

VICTIMS OF THE VIRTUAL VORTEX: REGULATING THE VIDEO GAME INDUSTRY IN INDIA

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A*bstract*—Due to the advent of globalisation, technology has become easily accessible. In concurrent times, most traditional games and leisure activities for children have been substituted by video games since children mostly use sophisticated gadgets for recreation. The graphical depictions used in this media have become increasingly realistic and prove to be highly influential in a person's life. Hence, it is imperative to regulate what is being depicted in such video games and prevent the citizens of our country, especially the youth, from being swayed by any ostentatious content. This revolution in the video game industry, therefore, demands a coherent and effective law. The paper talks about the contemporary video game industry in India and evaluates the imposition of bans on various games in the recent past. The paper further attempts to analyse the various effects that video games have had on the Indian populace. Further, the existing legislations in force, which attempt to regulate the video game industry, are discussed along with the legislations prevalent across the world. The comparison of Indian laws with those of other countries depicts the lack of regulatory systems in our country and the need for a renaissance in the video game industry. This academic venture investigates how video games can be regulated in a more stringent and effective manner, and proposes solutions for the same. The purpose of this article is to analyse the present measures used in regulating video games' content worldwide and to suggest possible remedies suitable for the Indian scenario.

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INTRODUCTION

A video game is an electronic game in which players control the images displayed on a video screen. It is a form of entertainment consumed via interaction; hence, it is more impactful than ordinary forms of media like films and music. Gaming can be classified into casual gaming and gambling. Casual gaming is a category where the aim of the game is not to bet but to engage merely in a leisure activity. Casual video gaming has proved to be one of the most widespread means of entertainment and recreation for the common public, and has taken gaming experience from traditional board games to online and mobile platforms. A video game is an important media which not only disburses information to players through the game but also facilitates their active participation. It is a social instrument with the potential to mould the players' outlook and personality. The heightened popularity of these games makes it imperative to assess their content and effects through a thorough study of the characters and themes that these games propagate.⁸⁶

VIDEO GAMING INDUSTRY IN INDIA

Video gaming in India, predominantly, encompasses PC gaming, mobile gaming and console gaming. With a turnover of over \$890 million, India is one of the top five countries in the video game sector around the world.⁸⁷ With only 25 video game development companies in 2010, the country has now more than 250 such companies.⁸⁸ The digital revolution and existence of the internet along with various media has helped the video game culture to spread to every nook and corner of the nation. Among a plethora of choices available to people, violent video games are the ones which are the most popular, especially among

⁸⁶ Tracy L Dietz, 'An Examination of Violence and Gender Role Portrayals in Video Games: Implications for Gender Socialization and Aggressive Behaviour' (March 1998) *Sex Roles* 445 <www.researchgate.net/publication/255617498_An_Examination_of_Violence_and_Gender_Role_Portrayals_in_Video_Games_Implications_for_Gender_Socialization_and_Aggressive_Behavior> accessed 30 January 2020.

⁸⁷ Suparna Dutt D'Cunha, 'How Digital Gaming in India is Growing Up into a Billion-Dollar Market' (*Forbes*, 9 March 2018) <www.forbes.com/sites/suparna-dutt/2018/03/09/how-online-gaming-in-india-is-growing-fast-into-a-billion-dollar-market/#54d973de55b6> accessed 28 January 2020.

⁸⁸ D'Cunha (n 87).

children. With the growing popularity of video games and the entry of foreign companies in the video game market, which though is proving to be beneficial for revenue on one side, it is raising concerns on the other. Such concerns include the possibility of interactive violence, exposure to obscenity, hurting religious sentiments and inciting violence through controversy.

