

White paper on

Co-regulatory Framework For Online Skill Gaming Platforms

August -2022

Introduction

In our earlier policy paper on the regulatory roadmap for online skill gaming platforms,¹ we analysed the socio-economic contribution of online skill gaming platforms and the present legal and policy landscape. Based on our analysis, we had arrived at the conclusion that there is a need for a unified approach to regulating the online skill gaming platforms in India instead of the present fragmented and inconsistent approach. In the policy paper, we recommended key sets of guidelines/principles that are required to be kept in mind while regulating such platforms.

A rapidly growing economy, changing innovation landscape, and a growing internet user base, call for responsible online platforms that hold consumers' protection paramount while generating overall value for the industry. On this backdrop, self-regulation, along with a statutory-based regulatory framework, emerges as the single most effective way to ensure balance of consumer protection and innovation in industry. Self-regulatory bodies are arguably more prompt, effective and flexible in dealing with issues pertaining to a dynamic industry such as online gaming.

Given the current size and scale of the industry, it is becoming exceedingly difficult to differentiate between games of skill and games of chance. Further, with the exponential proliferation of types of game formats, it is crucial that Indian users are protected against malicious operators who could be offering betting and gambling formats under the guise of 'games of skill'.

A co-regulatory based framework will be best suited for effective governance of the industry and for ensuring protection of users' interests. Under such a framework, the Union Government can appoint a Competent Authority to carry out the function of rulemaking, adjudication and enforcement. This can be supplemented with Self Regulatory Organisations (SROs) which can be provided with limited powers for administration, monitoring, tracking and reporting instances of non-compliance.

This report aims to elaborate on earlier recommendations and examine various Self-Regulating Organisation (SRO) mechanisms that already exist across various industries. The report also offers insights on the merits of SROs and why they would be beneficial for the responsible and structured growth of the online gaming industry in India. Additionally, this report is structured on the backdrop of the recently formed Inter-Ministerial Task Force for suggesting the way forward on a central regulation for online gaming.

1.<https://we-worldwide-arhxo0vh6d1oh9i0c.stackpathdns.com/media/451453/policy-paper-on-regulatory-road-map-for-online-skill-gaming-platforms.pdf>

What is Self - regulation?

Businesses around the world generally use self-regulation to decrease risk to consumers, build public trust and generate more awareness about the industry. It complements existing laws and regulations by imposing supplementary rules that govern the behaviour of firms. The SROs are sometimes wholly responsible for developing the code of conduct, monitoring, compliance, and ensuring enforcement, or they are supported by government stakeholders in a co-regulating capacity. Some of the important aspects of this format are:

- ◆ **Definition:** The Reserve Bank of India (RBI), as the regulator of payment and settlement systems in the country, defines SRO as **"A non-governmental organisation that sets and enforces rules and standards relating to the conduct of entities in the industry (members) with the aim of protecting the customer and promoting ethics, equality, and professionalism."**

- ◆ **Composition:** An SRO is constituted with an expectation to provide a link between the government and market participants through an agile and flexible set-up.

- ◆ **Administration:** SROs typically collaborate with all relevant stakeholders in framing rules and regulations for the industry concerned. Their self-regulatory processes are administered through impartial mechanisms such that members operate in a disciplined environment and accept penal actions prescribed by the SRO.

- ◆ **Responsibilities:** An SRO is expected to address concerns beyond the narrow self-interests of the industry, such as to protect workers, customers, or other participants in the ecosystem. **"Such regulations supplement, but do not replace, applicable laws or regulations."**²

The government plays a significant role in encouraging and interacting with self-regulatory bodies, although the degree of involvement by the government depends on the industrial sector that is to be governed. In some cases, the government supports the self-regulation model due to its cost-effectiveness and technical expertise to regulate the industry. For an SRO mechanism to be effective, it needs to be properly integrated into the overall regulatory framework and assist the government with framing appropriate policies. At the same time, it needs to enhance the government's expertise in the sector through its vast pool of knowledge so that industry and consumer concerns are addressed effectively.

