

Legality of Fantasy Sports in India

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Introduction

Fantasy sport is a game where a player selects an imaginary virtual team of real-life players on the estimation of their performance in real-life statistics. The better a team scores in real life statistics, the more is the player choosing that team likely to win. Fantasy sports is a fast-emerging industry in India. Between 2016 to 2019, the industry has grown at a combined annual rate of [212%](#) and has experienced a [2500%](#) growth in its user base in the past decade. The industry is expected to be valued around [3.7 billion](#) US dollars by 2024. While such a financially strong industry offers several opportunities in terms of jobs and economic growth, regulation of these fantasy sports has always been a bone of contention between the governments and fantasy sports companies.

Fantasy sports games are either free to play or require a certain entry fee to be deposited. The entry fee contributes to the gross income of the fantasy sport operator and the government charges [Goods and Services Tax](#) (GST) upon the revenue of the operator while at the same time collecting the income tax on the player's monetary earnings.

Legality of Fantasy Sports

Since betting and gambling have been recognised under schedule VII of the Constitution and have been enlisted in the state list, the state governments have the authority to regulate fantasy sports through the medium of legislation.

While fantasy sports which come under the head of "game of skill" are legitimate and legal, the legality of such fantasy sports which come under the head of "game of luck" is determined on the basis of the laws and regulations mandated by the various state legislatures. The test of distinction between the two is that a "game of skill" requires significant mathematical skills of more than 50% to win the game. While most of the Indian states permit Fantasy sports, certain states Orissa have banned all such games which involve money and some states such as Nagaland and Sikkim have mandated a prerequisite of obtaining a state license for gaming.

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The Supreme Court of India distinguished between a game of skill and a game of chance in the case of [Dr. K.R. Lakshmanan v State of Tamil Nadu](#). The court held that the primary test is whether the dominant element is “luck” or “skill”. While the element of luck or chance plays a predominant role in the final outcome of a game of luck, a game of skill is predominantly determined by knowledge, skills and talent.

Moreover, the [276th report](#) of the Law Commission of India recommended the exemption of skill-based games from the scope of gambling. The Law Commission recommended enactment of legislations concerning online gambling under List 1 of the seventh schedule of the Constitution. The report suggested that obtaining a license from the appropriate authority must be made mandatory for offering online gambling services. Furthermore, the Government of India has also cited the 276th report while holding that fantasy sports are games of skills and hence are legal under the ambit of the Indian legal system.

Judiciary’s take on Fantasy Sports

One of the most prominent fantasy sport platforms in India is Dream 11. However, it has also been involved in a myriad of controversies regarding its legality. The High Court of Punjab and Haryana, while dealing with the legality of Dream 11 in the case of [Shri. Varun Gumber v. Union Territory of Chandigarh & Others](#) (hereafter Varun Gumber) upheld the legality of the fantasy sport operator on the grounds that it was a game of skill. Similarly, the Rajasthan High Court in the case of [Ravindra Singh Chaudhary vs Union of India](#), held that online fantasy sports are a game of skills and are hence legal. In both the aforementioned cases, the Courts were of the opinion that fantasy sports require a significant use of skills, knowledge and analysis in order to win. Since the players form their virtual teams after analysing the statistics of the real-life players, these games do involve significant analytical and mathematical skills.

However, the judgment of the Rajasthan High Court has been challenged before the Supreme Court of India. Earlier, a petition was also filed before the Supreme Court challenging the Varun Gumber judgment which was subsequently dismissed by the apex court. The Bombay High Court also cited the Varun Gumber judgment while upholding the legality of Dream 11 in its judgment in the case of [Gurdeep Singh Sachar v Union of India & Others](#). However, the judgment was later stayed by the apex court. Still, the judgments of the Rajasthan and Punjab and Haryana High Courts continue to stay in operation and the same have not been interfered with by the Supreme Court.

Conclusion

Thus, it is abundantly clear that the legality of fantasy sports depends upon the fact whether the predominant factor in these games is luck or skill. Even though the fantasy sports may be an amalgamation of both the factors, as long as the skills overshadow the element of luck, they are considered to be legal. The various High Courts have also followed this principle while deciding upon the legality of the fantasy sports platforms.

The sphere of fantasy sports certainly has numerous opportunities to offer. However, it does require a certain extent of regulation in order to prevent any harmful effects of fantasy sports on children and to protect the innocent people from exploitation at the hands of big corporations. Since the fantasy platforms exist largely on a digital platform and hence are accessible throughout the nation, a uniform nationwide policy needs to be formulated to regulate them. This will also eliminate any vagueness and ambiguity regarding the legal regulations dealing with fantasy. Furthermore, minor children should not be allowed to participate in the fantasy sports. The fantasy sport operators must bring transparency in their business operations to guarantee that they are not deceiving their consumers.

Self-regulation by industry players might not suffice in protecting the larger interests of the society since these self-regulation bodies prioritize monetary benefits over the welfare of the society. Hence, a statutory regulatory body is necessary to ensure that the online fantasy sports operators conduct their business affairs and deal with their consumers in an ethical manner.