

'POWER-UP' TO THE GAMERS

Empowering Consumers in the Online Gaming World

29

JUNE, 2022
WEDNESDAY

15:30-17:15 IST

Introduction

The online gaming industry in India is a sunrise industry. As it remains largely unregulated, the discussion on player protection becomes urgent and necessary. Further, in light of the several state regulations, such as in Karnataka, Rajasthan, and Manipur and the Central Government's initiative to regulate the industry, it becomes even more critical to understand the impact players have.

CUTS and Nishith Desai Associates (NDA) feel that it is necessary to create discourse on player protection and other allied issues in the sector. Thus, to engage on the issue of player protection and discuss how to provide a regulatory 'Power-Up' to the players, CUTS and NDA conducted a virtual roundtable.

Pradeep S Mehta, Secretary General, CUTS International, delivered the welcome address and opening remarks. Rakesh Maheshwari, Scientist G and Group Coordinator, Ministry of Electronics and Information Technology (MeitY), participated as the Keynote Speaker. The panel members were Gowree Gokhale, Partner, NDA; Sameer Barde, CEO, E-Gaming Federation (EGF) and Shivani Jha, Director, eSports Players Welfare Association (EPWA). The session was moderated by Prince Gupta, Senior Research Associate, CUTS International.

Highlights from Opening Session

The online gaming industry in India is relatively new and seeing a phenomenal growth rate, particularly in terms of market statistics. However, it lacks a comprehensive regulatory framework. Regulating the online gaming industry is critical from a consumer protection standpoint. There has been an increase in many associated adverse societal effects, such as addiction, financial losses, and suicide rates.

Online games also have several positive aspects. Younger people frequently use games as tools for leisure time. Games can be used to teach essential life skills and as an additional learning tool, making historical and culturally significant items more widely known. This makes it even more important to have a robust regulatory environment for the industry to achieve the best possible growth in concern with all relevant stakeholders. The recorded increase necessitates

deep diving to understand the gaming business's new area and develop an appropriate regulatory framework.

The current regulatory environment governing the online gaming space consists of online gaming companies being categorised as intermediaries on whom provisions of the Information Technology Act, 2000 (IT Act) and the Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules 2021 apply. However, there are numerous challenges. These include determining what type of regulation is required or whether online gaming can be subjected to existing regulations with potential amendments, such as the IT Act and determining the nodal ministry under which the concerned regulation for online gaming will fall, issues of licencing valid games and the best-suited process for blocking the unlawful ones.

Because of the lack of targeted regulations, effective regulation is missing. Creating an effective regulatory structure for the online gaming industry is essential. A well-known fact is that only the well-managed industries have the potential to expand in terms of creating more jobs, luring investors, boosting the sector's potential for export, and furthering the idea of Atmanirbhar Bharat in an absolute sense.

In addressing the lack of regulation in online gaming, the emphasis should be on optimal regulation, which strikes a delicate balance between encouraging innovation and providing appropriate recourse. Such a regulatory framework should include a cost-benefit analysis of various stakeholders, particularly players and start-ups, by conducting a regulatory impact assessment. Overregulation must be avoided, co-regulation should be encouraged, along with adequate consumer representation and a stricter mandate for player protection should be incorporated to ensure their protection.

For player protection, the online gaming platforms should offer equal opportunity, where interactions should be between players rather than between players and machines or Artificial Intelligence (AI). Additionally, some matters require careful consideration, such as the need for platforms to have robust KYC in place and a cap on the maximum amount that can be charged if the game falls under the pay-to-play category. Additionally, gaming hours can be restricted, and advertisements should be subject to the strictest regulation to encourage responsible advertising.

Highlights from the Panel Discussion

Challenges Faced by Players

The panel discussion unfolded with the issue of identifying challenges that players face and how to incorporate consumer protection effectively. There is not much clarity on what sorts of games fit under the categories of games of skill and games of chance. There is also a lack of clarity on what determines whether or not platforms are going too far in blurring the boundary between the two categories of games. In this context, state governments criminalising online

games becomes problematic. Evidence shows that professional players in real sports are also increasingly indulging in online esports games. In this context, any state government's criminalisation of online games worries the players because if a state bans online games, it effectively criminalises anyone who plays such games.

