

CUTS Comments on Rajasthan Virtual Online Sports (Regulation) Bill, 2022

Background

Consumer Unity & Trust Society (CUTS) expresses its gratitude to the Department of Finance, Government of Rajasthan, for inviting comments and suggestions on the Rajasthan Virtual Online Sports (Regulation) Bill, 2022.¹ The first of its kind, the bill is an essential step towards regulating the online sports industry.

About CUTS

In its 39 years of existence, CUTS has come a long way from being a grassroots consumer-centric organisation based in Jaipur to opening overseas Resource Centres in Africa,² Switzerland,³ Vietnam,⁴ and most recently, the United States of America.⁵ It continues to remain an independent, nonpartisan, and non-profit economic policy think tank while opening various programme centres, namely: Centre for International Trade, Economics & Environment (CITEE);⁶ Centre for Consumer Action, Research & Training (CART);⁷ Centre for Human Development (CHD);⁸ and Centre for Competition, Investment & Economic Regulation (CCIER).⁹ It has been working towards enhancing the regulatory environment through evidence-backed policy and governance-related interventions across various sectors and national boundaries. Further details about CUTS are available [here](#).

Being a consumer organisation, CUTS keeps a close watch on concerns relating to the digital economy, including online gaming¹⁰ and continuously engages with the government to

¹ Rajasthan Virtual Online Sports (Regulation) Bill, 2022, available at: <https://finance.rajasthan.gov.in/PDFDOCS/REVENUE/10746.pdf>

² <http://www.cuts-international.org/ARC/>

³ <http://www.cuts-geneva.org/>

⁴ <http://www.cuts-hrc.org/>

⁵ <http://www.cuts-wdc.org/>

⁶ <https://cuts-citee.org/>

⁷ <https://cuts-cart.org/>

⁸ <https://cuts-chd.org/>

⁹ <https://cuts-ccier.org/>

¹⁰ CUTS work on Digital Economy, <https://cuts-ccier.org/digital-economy/>

highlight consumers' views.¹¹ CUTS had also submitted comments on Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India¹² and highlighted the regulatory uncertainty persisting in the online gaming sector.¹³

CUTS Comments

Having previously researched and highlighted problems in the online gaming sector, CUTS has observed a few critical issues in the draft Rajasthan Virtual Online Sports (Regulation) Bill, 2022. These have been discussed in subsequent sections and a few recommendations to address them.

1. Categorisation and Legality of Virtual Online Sports Platforms

The bill aims to regulate virtual online sports and “includes esports competitions, fantasy sports, derivative formats that are approved by courts, self-regulatory organisations, or any other appropriate authority.” Here, the bill excludes regulation of *other forms of skill-based pay to play virtual online sports like rummy, poker etc.*¹⁴ While such virtual online sports may be covered in the derivative format, in principle, rather than the judiciary determining the legality of these forms of virtual online sports, the legislature must act by defining them under the bill.

Further, the bill also does not define games of skills and games of chance. As courts across the country have already been pronouncing judgements on games of skill and games of chance, the bill must clearly define the same, based upon the principles laid out in such judgements, thus codifying such principles. It is pertinent to note that the judiciary's role is to interpret the law and not make law. Therefore, the legislature should not shy away from determining the basis of legality of games of skill and provide the basis to the judiciary for scrutinising the legality of such games.

Further, even when the bill provides powers to the government to issue directions to Self Regulatory Organisations (SROs) while approving a particular format of virtual online sports, no recognition in the parent legislation about such games could create confusion. Further, it may also result in lack of accountability and conflict of interest as the SRO would itself comprise the regulated entity.

¹¹ CUTS Advocacy efforts, <https://cuts-ccier.org/advocacy/>

¹² CUTS Response to Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India <https://cuts-ccier.org/pdf/comments-on-principles-for-online-fantasy-sports-platforms.pdf>

¹³ CUTS Discussion Paper Impact of Regulatory Uncertainty on Ease of Doing Digital Business. https://cuts-ccier.org/pdf/dp-impact_of_regulatory_uncertainty_on_ease_of_doing_digital_business.pdf

¹⁴ Draft of Rajasthan Virtual Online Sports Regulation Bill 2022: Non Fantasy Sports Operators see Red News, Outlook, available at: <https://www.outlookindia.com/sports/draft-of-rajasthan-virtual-online-sports-regulation-bill-2022-non-fantasy-sports-operators-see-red-news-197727>

For instance, it may lead to an SRO denying a particular new format of virtual online sports as legal to curb competition in the market and reduce consumer welfare. This will also make many virtual online sports engagement platforms operate in a regulatory grey area. There will be uncertainty on their legality, which will also impact the ease of doing digital business, grievance redressal, confidence and trust of consumers, etc.