²https://www.rbi.org.in/scripts/bs_viewcontent.aspx?id=3892

A recent study by Deloitte analyses different regulatory mechanisms for future technologies³ that balance consumer protection and innovation effectively. It further suggests adaptive regulation through soft law instruments, which has several advantages over formal regulation in the arena of emerging technologies. These instruments hold an upper hand in allowing regulators to adapt quickly to changes in technology and business models, and to address issues as they arise without stifling innovation. In the interest of maintaining reputation, competition, and soft-touch regulation, businesses are invested in the model of self-regulation. For an effective SRO model, industry-wide support for the SRO is necessary. It is this support that gives the SRO flexibility and adaptability to deal with volatile markets and innovations.

3.<https://www2.deloitte.com/us/en/insights/industry/public-sector/future-of-regulation/regulating-emerging-technology.html>

Industry Standards: National & International

In driving the growth of sunrise industries, transparent and representative self-regulating bodies are playing an instrumental role globally. Even in India, the regulatory landscape is moving towards SRO mechanisms in various sectors that prioritise consumer welfare. During a recent media briefing, MoS for Electronics and Information Technology (MeitY), Mr. Rajeev Chandrashekhar made clear that the Ministry is open for social media intermediaries to come up with their own self-regulatory and self-redressal appellate mechanism⁴ to ensure grievance redressal against significant social media intermediaries.

Even the Hon'ble Supreme Court of India, in its judgement in the case of Common Cause vs Union of India⁵, upheld the self-regulatory mechanism (IBF, ASCI, NBA) in place against television and radio programmes. The court

acknowledged that there is an existing self-regulatory consumer dispute redressal mechanism in place, which however needs adequate publication. The court thus directed the Central Government to deliberate on the issue, take a conscious decision and finalise a statutory framework to formalise the self-regulating mechanism with respect to consumer disputes along with the statutory authority concerned that shall adjudicate upon the same, including the appellate and other redressal mechanisms, leading to final conclusive determination.

In this regard, the following list of self-regulatory frameworks adopted by different industries offers an insight into the existing industries in India and worldwide –

India

1. Industry Type - Over the top (OTT) Platforms

Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021⁶ mandates for adoption of a self-regulating body for ensuring observance, adherence to the Code of Ethics and for addressing the grievances made in relation to Publishers. They proposed a three-tier grievance redressal system –

4.<https://economictimes.indiatimes.com/tech/technology/centre-open-to-idea-of-self-regulating-grievance-redressal-by-social-media-chandrasekhar/articleshow/92067302.cms>

5.W.P (C) No. 387 of 2000

6.<https://www.dpcgc.org/statca51f6a44da8752f00830ad4814dd24/531310fb39e2e00e79e462218c3e9d42.pdf>

Level I - Self-regulation by publishers

Level III - Oversight mechanism by the central government.

For Level II –The Internet and Mobile Association of India (IAMAI) came forward as a self-regulatory body, the Digital Publishers Content Grievances Council (DPCGC), for online curated content providers (OCCPs). It Includes members from legal, experts from media and entertainment industry and child or minority rights field. Similarly, Media9 Digital Media Federation, Indian Digital Publishers Content grievance Council (IDPCGC), Web Journalists Standard Authority (WJSA), News Broadcasters Federation-Professional news Broadcasting Standards Authority (NBF-PNBSA), DIGIPUB News India Foundation, Working Journalist Media Council (WJMC), Digital Media Publishers & News Portal Grievance Council of India⁷ are few self-regulating bodies that got themselves registered as Level II bodies for publishers of news and current affairs content as per IT Rules, 2021.

2. Industry Type- Payment System Operators (PSO)

The framework issued by RBI⁸ for recognition of SROs for PSOs requires a group of PSOs (banks or non-banks) to

set-up a non-governmental organisation, which is managed professionally. The Board of Directors and management is expected to have expertise in the payment ecosystem. At least one third of members on the Board of Directors should be independent and not associated with member organisations. Its functions include -

- Represent members in public discussions or with RBI
- Establish minimum benchmarks, ethical, and behavioral standards
- Keep a check on violations of the Payments and Settlements Systems Act, 2007 and inform RBI.
- Establish a uniform grievance redressal and dispute resolution framework
- Conduct & promote research and development for creating a secure and safe payment ecosystem.

