

## CUTS Submission to Government of Tamil Nadu on Online Gaming Regulations

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### 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,<sup>1</sup> Switzerland,<sup>2</sup> Vietnam,<sup>3</sup> and most recently in the United States of America.<sup>4</sup> It continues to remain an independent, nonpartisan, and non-profit economic policy think tank while opening various programme centres. 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 are available [here](#).

Being a consumer organisation, CUTS keeps a close watch on concerns relating to the digital economy including online gaming<sup>5</sup> and continuously engages with the government to highlight the views of consumers.<sup>6</sup> CUTS had also submitted comments on the recent Rajasthan Virtual Online Sports (Regulation) Bill, 2022<sup>7</sup>, Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India<sup>8</sup> and highlighted the regulatory uncertainty persisting the online gaming sector.<sup>9</sup>

### Submissions on Online Gaming Regulations

#### a. Legality of Online Gaming Platforms:

The online gaming industry is a sunrise industry with extensive potential in a country like India, because of the high number of internet users. These internet users become potential consumers of the industry and are, thus, valued highly.

The industry is divided into various types of games played based upon distinctions of skill & chance, real money & casual gaming, eSports, mobile gaming, multiplayer games, social games, and cloud games amongst others.<sup>10</sup> Due to the diverse nature of the industry, the use-cases are slowly coming to light. The industry is largely unregulated but the central

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<sup>1</sup> <http://www.cuts-international.org/ARC/>

<sup>2</sup> <http://www.cuts-geneva.org/>

<sup>3</sup> <http://www.cuts-hrc.org/>

<sup>4</sup> <http://www.cuts-wdc.org/>

<sup>5</sup> CUTS Work on Digital Economy, available at: <https://cuts-ccier.org/digital-economy/>

<sup>6</sup> CUTS Advocacy efforts, available at: <https://cuts-ccier.org/advocacy/>

<sup>7</sup> CUTS Comments on Rajasthan Virtual Online Sports (Regulation) Bill, 2022, available at: <https://cuts-ccier.org/pdf/comments-on-rajasthan-virtual-online-sports-regulation-2022-bill.pdf>

<sup>8</sup> CUTS Response to Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India, available at: <https://cuts-ccier.org/pdf/comments-on-principles-for-online-fantasy-sports-platforms.pdf>

<sup>9</sup> CUTS Discussion Paper Impact of Regulatory Uncertainty on Ease of Doing Digital Business, available at: [https://cuts-ccier.org/pdf/dp-impact\\_of\\_regulatory\\_uncertainty\\_on\\_ease\\_of\\_doing\\_digital\\_business.pdf](https://cuts-ccier.org/pdf/dp-impact_of_regulatory_uncertainty_on_ease_of_doing_digital_business.pdf)

<sup>10</sup> Online Gaming - The Basics, Internet Matters, available at: <https://www.internetmatters.org/resources/online-gaming-advice/the-basics/>

government has set up an inter-ministerial panel to work on regulations for the online gaming industry and identify a nodal ministry to look after the sector.<sup>11</sup>

The forthcoming regulations must clearly define and distinguish between games of skill and games of chance. While making such distinction, reliance should be placed upon judicial decisions. For instance, the Madras High Court laid down the conditionalities of online games being qualified as a game of skill.<sup>12</sup> The regulations need to include all forms of skill-based pay to play online games so that regulatory uncertainty can be avoided.<sup>13</sup>

It is recognised that certain types of games may cause harm to consumers. However, this may not be true for all types of online games. There is a noticeable lack of reliable evidence based study that brings out the consumers' perspective and awareness relating to online gaming's perceived risks, benefits and expectations.<sup>14</sup> Thus, the approach of completely banning all online games may not be the best possible way forward. Identification and regulation of games which may cause harm is necessary. This will help the government make better regulations. The state governments must introduce exclusive policies to regulate online games and not resort to blanket bans which might lead to an increase in illegal activities of online gaming.<sup>15</sup>

#### **b. Provisions for Consumer Protection and Grievance Redressal:**

Online gaming platforms are growing in popularity as a greater number of consumers (in this case, the gamers/players) are joining different sports engagement platforms. Creating a regulatory framework for the online gaming industry will encourage consumers to actively participate and help the industry grow. While most of the Self Regulatory Organisations (SROs) provide for grievance redressal and player protection, these are not enforceable. There is a need to protect the rights of consumers. Thus, regulations should have provisions for consumer grievance redressal and consumer protection. In this regard, an appeals mechanism to the consumers, in case their grievances are not addressed should be provided.