Panellists pointed out that addressing consumer protection issues becomes more complex for India due to socio-economic diversity. Therefore, it is challenging to have legislation that equally serves everyone. Further, notifying consumer protection guidelines may often be ineffective because of the lack of awareness. Much work needs to be done on the issue of player protection awareness, and solutions recommended include creating short videos or tutorials to better awareness. Further, as advertisement and awareness go hand in hand, the type of advertisement promoted by online gaming platforms needs proper scrutiny.

Several other problems also exist, like concerns about data privacy. Further, players who play games on offshore platforms have no legal recourse. Additionally, none of the regulations are future-proof, and it is essential to understand that online gaming is constantly expanding, with new games coming out regularly. Any game's validity should be checked using more than just a skill-based evaluation; it should also consider how simple the game is to cheat.

Significant differences exist in how online games are defined and their associated legality by different states in India, making it imperative to adopt a common standard format for the industry applicable across states. Thus, there may be a requirement for a strong Central law that is robust in limiting potential harm and light on the ground to foster the sector's growth.

Ensuring for Player Protection: Standards for Responsible Play

There is no governing body that defines the dos and don'ts of online gaming. Certain Self Regulatory Organisations (SROs) are taking measures for player protection. SROs like EGF act as standard-setting bodies, which set standards for online gaming companies to follow to protect players from different harms. The need for standards is dynamic. Therefore, these standards should change as the gaming industry evolves. SROs have developed innovative systems such as incorporating a general code of conduct by looking at the world's best practices and using independent third parties to conduct audits, among others. These audits are a regular, yearly requirement and not a just one-time need.

While developing such standards is critical to design them for consumer protection rather than for business development. Transparency, fairness, and other requirements that enable responsible play should be considered. The ultimate goal of creating standards should be player protection, which includes protection against bot smart play, player money, general privacy concerns, etc. Further, to maintain a fine balance and proper representation, SROs should consult effectively with stakeholders and industry players during the standard-development process.

However, even when there are SROs functioning to incorporate measures for player protection, there exists a lack of enforceability of these standards as online gaming platforms are not required to be a part of the SROs. Further, the player welfare body can only provide limited support in terms of legal support, support for grievance redressal, and health and wellness support. However, they cannot ensure justice because no law backs it. An implementation framework needs to come from the government's end to ensure that there is a uniformity of standards that is being followed by all online gaming platforms.

Need for an Evidence-Based Study on Harms faced by Player

While several kinds of harm have been noticed and highlighted, evidence to back the claims seems lacking. In this context, there is a need to have an evidence-based study highlighting the challenges players face through a survey of players. All stakeholders, such as industry bodies, consumer welfare organisations, and legal experts who work for player protection, should come together for this purpose.

Such a study will not only help highlight the pertinent issues existing in the online gaming space but will also help in presenting the data to the government and the courts, thus leading to better policy making.

The recording of the event is available on [Youtube](#).

Further event details are available [here](#).

Annexure 1

Being a consumer-facing organisation, Consumer Unity & Trust Society (CUTS) keeps a close watch on concerns relating to the digital economy, including online gaming¹ and continuously engages with the government to highlight the views of consumers.² CUTS had also submitted comments on the recent Rajasthan Virtual Online Sports (Regulation) Bill, 2022³, Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India,⁴ made submission to the Ministry of Electronics and Information Technology (MeitY) and highlighted the regulatory uncertainty persisting in the online gaming sector.⁵

This event report has been prepared by Arshiya Chaturvedi, Research Associate and Prince Gupta, Senior Research Associate, CUTS International, with the support of Neelanjana Sharma, Senior Research Associate, CUTS International.

The authors extend gratitude to Amol Kulkarni, Director (Research), Akshay Sharma and Ritu Sharma (Programme Team), Sweepthish Jayan and Keval Sharma (IT Team), Madhuri Vasnani, Rajkumar Trivedi and Mukesh Tyagi (Publications Team) of CUTS International for their constant support and encouragement in making the event a success.

¹ CUTS work on Digital Economy, <https://cuts-ccier.org/digital-economy/>

² CUTS Advocacy efforts, <https://cuts-ccier.org/advocacy/>

³ CUTS Comments on Rajasthan Virtual Online Sports (Regulation) Bill, 2022
<https://cuts-ccier.org/pdf/comments-on-rajasthan-virtual-online-sports-regulation-2022-bill.pdf>

⁴ 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>

⁵ 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