3. Industry Type – EdTech

An advisory issued to citizens regarding the use of caution against EdTech Companies⁹ by the Ministry of Education mentions the need for self-regulation by EdTech companies to observe and adhere to a common 'code of conduct' and establish a two-tier grievance redressal mechanism -

Tier I - Internal Complaint Forum by IEC member

7.<https://mib.gov.in/self-regulatory-bodies>

8.<https://www.rbi.org.in/Scripts/NotificationUser.aspx?Id=11986&Mode=0>

9.<https://pib.gov.in/PressReleasePage.aspx?PRID=1784582>

Tier II - Self-regulation by independent grievance review board

Under the aegis of the IAMAI, India EdTech Consortium (IEC)¹⁰ came forward as an independent and autonomous body of EdTech entities. 'India Edtech Consortium Management Committee' ('IECMC') is responsible for constituting SROs under Tier II, called the 'Independent Grievance Review Board' ('IGRB') for adherence to the functions as laid down in this memorandum.

4. Industry Type - Advertising

The Advertising Standards Council of India (ASCI) is an SRO for ensuring the protection of consumers' interests against misleading advertisements. It ensures that advertisements conform to its Code for Self-Regulation, which requires advertisements to be legal, decent, honest, and truthful, and not hazardous or harmful while observing fairness in competition.

ASCI has setup a Consumer Complaints Council (CCC) as an examining body that considers the complaints raised by consumers as well as responses from advertisers before offering its recommendations. ASCI and the CCC are not Clearing Houses or Voluntary Censor bodies, which means advertisements are not pre-cleared or approved.

10.https://www.indiaedtech.in/imagesnew%20India%20Edtech%20Consortium_Memorandum_MoE_04.02.2022_r1.pdf

5. Industry Type – Data Protection & Cybersecurity

NASSCOM has formed a not-for-profit industry body- the Data Security Council of India¹¹, to make cyberspace safe, secure and trusted by establishing best practices, standards and initiatives in cyber security and privacy. It is fully homogenous and subscribes to a set of privacy principles vetted by major clients and regulators in the United States, the European Union, and other countries. It incorporates co-regulation in the form of self-regulation on a global scale. It includes DSCI's accredited auditors who conduct conformity assessment of member organisations and constitutes a committee for certification/rating. It redresses complaints of clients and service providers with Alternative Dispute Resolution (ADR).

6. Industry Type – Securities Market

The Securities and Exchange Board of India (SEBI)¹² is the regulatory authority established under the SEBI Act, 1992, and is the principal regulator for Stock Exchanges in India. SEBI's primary functions include protecting investor interests, as well as promoting and regulating the Indian securities markets.

11.<https://www.dsci.in/sites/default/files/DSCI-Privacy-SRO.pdf>

12.[https://www.sebi.gov.in/sebi_data/commndocs/sroregu_h.html#:~:text=\(k\)%20%22Self%20Regulatory%20Organization,but%20excludes%20a%20stock%20exchange.](https://www.sebi.gov.in/sebi_data/commndocs/sroregu_h.html#:~:text=(k)%20%22Self%20Regulatory%20Organization,but%20excludes%20a%20stock%20exchange.)

All financial intermediaries permitted by their respective regulators to participate in the Indian securities markets are governed by SEBI regulations, whether domestic or foreign. With this view in mind, SEBI has recognised the Association of Merchant Bankers of India (AMBI), the Association of Mutual Funds of India (AMFI), the Association of Custodial Agencies of India (ACAI), and the Registrars Association of India (RAIN)¹³ to regulate various securities markets.

International

7. Industry Type - Consumer Video games (United States & Canada)

Entertainment Software Rating Board established by Entertainment Software Association (ESA) assigns age and content ratings to consume video games. They maintain a code of ethics for the advertising and promotion of video games—ensuring that marketing materials for games are targeted to appropriate audiences. The ESRB rating system was devised in 1994 after consulting a wide range of child development and academic experts, analysing other rating systems and conducting nationwide research with parents. The ESRB's Advertising Review Council monitors industry compliance, and in the event that a game publisher is

found to have inappropriately labelled or advertised a product, the ESRB is empowered to compel corrective actions and impose a wide range of sanctions, including monetary fines of up to USD 1 million. Each violation carries warning points, fines and/or corrective actions. Sanctions like these have a significant deterrent effect and are viewed as some of the most stringent amongst self-regulatory bodies.