CUTS recommends a tiered mechanism for grievance redressal of consumers which should be mandated through statutory provisions in regulations. At the first step, grievances should be solved by the online game platform. If this fails, consumers should have the right to appeal to the SROs which should have an Ombudsperson to address the grievances. If grievances still remain unaddressed, consumers should have the opportunity to go to the Independent Board.<sup>16</sup> In this regard, credible consumer organisations may also be engaged by the Independent Board for redressal of consumer grievances.

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<sup>11</sup> Singh Priya, Government of India sets up a seven-member committee to regulate online gaming industry, 27 May 2022, BGR, available at:

[www.bgr.in/gaming/government-panel-niti-ayog-regulate-online-gaming-industry-india-1276206/](http://www.bgr.in/gaming/government-panel-niti-ayog-regulate-online-gaming-industry-india-1276206/)

<sup>12</sup> Jungle Games Pvt. Ltd. v. The State of Tamil Nadu, 2021, available at:

[https://www.livelaw.in/pdf\\_upload/jungle-games-india-private-limited-v-state-of-tamil-nadu-397904.pdf](https://www.livelaw.in/pdf_upload/jungle-games-india-private-limited-v-state-of-tamil-nadu-397904.pdf)

<sup>13</sup> Ibid.

<sup>14</sup> CUTS Webinar "Light touch regulation the way forward for online gaming: Rakesh Maheshwari, MeitY", available at: <https://cuts-ccier.org/light-touch-regulation-the-way-forward-for-online-gaming-rakesh-maheshwari-meity/>

<sup>15</sup> Tejaswi Mini, 'Regulate, don't ban online gaming', 3 June 2021, The Hindu, available at: <https://www.thehindu.com/business/regulate-dont-ban-online-gaming/article34721333.ece>

<sup>16</sup> CUTS Comments on Rajasthan Virtual Online Sports (Regulation) Bill, 2022, available at: <https://cuts-ccier.org/pdf/comments-on-rajasthan-virtual-online-sports-regulation-2022-bill.pdf>

Further, in order to protect consumers from harms, regulations should also mandate online gaming platforms to provide measures for responsible playing such as self-exclusion mechanisms, limiting the daily spending limit and limiting the daily amount of time spent on a platform etc. Such mechanisms are in practice, albeit voluntarily, by few online gaming platforms who are members of existing industry SROs.<sup>17</sup>

Furthermore, SROs should also be mandated to carry out awareness generation and capacity building campaigns for consumers, guidelines for which may be prescribed by regulations. Such campaigns should include making consumers aware about how to play games safely, and how to 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.<sup>18</sup>

### **c. Setting up an Independent Board to Monitor SROs**

In the guise of light touch regulation, complete outsourcing and delegation of regulation making power to SROs should be avoided. It is essential that any regulation that regulates the industry, constitutes and defines the composition of an independent board. This independent board should act as a bridge between the government and the industry.

Further, this independent board should include representation from stakeholders in the online gaming industry, player bodies, academia and the government. The independent board needs to function in a co-regulatory model, where it provides broader guiding principles to SROs which they may use for performing day to day functions like jointly designing the code of conduct with online gaming platforms, player representation bodies etc., before issuing to sports engagement platforms, etc.

Further, the independent board should be required to keep a close watch on the working of the SROs. In this regard, mandating submission of periodic reports by the SROs on their working which will bring in transparency and accountability should be explored.