Recommendations

Clearly define games of skill and games of chance, based upon the several judgements given by various High Courts and the Supreme Court and lay down the conditionalities for virtual online sports being qualified as a game of skill. Include other forms of skill-based pay to play virtual online sports to avoid regulatory uncertainty. Provisions for granting licence to such virtual online sports by the government licencing authority should also be included, as has been done for esports, fantasy sports and derivative formats. However, in recognition that the courts have been ruling on the legality of different kinds of online games, the provision of virtual online sports of derivative formats based on judicial precedents should be retained in the bill.

2. Licensing, Limited Powers of the Rajasthan Virtual Online Sports Commission and Excessive Delegation to SROs

The bill gives the Rajasthan Virtual Online Sports Commission (Commission) limited powers for regulating the online gaming industry. For instance, the bill provides the power to offer licences to a government official not below the rank of Additional Secretary, rather than to the Commission. It is pertinent to note that such a charge will add an additional responsibility to the government where it may also be required to call in outside expertise.

Further, light-touch regulation should not mean complete outsourcing and delegation of regulation-making power and monitoring to SROs, as this is a function of the government. Too much discretion to SROs may lead to an inconsistent regulatory approach. For instance, as SROs are required to issue directions or orders for compliance with the code of ethics, governance, and advertising guidelines, different SROs may set different norms and issue conflicting sets of guidelines to sports engagement platforms.

Recommendations

The government should not shy away from performing its function of regulation. Here, it is vital to make the Commission powerful as a regulator. Rather than giving powers to SROs to determine the legality of virtual online sports, the Commission should be empowered for this purpose. The Commission should act as a bridge between the government and the industry. Once the bill has laid out the definitions of games of skill

and games of chance and recognise different kinds of virtual online sports, the power of providing licences to sports engagement platforms should be rested with an independent committee should be set up by the Commission. The independent committee should include experts in law, online gaming and sports, consumer protection, etc.

A co-regulatory model should be adopted. The Commission should provide broader guiding principles to SROs that they may use for performing day-to-day functions like issuing code of conduct to sports engagement platforms, etc. Further, as multiple SROs may be registered with the Commission, to maintain parity, the Commission should mandate SROs to do prior consultation before issuing a code of conduct. This will enable the Commission to maintain parity in the code of conduct of different sports engagement platforms.

Further, the Commission should keep a close watch on the working of the SROs. For this purpose, the Commission should mandate the submission of 6-monthly reports by the SROs on their work, bringing transparency and accountability. The Commission should also be empowered to evaluate the conduct of virtual online sports engagement platforms if SRO fails to keep a check on their conduct.

3. Composition of Commission

The Commission's composition includes three members, including a retired judge from a High Court or the Supreme Court, a retired government servant not below the rank of Secretary and a person having vast experience in the field of sports and sports federations. However, given the growth the virtual online sports industry has seen in the past few years, it is essential to realise that a three-member body may face challenges in performing all the required functions, including licencing, monitoring and compliance (as proposed earlier). Further, multiple stakeholders should get representation in the Commission.

Recommendations

There is a need to increase the number of independent members. This will help empower the Commission to perform all of its functions. The Commission should include stakeholders, such as consumer representatives who are players and consumer groups that advocate for consumer protection. A five-member Commission will be more representative, and this will also enable the Commission to perform the vast majority of tasks efficiently.

4. **Minimum Per-Legislative Consultation period by Commission**

As per clause 18(3) of the bill, the Commission must ensure that all stakeholders get adequate time to make comments or draft advisories, caution notices, and recommendations. However, there is no mention of a minimum consultation period.

Recommendation

As per the Pre-Legislative Consultation Policy of the Government of India, any draft consultation policy or bill should be made available for public comments for 30 days. The bill should also specify the minimum period of 30 days for pre-legislative consultation on rules issued by the Commission.