How Games are rated

- ◆ ESRB assigns ratings to games based on their content, using a combination of six age-based levels intended to aid consumers in determining a game's content and suitability, along with a system of "content descriptors" which detail specific types of content present in a particular game.
- ◆ The ratings are determined by a combination of material provided by the game's publisher in both questionnaires and video footage of the game, and a review of this material by a panel of reviewers who assign it a rating.
- ◆ The ratings are designed towards parents so they can make informed

¹³https://www.sebi.gov.in/sebi_data/commndocs/pt3d_h.html

decisions about purchasing games for their children.

- ◆ Once a game is rated, the ESRB maintains a code of ethics for the advertising and promotion of video games—ensuring that marketing materials for games are targeted to appropriate audiences.
- ◆ The ESRB ratings system is enforced via the voluntary leverage of the North American video game and retail industries for physical releases.
- ◆ Most stores require customers to present photo identification when purchasing games carrying the ESRB's highest age ratings, and do not stock games which have not been rated.
- ◆ Additionally, major console manufacturers will not license games for their systems unless they carry ESRB ratings, while console manufacturers and most stores will refuse to stock games that the ESRB has rated as being appropriate for adults only.
- ◆ ESRB has also started offering a system to automatically assign ratings for digitally distributed games and mobile apps, which utilises a survey answered by the product's publisher as opposed to a manual assessment by ESRB staff, allowing online store fronts to filter and restrict titles based on the ESRB

8. Industry Type – Securities Market (United States)

Financial Industry Regulatory Authority (FINRA)¹⁴ is a not-for-profit organisation, formed in 2007 after the merger of the New York Stock Exchange and the National Association of Securities Dealers to enforce certain industry standards and requirements related to securities trading and brokerage. The governance structure of FINRA

constitutes a board composed of 24 industry and public members, where 10 seats are designated for industry members, 13 seats are designated for public members and one seat is reserved for the Chief Executive Officer (CEO). The selection process and tenure of members are pre-defined and documented. There are four different types of committees – Standing Committee, Advisory

Committee, Regional Committee and Ad-Hoc Committee. The details of discussion of these committees get recorded and published on portals to reach a broader audience.

Apart from all the examples of industry sectors mentioned above that depend on the self-regulatory model for their operations, a case study that sets a benchmark of successful implementation is that of the National Advertising

¹⁴<http://www.finra.org/about>

Division (NAD) in the United States¹⁵. This unit is charged with addressing concerns expressed by government and consumer advocates about the truthfulness and accuracy of national advertising in the United States. Following are its key features -

- ◆ The self-regulatory system is administered by the Council of Better Business Bureaus (CBBB), an independent business organization which also operates a US-wide system for reporting consumer complaints.
- ◆ Policies and procedures for advertising industry self-regulation are established by the 11-member Board of Directors of the Advertising Self-Regulatory Council (ASRC). ASRC Board members are drawn from the leadership of the CBBB and six key US advertising trade associations.
- ◆ The decision-making process at NAD is independent of the CBBB and the ASRC Board of Directors.
- ◆ For every case, NAD prepares a decision and summarises its findings in a press release, which is made available to the public.
- ◆ Any non-compliance with NAD recommendations results in referral to a government agency for enforcement action.

- ◆ Although participation is voluntary, **NAD has a 95%+ record of compliance with its decisions.**

Hence, the NAD process is structured in a manner that benefits all stakeholders - advertising industry, consumers, and the government. It enhances public credibility and fosters trust in individual participant companies as well as advertising in general in the most cost-effective way.

15.<https://www.oecd-ilibrary.org/docserver/5js4k1fjqkwh-en.pdf?expires=1660653275&id=id&accname=guest&checksum=5B853B45FB940E633F739A7096610799>

Merits of Self-Regulatory Organisations (SRO)

A collaborative, multi-stakeholder approach through self-regulation is an important tool for governing rapidly changing businesses in the information economy. Lessons from the online behavioral advertising self-regulation model serve as a useful guide for developing self-regulatory policies to govern online piracy¹⁶.