India is a highly diverse nation, and therefore what might offend one section of the society might be welcomed in some other section. In 2014, copies of a video game called 'Dragon Age: Inquisition' containing homosexual content were removed from the shelves of video game stores. The protagonist of the game had homosexual tendencies. Homosexual relations were criminalised under Section 377 of the Indian Penal Code, 1860 (only to be struck down in the judgment of *Navtej Singh Johar v Union of India*),⁸⁹ and hence, the game suffered a heavy backlash. Electronic Arts justified the withdrawal of the game under the pretext of 'breach of local content laws.'⁹⁰

Another game called 'Overwatch', caused discord in India as one of the characters of the game called 'Symmetra' had an option of donning a 'devi' skin which helped it transform into a character with close resemblance to the Hindu goddess Kali. While her characterisation was not a close replica of the goddess, a few elements like her skull decoration and blue skin were identical. The characterisation of the game was highly inappropriate and it trivialised one of the most revered goddesses in Hinduism. The move of banning this game in the country reflects the Indian stand that reimagining scriptures, symbols, concepts and deities for commercial agenda will not be condoned. Another game that was banned for the use of religious characters is 'Smite'. It included characterisation of three Hindu deities - Kali, Agni and Vamana. It was also contended that it was offensive to portray that a player god is in control of a player.

'Pokémon Go', an augmented reality mobile game was also challenged and a PIL was filed against it in the Gujarat High Court, following which notices were sent to the Central Government, State Governments and Niantic, Inc., a US-based software development company.⁹¹ The game had

⁸⁹ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 : AIR 2018 SC 4321.

⁹⁰ Nathan Grayson, 'EA Says India won't Get Dragon Age: Inquisition Due to Obscenity Laws' (*Kotaku*, 17 November 2014) <<https://kotaku.com/ea-says-india-wont-get-dragon-age-inquisition-due-to-o-1659754229>> accessed 30 January 2020.

⁹¹ Maulik Pathak, 'Pokémon GO: Gujarat HC Issues Notice for Hurting Religious Sentiments' (*LiveMint*, 7 September 2016) <www.livemint.com/Consumer/K11L09ZNjleqqMOpCs1ZEJ/Pokemon-Go-is-blasphemous-Gujarat-court-told.html> accessed 28 January 2020.

come into question for hurting the religious sentiments of certain communities by displaying images of eggs in their holy places. The petitioner alleged that images of eggs in places of worship are disrespectful to religions propagating vegetarianism. In this game, players had to get virtual eggs from 'stops' including temples, to hatch them and collect a new 'Pokémon'. The petitioner pleaded that showing non-vegetarian food in places of worship is irreverent to the religious beliefs of Hindus and other communities. Even privacy and security concerns were raised regarding the game.⁹²

One of the most widely played video games, Player Unknown's Battlegrounds (hereinafter 'PUBG') is an online multiplayer video game which involves players fighting for survival by killing other players. This game was, however, banned by the State Government of Gujarat for some days under the pretext that the game can lead to violent behaviour among children and adversely affect their studies.⁹³ The National Commission for Protection of Child Rights (hereinafter 'NCPCR') has recommended barring the game due to its violent nature, and the Delhi Commission for Protection of Child Rights (hereinafter 'DCPCR') has even issued an advisory against PUBG saying that it has a harmful, negative and adverse impact on the young minds of our country.⁹⁴

IMPACT ON THE SOCIETY

A study indicated that children who played more violent video games early in their school years tend to see the world more aggressively and became more aggressive, both verbally and physically. Additionally, interactive forms of media violence, like video games, were more strongly related to violent behaviour than exposure to non-interactive media violence like films and music.⁹⁵

In recent days, there has been a sharp rise in the creation of content consisting of extreme graphic violence, obscenity and controversy. This, in turn, has resulted in several undesirable outcomes like de-sensitisation to violence, dehumanisation and interference with the development

⁹² Pathak (n 91).

⁹³ Abhijit Ahaskar, 'Why Playing PUBG Mobile Can Get You Arrested in Gujarat' (*LiveMint*, 18 March 2019) <<https://livemint.com/news/india/why-playing-pubg-mobile-can-get-you-arrested-in-gujarat-1552849965539.html>> accessed 4 February 2020.

⁹⁴ Udit Verma, 'PUBG Banned Again and this Time it Probably won't be the Only One' (*Business Today*, 12 July 2019) <www.businesstoday.in/technology/news/pubg-banned-jordan-fortnite-ban-battle-royale-mobile-india/story/363743.html> accessed 4 February 2020.