### **d. Harmonious Regulation for Online Gaming Industry**

The subject of gambling falls under the ambit of the state governments under the State list of Schedule VII of the Indian Constitution<sup>19</sup>; several states, along with Tamil Nadu have taken steps to regulate or ban online games.<sup>20</sup> 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.<sup>21</sup>

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<sup>17</sup> EGF Responsible Play, available at: <https://www.egf.org.in/responsible-play.html>; AIGF Skill Games Charter, available at: <https://www.aigf.in/skillgamescharter/>

<sup>18</sup> CUTS Response to Niti Aayog's Draft Guiding Principle for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India, available at: <https://cuts-ccier.org/pdf/comments-on-principles-for-online-fantasy-sports-platforms.pdf>

<sup>19</sup> Entry 34, List II, Schedule VII in the Constitution of India.

<sup>20</sup> Md Sruti, 'Online Gaming and the Struggles of the State Governments', Newslick, available at: <https://www.newslick.in/Online-Gaming-Struggles-the-State-Governments>

<sup>21</sup> Online Gaming: Government Panel Seeks To Regulate Chaotic Industry, Outlook, available at: <https://www.outlookindia.com/sports/online-gaming-government-panel-seeks-to-regulate-chaotic-industry-news-198875>

In order to promote ease of doing digital business, regulation of the online gaming industry must have uniformity with other future legislations in other jurisdictions/states. Therefore, we hope that government's across centre and states will be able to provide for a model law or an enabling legislation in order to co-regulate with each other while clearly establishing the role of SROs for optimal regulation of this emerging industry. Such model law needs to be designed after conducting due Regulatory Impact Assessment (RIA) and Cost - Benefit Analysis (CBA) for all beneficiaries of the regulation.

#### **e. Robust Public Consultation and Feedback Mechanisms in the Policymaking Process**

The notification for invitation for public comments to Justice Chandru's Report and draft ordinance<sup>22</sup> was released on August 07, 2022. The comments are invited from stakeholders, Industry Associations, and the general public to share suggestions and comments until August 12, 2022. This is not adequate time for the public consultation process; as the Pre-Legislative Consultation Policy (PLCP) requires for a minimum of thirty days for the draft legislation to be kept in public domain for an effective consultation process.<sup>23</sup> Moreover, the draft ordinance and Justice Chandru's committee's report are not made available in public domain. This leads to the invitation of comments on these very documents, a less effective exercise than intended.

The PLCP applies to principal and subordinate legislations. Given these instruments are subject to intense legislative scrutiny but a policy is not, a policy should be subject to similar, if not higher, public consultation and feedback mechanisms. Thus, draft policy and the report of Justice Chandru's Committee should be available in public domain and be open for public comments for at least a period of 30 days, if not more.

## **Conclusion**

Being a consumer facing organisation, CUTS is committed towards raising awareness and optimal regulations leading to transparent and accountable regulation of the industry with player protection at its core.

In this regard, CUTS intends to undertake awareness generation, capacity building and advocacy for protection of players through regulations. We intend to conduct a consumer perception study to understand consumer understanding, level of awareness, engagement and consumer expectations going forward from the industry, platforms and the regulations. We will continue to call for optimal regulation of the industry, with players' protection at its epicentre.

In case of any clarifications, please feel free to contact Prince Gupta ([prg@cuts.org](mailto:prg@cuts.org)) or Neelanjana Sharma ([njs@cuts.org](mailto:njs@cuts.org)).

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<sup>22</sup> Press Release on Online Gambling and Gaming, Home, Prohibition and Excise Department, Government of Tamil Nadu, available at: [https://ourgovdotin.files.wordpress.com/2022/08/pr070822\\_e\\_1351.pdf](https://ourgovdotin.files.wordpress.com/2022/08/pr070822_e_1351.pdf)

<sup>23</sup> Pre-Legislative Consultation Policy, Government of India, available at: <https://legislative.gov.in/sites/default/files/plcp.pdf>