According to the draft for discussion released by NITI Aayog titled "Guiding Principles for the Uniform National-Level Regulation of Online Fantasy Sports Platforms in India"¹⁷, the selfregulatory body will bring transparency, accountability, and consumer protection practices to the platform. Self-Regulatory Organizations are widely known to complement governance oversight with market-driven innovations, compliance, and clear distinction of unlawful practices in the industry. The industry bodies which form part of the

SRO are better equipped to frame technical guidelines that promote responsible innovation and user protection, keeping in line with international best practices and at the same time maintaining a competitive edge over world platforms. Apart from technical expertise, SROs offer the following benefits over other forms of regulations-

● Reducing the burden on courts

Lack of a clear, uniform national regulatory framework for the online skill gaming industry has deterred its growth and prevented it from realising its true potential as a driver of technological and economic growth. A few states have also gone beyond their legislative competence to regulate online skill gaming platforms under gambling and betting laws, which has further dampened investor sentiment and curbed industry growth. This is compounded by the fact that currently there is no uniform benchmark for distinguishing games of skill from games of chance. According to a report released by the Sports Law and Policy Centre (SLPC) titled "Games of Skill in India- A proposal for reform"¹⁸, there exists no definable test or regulatory guideline to determine if it's a game of skill or a game of chance. Any dispute resolution of the distinction between

16.<https://d1bcsfjk95uj19.cloudfront.net/files/2011-self-regulation-online-behavioral-advertising.pdf>

17.https://www.niti.gov.in/sites/default/files/2020-12/Fantasy_Sports_DraftForComments.pdf

18.<https://drive.google.com/file/d/0B6LE5s8UEIKGZXNKNGRnQk94ZEE/view?resourcekey=0-jlKdig155mJtCAWpetCwhA>

game of skill or chance takes place at the expense of time and resources of Indian courts. As a result, this question is routinely highlighted for judicial review, which ostensibly burdens the judiciary with a matter that can be effectively addressed through a national co-regulatory framework. In such a scenario, for protection of consumers from financial losses and privacy, addressing the grievance through authorised platforms should be the first step in reducing the burden on our civil courts.

In fact, the Central Government has also recognised the need for engaging with industry for quick resolution of disputes to support ease of doing business and to foster innovation.¹⁹ The gaming industry has already come together to form SROs which are committed to protecting the interests of the users and ensuring responsible conduct by the companies. To this end, self-regulation is now being identified as a norm with the objective of reducing the regulatory burden on the judiciary and the executive, as they do not have the time and expertise to constantly monitor deviant platforms and provide grievance redressal separately.

◆ Consumer Experience and Dispute Resolution

Consumer trust is paramount for the sustainability of brand reputation and growth of an industry. With the exponential rise in Indian startups and the gaming industry worldwide, it becomes important to gain consumer confidence, a level playing field, and a robust marketplace where consumer choices and trust thrive.

With a three-tier consumer grievance redressal mechanism, where gaming platforms would be required to appoint a grievance officer, complaints against any violations will be addressed in a time-bound manner. An oversight on these officers and the industry can then be maintained by SROs who are further supplemented by an Ombudsman, who answers appeals from Level-1 and provides quick and effective resolutions to complaints. This structured participation of industry stakeholders and judiciary enables transparency and improves confidence in consumers. Finally, a competent authority, as appointed by the Union Government, can serve as Level-3 to ensure enforcement and rulemaking.

According to a news report, while evaluating the effectiveness of self-regulatory mechanism for online curated contents, it was noted that 95% of the complaints received on content regulation are being resolved at level I

¹⁹https://www.business-standard.com/article/economy-policy/govt-at-work-to-remove-burdensome-compliance-help-ease-of-doing-biz-goyal-121112700491_1.html

itself²⁰. Hence, the suggested mechanism will help the industry in making processes more responsive and quicker, leading to positive growth of the industry.