⁹⁵ Craig A Anderson, Douglas A Gentile and Katherine E Buckley, *Violent Video Game Effects on Children and Adolescents: Theory, Research and Public Policy* (OUP 2007).

of mature empathy. De-sensitisation to violence has been defined as an unconscious process that results in the reduction or eradication of cognitive, emotional and resultantly behavioural responses to a violent stimulus.⁹⁶ Such repeated exposures to violence for a long period results in de-sensitisation.

In ‘Grand Theft Auto: Vice City’, a player can participate in the act of prostitution by paying a certain amount of money and then get his money back from the prostitute by killing her. This is accompanied by spurting blood and agonising audio clips. The person playing the game slowly loses sensitivity for violence and fails to retain his sense of empathy. An avid player of this game, Devin Moore, a teenager who was under police custody for an alleged car theft, forcefully snatched a police officer’s pistol and fired the arm, resulting in the death of three people. The teenager then got into a police car and sped away. Later, he told the police, “Life is like a video game. You have to die sometime.”⁹⁷

Moreover, due to the absence of sympathy and perspective taking, the moral development of children exposed to high amounts of violence in video games is retarded to a considerable extent. These children exhibit immoral reasoning and acute moral disengagement. Moral disengagement is the process of convincing one’s self that ethical standards do not apply to oneself in a particular context.⁹⁸

Another infamous game, ‘Blue Whale’, is known for creating a ruckus and proving to be a black sheep for the video game industry. It was a game in which the player was asked to perform certain tasks; the final of which was to commit suicide. Philipp Budeikin, the creator of this game, stated that his purpose behind creating this game was to clean the society by pushing to suicide those he deemed as having less or no value.⁹⁹

Apart from the effects like lack of development of empathy and morality, increased aggression and adverse behaviour due to video games

⁹⁶ JB Funk, ‘Aggression and Psychopathology in Adolescents with a Preference for Violent Electronic Games’ (2002) 28(2) *Aggressive Behaviour* 134.

⁹⁷ Monica K Miller, ‘Content Analysis of the 18-Year Evolution of Violence in Video Game Magazines’ (2009) *J of Crim Justice and Popular Culture* <www.researchgate.net/publication/254410066_Content_Analysis_of_the_18Year_Evolution_of_Violence_in_Video_Game_Magazines> accessed 27 January 2020.

⁹⁸ Mirjana Bajovic, ‘Violent Video Gaming and Moral Reasoning in Adolescents: Is there an Association?’ (2013) 50(3) *Educational Media Intl* 177.

⁹⁹ Akash Jaini, ‘Meet the 22-Year-Old Creator of the ‘Blue Whale’ Death Game’ (*The Times of India*, 2 August 2017) <<https://timesofindia.indiatimes.com/india/meet-the-22-year-old-creator-of-the-blue-whale-death-game/articleshow/59860662.cms>> accessed 1 January 2020.

usually arises from a combination of traits. These traits fall into two categories.¹⁰⁰ Firstly, it includes interpersonal-affective deficits like social efficacy, pathological lying and manipulative behaviour. As a result, people develop tendencies to stay away from social interactions and isolate themselves from other people due to which they fail to create close relations with their friends and family. Secondly, they are more prone to take impulsive actions, show reckless behaviour and exhibit immediate reward-seeking tendencies. The exposure to violent video games also results into a high risk of delinquency. Even though the strongest predictors of delinquency are pre-existing deficits, such children may be affected more by the use of violent video games which may ultimately result into a higher likelihood of the expression of adverse behaviour.¹⁰¹