5. **Presumption of SROs representing a single class of Virtual Online Sports**

As per clause 27(2)(i) of the bill, the government may issue criteria for recognising an SRO representing a class of virtual online sports by the Rajasthan Virtual Online Sports Commission (Commission). However, the bill presumes that a particular SRO will be representing a single class of virtual online sports. Currently, industry bodies like the All India Gaming Federation¹⁵ operate in the country representing different kinds of virtual online sports, and the bill fails to recognise the same.

Further, as per clause 12(5)(c),¹⁶ any SRO wanting to be recognised by the Commission should have a demonstrated functioning of a minimum of 3 years with an existing office of the Ombudsman or similar dispute resolution mechanism. This is problematic because it may restrict and limit the entry of new SROs.

Moreover, the bill does not specify the composition of the governing board of the SROs. This may become problematic if such governing boards do not become representatives and positions become occupied by a handful of stronger players.

Recommendations

The bill should not restrict SROs that represent multiple virtual online sports classes. In this regard, amendments should be made to all relevant clauses. Further, newer SROs should be recognised by the Commission, provided they can fulfill set criteria, as may be prescribed by the Commission. The Commission should also ensure that the voices of the smaller players do not go unheard within the SROs. In this regard, the composition of the governing board of the SROs should be defined by the Commission and the principle of one member, one vote should be adopted for the functioning of the SROs.

¹⁵ <https://www.aigf.in/>

¹⁶ The draft bill has a clerical error of mentioning two clauses with clause number 12(5)(c). Here, the second clause with the clause number 12(5)(c) is referred.

6. Provisions for Consumer Protection and Grievance Redressal

Virtual online sports are growing in popularity as a more significant number of consumers (in this case, the gamers/players) are joining different sports engagement platforms. Creating a regulatory framework for the virtual online sports industry will encourage consumers to participate actively and help the industry grow. While the bill states that SROs should have provisions for consumer grievance redressal and consumer protection, it fails to provide an appeals mechanism to the consumers if their grievances are not addressed. There is a need to protect the rights of consumers.

Recommendations

A three-step mechanism for grievance redressal of consumers should be mandated through statutory provisions in the bill. In the first step, grievances should be solved by the sports engagement platform. If it fails, consumers should have the right to appeal to the SRO, with an Ombudsman to address the grievances. If grievances remain unaddressed, consumers should have the opportunity to go to the Commission.

Further, SROs should also be mandated to carry out awareness generation and capacity-building campaigns for consumers, guidelines for which may be prescribed by the Commission. Such campaigns should include making consumers aware of how to play games safely and ensure grievance redressal, among others. These may be included in the SRO's charter, code of ethics and governance. In this regard, SROs may also collaborate with consumer groups to create awareness.

7. Synergy with other Central/State Laws

As the subject falls under the ambit of the state governments, several states have taken steps to regulate or ban virtual online sports. Further, there have also been calls for a unifying central legislation to bring in uniformity. The Government of India has also set up a seven-member panel to study the possibility of a central regulation for the industry.¹⁷ While the bill makes a positive move by introducing penalties which had remained a long unaddressed issue, other relevant issues include taxation under the Goods and Services Tax (GST) which is still being discussed.¹⁸

¹⁷ Online Gaming: Government Panel Seeks To Regulate Chaotic Industry, available at: <https://www.outlookindia.com/sports/online-gaming-government-panel-seeks-to-regulate-chaotic-industry-news-198875>

¹⁸ Panel Of Ministers Suggest 28% GST On Casinos, Race Course, Online Gaming, Outlook, available at: https://www.outlookindia.com/business/panel-of-ministers-suggest-28-gst-on-casinos-race-course-online-gaming-news-197335?utm_source=related_story

Recommendation

To promote ease of doing digital business, regulation of the online gaming industry must have uniformity with other future legislation in other jurisdictions/states. Therefore, the Rajasthan government must ensure that the bill is in synergy with other upcoming state and central legislation.

Conclusion

CUTS looks forward to the Government of Rajasthan accepting the suggestions given above and assisting the government in its endeavours of empowering consumers and individuals. For any clarifications/further details, please feel free to contact Prince Gupta, Senior Research Associate, CUTS at prg@cuts.org.