◆ Expertise

The SROs have the benefit of combined technical prowess and understanding of their members, which enables them to promote and adhere to ethical ways of doing business. Following are the key technical areas where SROs provide expertise and administration support :

- **Fair play and responsible gaming:** Issuance of fair and transparent user terms and conditions, pre-disclosed rules for participation and self-exclusion option for players.
- **Age rating and age gating:** Ensuring minors are not permitted to join any pay-to-play contests and ensuring they are not subject to any content that may be violent, explicit or otherwise damaging to their health.
- **Platform integrity:** Auditing to ensure fairness of algorithms, random number generator certification and compliance with anti-bot policy.
- **Financial integrity:**
 - Only accept digital payments and ensure that the digital wallets and accounts of the user are KYC compliant
 - Maintain separate accounts for operational expenses and prize pool and pay-outs to be made to winners
 - Implement controls and preventive measures to detect and prevent the use of its platform for money laundering or terror financing

- Conduct an annual assessment of the risks of its platform being used for money laundering and terrorist financing
- User data protection
- Consultation services to the member operators on game formats to ensure preponderance of skill is not compromised.
- **Responsible advertising:** Ensure compliance with existing guidelines of the Advertising Standards Council of India.

◆ Oversight mechanism

With a well-established code of conduct for its members, SROs ensure a strong oversight mechanism. With formal recognition by the Government, they are empowered to ensure industry's compliance with the appropriate regulatory mechanisms to drive accountability.

◆ Robust governance

SROs are aptly placed to take necessary action for any kind of market disruptions and for managing conflicts. They are generally empowered by the central authority to frame strict codes of

conduct that are administered closely, with power to enforce them on the member industries. The United States' Entertainment Software Rating Board (ESRB) is a good illustration of this point, as it maintains age-rating for each game and monitors industry compliance. If any game producer is found to be violating these norms, ESRB compels corrective action and imposes fines on that platform.

20. <https://www.hindustantimes.com/opinion/selfregulatory-regimes-are-key-in-digital-businesses-101644065942590.html>

Enhancing the Efficacy of SRO Mechanisms

Suggested areas of intervention	Recommendations
Buildingcredibility and public Confidence	SROs can ensure inclusion of independent Members in their governing board; this position is to be held by a retired bureaucrat or a retired judicial officer or other technical experts. This will help consumers gain trust in the ecosystem.
Ensuring effective enforcement of rules	Effective enforcement of SRO's code of conduct can be ensured if the SRO is empowered by a central law to monitor the industry members. This is possible if a SRO is recognized by a central nodal agency.
Mitigating the risk of regulatory capture, which happens when self-regulatory body is overtly close to businesses that it oversees	Central nodal agency could recognize more than one self-regulating bodies for different formats of the industry depending on the expertise. By this move, effective oversight on the industry can be ensured and the competing interests will check for foul practices being involved. Further, formal oversight a government body will eliminate any such risks.
Addressing theproblem of free riders, businesses that choose not to participate in the SRO mechanism	The national statutory framework should mandate companies to join and abide by the code of ethics of at least one SRO.
Ensuring self-regulation does not create a barrier to entry which results in distortion in the competition	The cost of compliance of strict code of conduct by SRO might be high and can be passed on to the customers. Businesses should evaluate the trade-off in operating in the gaming ecosystem that values customer feedback and keeps their experience level and safety paramount.

Why is there a need for SRO model for Online Gaming Industry in India?

The online skill gaming industry is constantly evolving with new technologies and formats that are coming up every day. With a growth rate of 38%, more than 400 online gaming companies²¹ and 420 million online gamers onboard, India has the second highest number of online gaming players in the world, second only to China. Currently, there are around 5468 Indian game publishers on the Google Play Store offering 19,518 games across categories²². Looking at the global trend, companies have deployed new technologies to help make the experience more immersive and interactive using Artificial Intelligence and Augmented Reality. The Indian gaming industry is now also looking at Metaverse technology to enhance user experience²³. Such a rapid scale of innovation and growing user base requires a regulatory framework that is as dynamic as the industry. It would be

impractical for any government to regulate the online gaming industry with such a wide scale, without hurting the spirit of innovation and creativity. In this respect, the industry is currently deemed as the sunrise sector in India, as it offers a vast range of job opportunities. If it has to continue on the same growth path, the need for a uniform supportive central legislature has to be addressed. The courts too have favoured the administration of online fantasy sports through self-regulation as is evident from the decision of The Jaipur Bench of the High Court of Rajasthan in Ravindra Singh Chaudhary vs Union of India. D.B. Civil Writ Petition No. 20779/2019²⁴ held that fantasy sports offered online are not operating in a total regulatory vacuum and are subject to self-regulation by the Federation of Indian Fantasy Sports (FIFS). The rules and regulations of the charter of FIFS ensure that the games run by its members are 'games of skill' and are not in the form of any gambling or betting.