EXISTING LEGISLATIONS, VIOLATIONS AND PENALTIES

There is no statutory provision in India for the regulation of video games. Nevertheless, some laws do regulate video games. Article 19 of the Indian Constitution guarantees that all citizens shall have the right to freedom of speech and expression, however, this right is subject to Article 19(2), which restricts the freedom of speech and expression in the interest of decency and morality. As the creation of video games falls under the freedom of expression, regulation regarding the restriction of its sale must stand up to a test of ‘compelling state interest’. If the Court does find that a claimed right is entitled to protection as a fundamental right, a law infringing it must satisfy the compelling state interest test. Then, the question would be whether a state interest is of such paramount importance as to justify an infringement of the right.¹⁰² The general compelling interest advanced by states is that they want to prevent children from suffering the negative effects of playing video games, such as violent behaviour, depression, isolation, de-sensitisation etc. However, the onus to prove this lies on the shoulders of the state which must demonstrate that the recited harms are real, not merely conjectural, and that the regulation will in fact alleviate these harms directly and materially.¹⁰³

¹⁰⁰ Robert D Hare, *Hare Psychopathy Checklist-Revised PCL-R* (2nd edn, Pearson Clinical 2003) 231.

¹⁰¹ Hare (n 100).

¹⁰² *Gobind v State of MP* (1975) 2 SCC 148 : AIR 1975 SC 1378.

¹⁰³ Gregory Kenyota, ‘Thinking of the Children: The Failure of Violent Video Game Laws’ (2008) 18(3) *Fordham Intellectual Property, Media and Entertainment LJ* <<https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1410&context=iplj>> accessed 29 January 2020.

The Directive Principles of State Policy provide that children must be given the facilities to develop in a healthy manner in conditions of freedom and dignity, and childhood and youth be protected against exploitation, and moral and material abandonment.¹⁰⁴ In special circumstances, this constitutional provision can be invoked to seek directions from the High Courts or the Supreme Court of India, for issuing appropriate directions to the government agencies, to prohibit violations, or for the enforcement of legislation where such agencies are inactive.

The Indian Penal Code, 1860 (hereinafter 'IPC'), penalises the sale, publication and distribution of obscene content. It also prohibits the sale, hire, distribution, exhibition and circulation of any obscene object, and penalises any person who engages in or advertises or promotes or offers or attempts to do any obscene activity.¹⁰⁵ A wide interpretation of 'obscene object' can result into bringing, inter alia, the sector of video games in its ambit. Section 293 of the IPC is a special provision dealing with the sale of obscene objects to persons under the age of 20. The punishment prescribed under section 292 is imprisonment for a term which may extend to two years and fine which may extend to two thousand rupees. The punishment prescribed under section 293 is imprisonment which may extend to three years and fine which may extend to two thousand rupees.

The Information Technology Act, 2000 (hereinafter 'IT Act'), also contains penal provisions for the transmission of obscene content or sexually explicit material in electronic form. Section 67 provides that any material which is lascivious or appeals to the prurient interest or which may deprave and corrupt persons would be considered obscene, and would be punishable under the IT Act. Similarly, section 67A provides that any material in electronic form, which contains sexual act or conduct, shall be punishable under the Act. Section 67 provides for imprisonment which may extend to three years and fine which may extend to five lakh rupees whereas Section 67A provides for imprisonment which may extend to five years and fine which may extend to ten lakh rupees.

The Indecent Representation of Women (Prohibition) Act, 1986, punishes the indecent representation of women, which means the depiction in any manner of the figure of a woman, her form or body or any part thereof in such way as to have the effect of being indecent, or derogatory to, or denigrating women, or is likely to deprave, corrupt or injure the public morality or morals.¹⁰⁶ Section 4 prohibits any person from selling,

¹⁰⁴ Constitution of India 1950, art 39(f).

¹⁰⁵ Indian Penal Code 1860, s 292.

¹⁰⁶ Indecent Representation of Women (Prohibition) Act 1986, s 2(c).

distributing or circulating any film, photograph or representation of the figure, which contains indecent representation of women in any form. The punishment includes imprisonment which may extend to two years and fine of two thousand rupees for the first conviction, and in the event of a second or subsequent conviction, imprisonment for a term of not less than six months but which may extend to five years and fine not less than ten thousand rupees but which may extend to one lakh rupees.

