takes place through the ancillary industry and formal sector service providers. The said number was approximately 4200 by the end of FY19 and rose to 5100 employees by FY20.



INDIRECT EMPLOYMENT (NO. OF EMPLOYEES)

According to KPMG-analysis 2020, GST collection from online fantasy sports platforms and operators have increased with ₹166 crore in FY19 and ₹445 crore in FY20.

₹166 CR. FY19

₹445 CR. FY20

LEGAL AND REGULATORY ASPECTS



The conundrum of Online Gaming being or not being gambling/betting can be resolved by basing the legality of the sport on whether the same falls under the classification of 'game of skill' or a 'game of chance'. While a game of chance is axiomatically considered gambling as per the Indian laws, a game of skill (mere skill/preponderance of skill) is beyond the purview of gambling.

For the purpose of regulation of Gambling/Betting laws in India, the Public Gambling Act, 1867 is in force. As such, the Act criminalizes such actions that may amount to gambling by imposition of penalties along with other measures. However, what calls for attention is Section 12 of the Act, which excludes a game of 'mere skill' from the blanket of Gambling. In addition to the Public Gambling Act, various states have invoked their authority as warranted under Entry 34 (List II)- Schedule 7 to put laws in place to regulate Gambling/Betting.



In 2017, The Federation of Indian Fantasy Sports (FIFS), was formed as and in form of a self – regulatory body that has since its inception been working towards formulation and monitoring the set of standardized practices for the OFSG industry thereby ensuring the underlined interest of various stakeholders and consumers adequately and appropriately.

In 2020, The Gaming Charter was introduced by the FIFS (erstwhile IIFSG) in order to introduce a self-regulatory mechanism for Online Fantasy Sports Platforms OFSP's within the territory of India. The technology think tank, NITI Aayog which runs under the aegis of the Central Government issued draft guidelines in December 2020 to regulate the fantasy gaming industry in India by introducing a single, self-regulatory body for fantasy sports. In addition, insofar as the validity of online fantasy sports in India is concerned the same is no longer a res integra and enjoys protection within the contours of Article 19(1)(g) of the Constitution of India.



Various litigations pertaining to Online Gaming have already concluded before various Courts across India therein acknowledging the contribution made by the Online Gaming industry; many are yet to be adjudicated. While challenges remain consistent, it remains a fact that the potential which the Online Gaming industry carries is immense.



For a thorough and detailed analysis, take a glance at