Online gaming platforms receive participation from all sectors of society across generations, where children and young adults are the major consumers. A mechanism that matches their expectations and experience and at the same time, protects them from malicious operators, financial harm and other forms of harassment is paramount to the

21.<https://economictimes.indiatimes.com/news/international/business/big-bang-growth-of-indias-gaming-industry/articleshow/92053190.cms?from=mdr>

22.<https://42matters.com/india-mobile-gaming-statistics>

23.<https://www.exchange4media.com/marketing-news/the-future-of-online-gaming-is-in-metaverse-119014.html>

24.<https://indiankanoon.org/doc/175923288/>

industry. Keeping all these points in mind, self-regulation emerges as the single most effective way to ensure balance of consumer protection and innovation in the industry. Self-regulatory bodies are more prompt, effective, and flexible than government regulation to address issues, and the expertise and experience of the industry plays a strong role in the selection of a regulating body.

Although there exist several independent self-regulatory bodies that govern the standards and compliance of online games of skill, lack of central recognition of the SRO model that lays down standard guidelines and a grievance redressal mechanism is inter-alia missing, leading to ambiguity in this sector. Central guidelines and recognition of the SRO mechanism will help resolve such uncertainties and bring more transparency and accountability in the functioning of these platforms that are expected to follow principles of FITE (Fair, Independent, Transparent and Expert).

Recommendations & Model Framework

On this backdrop, taking inspiration from international best practices of the industry, keeping the interest of consumers, businesses, and policy makers at heart, self-regulation with multi-tiered grievance redressal mechanisms is the best solution for the gaming industry. This is in line with the recommendation of NITI Aayog, as laid down in their guiding principles document for fantasy sports.

Centrally recognised self-regulatory organisations, along with oversight from a government nodal agency, should be responsible for administration, and for addressing multiple stakeholders' issues ranging from finance, child protection, offshore sites, and consumer complaint forums. Following are the key recommendations for recognition of SRO in the online skill gaming industry -

1. A self-regulatory body should be recognised and registered by the Government and given statutory backing to be fully effective.²⁵

2. Self-regulatory body should be allowed to provide membership to platforms which offer online games which are predominantly skill based and

comply with applicable laws.

3. For evaluation of whether a format is predominantly skill based or chance based, the platforms may be required to provide statistical data which will then be evaluated by the SRO.

4. The SRO, in order to ensure independence, should have independent members on their Governing Board, such as retired bureaucrats or retired judicial officers, and technical experts.

5. Government should prescribe penal provisions with respect to deregistering an SRO in case of non-compliance with the law.

6. Functions and responsibilities of recognised SROs-

- Represent the voice of industry members in public discussions or in interactions with government agencies
- Establish minimum benchmarks, code of ethics to maintain healthy market behaviours for its members
- Promptly inform the government nodal agency about any violation of code of ethics or any applicable law that comes to notice
- Establish a uniform grievance redressal and dispute resolution framework across its members, and for addressing inter-member issues.
- Conduct awareness programmes for promoting safe practices in playing online skill gaming and its financial aspects
- Conduct or promote research and development for creating a secure and safe ecosystem for online games of skill
- Support the government nodal agency by furnishing information as requested and examining any proposals sent across

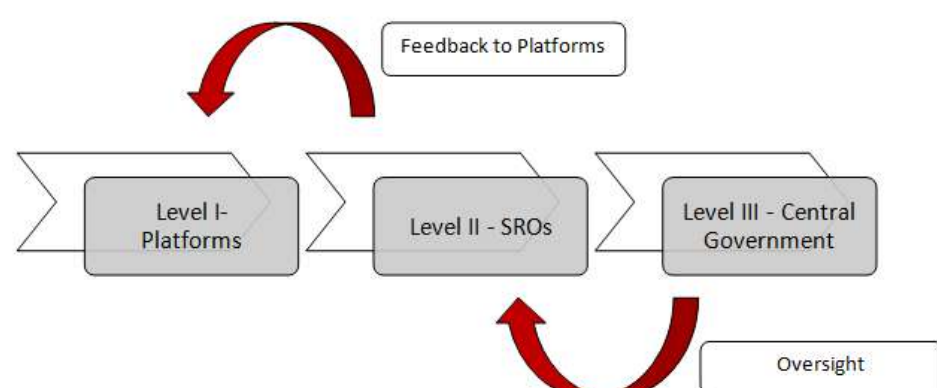
25. https://www.niti.gov.in/sites/default/files/2020-12/FantasySports_DraftForComments.pdf