The Young Persons (Harmful Publications) Act, 1956, was introduced to prevent the dissemination of certain publications, which are considered harmful to young persons. It defines ‘young person’ as a person, who is under the age of twenty years. ‘Harmful publication’ has been defined as any book, magazine, leaflet, news-paper or other similar publication which consists of stories told with the aid of pictures or without the aid of pictures or wholly in pictures. These stories must portray wholly or mainly - the commission of offences, or acts of violence or cruelty, or incidents of a repulsive or horrible nature in such a way that the publication as a whole would tend to corrupt a young person into whose hands it might fall, in any manner.¹⁰⁷

LAWS AROUND THE WORLD

Despite the above-mentioned legislations, India needs sector-specific legislations relating to the video game industry. Several attempts have been made all over the globe in doing so. In the United States, a voluntary content rating system has been imposed which requires all video games to include a rating level. The Entertainment Software Rating Board (hereinafter ‘ESRB’) is a self-regulatory body that assigns ratings to video games and apps so that parents can make informed choices. The ESRB rating system encompasses guidance about age-appropriateness, content and interactive elements. It has developed ratings ranging from ‘E’ (everyone), ‘E 10+’ (everyone above the age of 10), ‘T’ (teenagers), ‘M’ (mature, i.e., above the age of 17) and ‘AO’ (adults only).¹⁰⁸ The ESRB rating system for video games has also been voluntarily adopted by Canada and Mexico.

In Argentina, the National Council of Children, Youth and Family, along with the National Institute of Cinema and Audio-Visual Arts, assigns age ratings. The law provides that along with appropriate qualification manufacturers and/or importers of video games must place a label

¹⁰⁷ Young Persons (Harmful Publications) Act 1956, s 2(a).

¹⁰⁸ ‘The Entertainment Software Rating Board Ratings’ (*The Entertainment Software Rating*) <www.esrb.org/ratings/> accessed 28 January 2020.

on the video game package warning the consumer that over-exposure is harmful to health.¹⁰⁹ There exist three ratings - suitable for all public, suitable for those above 13 years of age and suitable for those above 18 years of age.

In Australia, the Australian Classification Board (hereinafter 'ACB') is responsible for the classification and censorship of video games. There exist three classification categories – advisory classification, restricted classification and refused classification. Under advisory category of classification, there are no legal restrictions on video games and include 'G' (general, i.e., the content is very mild in impact), 'PG' (parental guidance, i.e., the content is mild in impact) and 'M' (mature, which is for 15 years or older). The restricted category of classification includes 'MA 15+' (mature accompanied, i.e., the content is strong in impact and the child should be accompanied by an adult), 'R 18+' (restricted, which is for adults only) and 'X 18+' (restricted to adults and contains sexually explicit content). Under the refused category of classification, all those video games are included which are banned by the Australian Government.¹¹⁰

In Europe and Israel, a content rating system known as the Pan European Game Information (hereinafter 'PEGI') is constituted. It is one of the most holistic and widely inclusive video game content rating agencies to be developed. PEGI has five age categories – '3+' (suitable for all ages), '7+' (possible frightening scenes or sounds), '12+' (possible mild graphic violence), '16+' (realistic violence and possible mild sexual content) and '18+' (restricted to adults only). A unique feature regarding PEGI is that it has included content descriptions for an in-depth classification and parental convenience. Some of the content descriptors are violence, fear, bad language, sex and drugs.¹¹¹

In Indonesia, the Indonesian Ministry of Communication and Informatics has set up an official video game content rating system known as the Indonesian Game Rating System (IGRS). This system classifies content based on alcohol, drugs, violence, sexual content and language used in the game. The classifications are 'SU' ('Semua Umur' or universal), '3+', '7+', '13+' and '18+'.

¹⁰⁹ *Ministerio de Justicia v Derechos Humanos* (Law 26043, 2005) <<http://servicios.infoleg.gob.ar/infolegInternet/verNorma.do?id=107891>> accessed 29 January 2020.

¹¹⁰ 'What's Ok for Children?' (*Department of Infrastructure, Transport, Regional Development and Communications, Australian Government*) <www.classification.gov.au/Public/Resources/Pages/Parents.aspx> accessed 30 January 2020.