- Abide by the directions issued by the government from time to time
- Strive to address concerns beyond the interest of its members to protect customers, players, and other stakeholders in the ecosystem
- Be a repository or knowledge hub of all innovations in the industry.

7. Functions of the governing board of SROs must include -

- An independent oversight on the functioning of the SRO and have the sole responsibility for affairs conducted in it
- Provide guidelines on various aspects of code of ethics and ensure alignment by member platforms
- Establish audit guidelines for its members
- Establish interoperability standards for its members
- Establish data standards for reporting of data to the regulator
- Monitor compliance of members to these guidelines/standards

8. Establish three-tiered grievance redressal mechanism for faster resolution of disputes –



The three-tier Complaint Redressal

mechanism would examine complaints about any violation of any applicable law and the Code of Conduct, received from its consumers, government or any third party.

- Level I – Self-regulation by platforms

The platform should establish a grievance redressal mechanism and appoint a grievance officer who shall be responsible for redressal of grievances received on the platform. The platform shall disclose details of the grievance officer on its platform.

Any person having a grievance regarding foul practices followed by a platform in relation to the Code of Ethics may furnish his grievance on the platform. The platform shall generate and issue an acknowledgement of the grievance for the benefit of the complainant within 24 hours of it being furnished, for information and record. The platform shall address the grievance and inform the complainant of its decision, if the decision of the publisher is not communicated to the complainant within the stipulated time, the grievance shall be escalated to the level of the self-regulating body of which such platform is a member. The gaming platforms are required to share monthly reports with the recognised Self-Regulatory Organisation on the number of complaints received and resolution statistics.

The online gaming platforms have the appropriate technical expertise and an interest in enhancing consumer confidence in the brand which can be leveraged in favour of consumers to ensure protection against illegal practices and to safeguard them from financial loss.

- Level II – Self-regulation by the self-regulating bodies of the platforms

An independent body constituted by skill gaming platforms with clear bye-laws that specify admission criteria for members and the functions they discharge.

The SRO should appoint an independent regulatory body composed of representatives from industry, academia, government, and regulators. Their key responsibilities include oversight and ensuring the alignment and adherence to the code of ethics by platforms. They are required to address grievances which have not been resolved by platforms and hear appeals filed by complainants against decisions taken by platforms.

If a platform fails to comply with the guidance or advisories of the self-regulating body within the stipulated time, the self-regulating body shall refer the matter to the Oversight Mechanism.

- Level III – Oversight mechanism by central government (Brings more accountability to the SRO mechanism)

The oversight by the nodal agency must coordinate and facilitate the adherence to the Code of Ethics by platforms and self-regulating bodies, develop an Oversight Mechanism, and perform the following functions -

- o- recognise SROs that meet the eligibility criteria
- o- refer to the grievances arising out of the decision of the self-regulating body, or where no decision has been taken by the self-regulating body within the specified time period, or such other complaints or references relating to violation of Code of Ethics
- o- issue appropriate guidance and advisories to platforms and SROs
- o- issue orders and directions to the platforms and SROs for maintenance and adherence to the applicable laws and Code of Ethics.

9. The scope of power of Self-Regulatory Organisations and the methods of grievance escalation by consumers are to be clearly defined by nodal agency in their set of rules.

10. The government should also consider

capturing insights on consumer and player complaints received on online gaming platforms. The number of complaints received in a given period can determine the devolution of powers of a regulating body and the most effective way to resolve it.

Conclusion

We would recommend the identification of a nodal agency to formulate a framework that lays down rules for a self-regulatory mechanism as defined above after deliberations conducted by the Inter-Ministerial Task Force along with inputs from stakeholders. The industry/gaming associations can then volunteer themselves to be centrally recognised as self-regulating organisations, which will ensure more effective dispute resolution and protection of consumer rights.

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