¹¹¹ 'PEGI Age Ratings' (*PEGI*) <<https://pegi.info/page/pegi-age-ratings>> accessed 28 January 2020.

A country as semi-developed as Iran also wears the badge of having a well laid out system of rating video games. Entertainment Software Rating Agency (hereinafter 'ESRA') of Iran classifies video games in age categories like '3+', '7+', '12+', '15+' and '18+'. In assigning an age rating and content descriptors to games, ESRA considers the following four game characteristics - physical, intellectual or mental, emotional and social.¹¹²

In Japan, two video game rating systems are constituted - the Ethics Organisation of Computer Software (hereinafter 'EOCS') and the Computer Entertainment Rating Organisation (hereinafter 'CERO'). The EOCS rates adult PC games and the CERO assigns age ratings and content descriptors to all other video games. The EOCS separates the games that it rates into two categories: those only suitable for people aged fifteen and older and those only suitable for people aged eighteen and older, but both ratings apply to games that have explicit adult-oriented content. The CERO's rating system, on the other hand, assigns one of these five letters as age ratings - A, B, C, D and Z - to the games it rates, and affixes any of the nine content descriptor icons that it deems appropriate.¹¹³

FURTHER NEED FOR REGULATION IN INDIA

Man, as a rational being, desires to do many things, but in a civil society, his desires will have to be controlled by the exercise of similar desires of other individuals.¹¹⁴ In a country as diverse as India, mental faculties can be exploited limitlessly and a man can create a myriad of things with the support of science, technology and human imagination. But this creative blossom should not compromise the mental well-being of the young minds in our society. Every expression in our country needs to have certain reasonable restrictions imposed by the virtue of State regulations.¹¹⁵ These restrictions are imposed through censorship, which is traditionally prevalent in India.

Obscenity or violence in films is censored via the Central Board of Film Certification. Freedom of the press has been restricted by the

¹¹² Iran Computer and Video Games Foundation, 'Home' (*IRCG*, 2007) <<https://ircg.ir/>> accessed 28 January 2020.

¹¹³ Alan Wilcox, 'Regulating Violence in Video Games: Virtually Everything' (2011) 31(1) *J of the National Association of Administrative L Judiciary* <<https://digitalcommons.pepperdine.edu/cgi/viewcontent.cgi?article=1006&context=naalj>> accessed on 28 January 2020.

¹¹⁴ *AK Gopalan v State of Madras* AIR 1950 SC 27 : 1950 SCR 88.

¹¹⁵ Constitution of India 1950, art 19(2).

defamation laws in the country. Books, dramas, music and paintings are subject to being censored or banned if they contain any objectionable content. Objectionable content has been interpreted as any content which contains indecency, immorality, or which threatens the unity, integrity, security or sovereignty of India, friendly relations with foreign states or public order.¹¹⁶ However, it is evident that the video game industry in India is largely untouched by the legislature or the judiciary with regards to enacting legislations, judicial pronouncements or restricting the creation of adverse content in any other manner. The researcher suggests the following measures, in increasing order of formality, to bring regulation in the video game industry.

PARENTAL CONTROL

The least restrictive measure that can be implemented is leaving regulatory responsibility on the shoulders of parents. Before the advent of content rating agencies, this was the prevalent method. Under this method, it was entirely the parents' prerogative to monitor their child's activity. For this method to work, it is imperative that parents have a certain level of understanding of video games. This method requires them to make informed choices regarding the purchase and usage of video games and then install appropriate controls.¹¹⁷ However, in India, at present, there is little to no awareness among parents about the types of video games available in the market, and therefore, such regulation becomes tedious or non-existent.

While such a parental imposition is a little far-fetched in the present times, it may prove to be highly effective in the modern generation of people who have grown up as gamers. Gamer parents will potentially be better informed of the types of games available, the content present in such games and the effects that various types of games can have on children than the generations of parents who grew up without video games.¹¹⁸ As such, gamer parents would be in a better position to make informed decisions regarding the potentially violent video game content that their children are exposed to. The Supreme Court has observed:

“The future of the country depends upon proper upbringing of the children and giving them proper training to turn out to be good citizens. The future of any nation depends upon the degree of protection it

¹¹⁶ Information Technology (Intermediary Guidelines) Rules 2011, s 3(i).

¹¹⁷ Wilcox (n 113).

¹¹⁸ Wilcox (n 113).

*assures to the children. It is, therefore, essential to identify the factors that may come in the way of the progress and prosperity of children.*¹¹⁹

Therefore, our highest priority should be to invest in the progress and prosperity of children in a holistic way which can primarily be done by the parents of the children. In *Ginsberg*,¹²⁰ the court held that constitutional interpretation has consistently recognised the parents' claim to authority in their own household and that directing the rearing of their children is basic in the structure of our society. This view is wide enough to put the onus of authority on parents to oversee and regulate what video games the children are being exposed to.

INDUSTRY REGULATION

Another recourse that can be availed is industry regulation. Unfortunately, this concept is non-existent in India. The author believes that the video game industry itself should make efforts to mitigate the harmful effects of video games on citizens. A body or a voluntary organisation should be constituted in this regard, consisting of manufacturers who make video games. In this body, it shall be ensured that the members adhere to a mandated code of conduct. This code of conduct shall contain directives or guidelines for creating, manufacturing, producing, distributing, licensing and censoring of content. Adherence to these rules and regulations will effectively keep a check on the standards of gaming products created by the video game manufacturers. The body shall set short-term and long-term agendas by way of voting and shall have the exclusive right to create rules for the industry players. This right of creating rules shall be supplemented with a duty to impose sanctions or penalties by way of fines, revocation of manufacturing licence, or membership cancellation. This body shall develop content rating agencies and effectively censor graphics and language in video games. It shall also device comprehensive ratings or labels that provide information on the packaging of video games directly and simply. This will keep the buyers of the video games better informed regarding the nature, category and the age-appropriateness of the same.

The reason behind the author recommending this recourse is because a video game manufacturer has greater familiarity with its product than a governmental agency. The author believes that a self-regulatory body

¹¹⁹ *Sheela Barse v Children's Aid Society* (1987) 3 SCC 50.

¹²⁰ *Ginsberg v State of New York* 1968 SCC OnLine US SC 78 : 20 L Ed 2d 195 : 390 US 629 (1968).

can also reinforce and provide assistance to the existing governmental agencies. This also provides greater incentive for compliance as individual companies are more likely to view self-imposed rules as reasonable. However, a self-regulatory body could suffer from the disease of weak enforcement as violations might be ignored by the big players of the industry and regulations would be subverted in the name of collective interest.

LEGISLATION

The author believes that regulation of video games through the enactment of a single central legislation is the most effective recourse available to the country. An independent legislation should come into force, which would address the issues of regulation and prohibition of video games in India. A 'Video Game (Regulation and Prohibition) Act' should be enacted, with the primary objective of making provision for certification of video games, regulating its production and usage, and matters connected therewith. The Central Government, through this legislation shall establish a 'Video Game Certification Board' which shall, after detailed scrutiny and examination, sanction a 'Certificate of Release' to the manufacturers for the production and sale of video games. This board would act as a content rating agency by sanctioning appropriate certification which will be given on the basis of factors like age-appropriateness, intensity of violence or obscenity, adherence to community guidelines, degree of sexually explicit content, usage of abusive language etc. After the consideration of aforementioned factors, a grade would be issued on the certificate of release. A video game shall not be certified for public release if, in the opinion of the board, the video game or any part of it is against the interests of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, decency or morality, or it involves defamation or contempt of court or is likely to incite the commission of any offence.¹²¹ This board shall consist of a panel of experts from various industries like gaming, media, healthcare and education. The panel, inter alia, will also comprise of psychologists, sociologists, veteran video game developers, educators and IT experts. If certification is denied to any person, the person will have a remedy to voice his grievances to a higher authority. For the purposes of hearing appeals against the board, an appellate tribunal should also be constituted by the Central Government. Any further appeal against the decision of the tribunal can lie before a high court. However, the various game rating systems used around the world is enough evidence to prove that different groups of people have radically different ideas on what is and what

¹²¹ Cinematograph Act 1952, s 5(b)(1).

is not appropriate content for people to be exposed to.¹²² For example, from the classification of age appropriateness, it is clear that Germany is more lenient towards sexual content in video games than the USA. Additionally, India is less tolerant than the USA when the question of inclusion of abusive language arises in video games.

Even the Miller Test for obscenity, given by the US Supreme Court says that the work shall be termed as ‘obscene’ if: (a) an average person, applying contemporary community standards, finds it appealing to the prurient interest; (b) the work depicts or describes, in a patently offensive way, sexual conduct or excretory functions specifically defined by the applicable state law; and (c) the work, taken as a whole, lacks serious literary, artistic, political or scientific value.¹²³

The first part of the Miller Test reflects on the idea that obscenity or any other negative effect is not universal in nature, but is highly subjective in nature. Contemporary community standards of each state in India highly differ from each other. For example, Kerala (literacy rate of 93.91%) would need different set of regulations than Bihar (literacy rate of 63.82%) or Telangana (literacy rate of 66.5%).¹²⁴ Delhi, with the highest crime rate in the country needs more stringent regulations than Lakshadweep.¹²⁵ If proper research were conducted prior to enacting such legislation, each state’s regulatory scheme could be tailored to the beliefs and behaviour of its citizens.¹²⁶ Hence, the author believes that the state legislatures should be given the freedom to design their own laws, keeping in mind the larger interests of the country.

However, it should be noted that if every state began enforcing different laws on video game ratings and restrictions on sale or advertisement, the video game industry could come to a halt as the video game creators would be confused and overwhelmed by the discrepancies between various jurisdictions. Therefore, the author suggests that the state legislatures should be required to carry out only the crucial and essential amendments, without deviating substantially from the objectives of a parent legislation.

¹²² What’s Ok for Children? (n 110).

¹²³ *Miller v State of California* 1973 SCC OnLine US SC 156 : 37 L Ed 2d 419 : 413 US 15 (1973).

¹²⁴ ‘2011 Census Data’ (Census India 2011) <<http://censusindia.gov.in/2011-Common/CensusData2011.html>> accessed 30 January 2020.

¹²⁵ National Crime Records Bureau, Government of India, ‘Incidence and Rate of Violent Crimes During 2014’ (National Crime Records Bureau) <https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%203.1_2014.pdf> accessed 30 January 2020.

¹²⁶ Wilcox (n 113).

CONCLUSION

Regardless of one's opinion of them, video games undoubtedly cause an impact on the minds of gamers. Hence, there is a responsibility on the shoulders of the video game developers to create and publish gaming content which does not adversely affect the well-being of gamers. The author, in this paper, has proposed a solution which covers all aspects relating to the video game industry. Firstly, parental control gives each parent the freedom to raise their child the way they want without any societal pressure. However, due to inhibitions like low literacy rate and low awareness, such a proposition, in itself, may not be enough and prove to be utopian in nature. Secondly, the aspect of industrial self-regulation encourages the video game developers to comply with the self-imposed standards of creation, production and distribution of video games and also create a healthy competition between the companies. This does not imply that the Government is exempted from any responsibility towards the welfare of the society. Moreover, through the working machinery of the state, strict laws can be enforced along with strict penalties in case of violations.

Therefore, the need for an enactment of a comprehensive piece of legislation is of utmost importance as it will not only protect the interest and well-being of gamers but also give a force of law to the requirement of regulation. The author strongly believes that these recommendations are complementary to each other and are not to be treated in isolation. A harmonious and cohesive solution lies in applying all the suggestions in perfect coordination with each other.

Today, the video game industry in India is in its nascent stage. Hence, it is the right time to mould its advent in such a way that the content of the video games does not harm the impressionable minds of gamers and is in greater consonance with the progress of our country.