

THE GAMING GLITCH: A DEARTH OF VIDEO GAMING LEGISLATION IN THE DIGITAL INDIAN GAMING ECOSYSTEM

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***A**bstract—Institutions must be effectively empowered and managed to serve as enablers. Reflecting on this comment births the need for regulations. Cicero said that law is “the highest reason implanted in nature.” The edifice of development will cease to exist if the various influential factors surrounding humans go unregulated. One such factor making great strides as a recreational, educational, and simulation tool is the format of video games. Video games enjoy a cosmic consumer base in India with the industry’s added benefit of regulatory fluidity and unaccountability. Violent gameplay, duping, and addictive behaviours are becoming increasingly popular, raising concerns among parents, researchers, and policymakers about their potentially harmful effects. This puts us in a unique position as a country. With the lack of regulation concerning this industry, there is an opportunity to frame creative and encompassing pieces of legislation to identify the medium’s utility. This study examines the lack of legislation on digital games in India and provides recommendations for improving the video gaming industry.*

Keywords: Video gaming, regulation, legislation, gambling, paternalism.

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AN INTRODUCTION TO THE GAMING INDUSTRY IN INDIA

The gaming industry in India is snowballing at a phenomenal pace faster than most media sub-sectors, including cinema, television, and music. According to a report by BCG-Sequoia India,¹ the Indian gaming industry is generating USD 1.5 billion in revenue, which is expected to triple to over USD 5 billion by 2025. Digital games are being viewed as a means of more than just recreation, spilling over to various essential sectors such as education, governance, healthcare, and administration. Moreover, initiatives like Swatch Bharat Abhiyan and Skill India are endorsing their gamification.² Between 2014 and 2020, venture capital firms have invested almost USD 350 million³ in India's gaming business, with a sharp increase in homegrown brands and foreign investment. Marquee investors such as Sequoia, Alibaba, Softbank, and Tencent already have significant investments in Indian gaming start-ups. Additionally, funds like Lumikai have mushroomed with a specific focus on the Indian gaming ecosystem, making India a member of the top 10 gaming markets' club.⁴

Mass internet penetration and the advent of affordable smartphones have acted as catalysts for the amplification of casual gaming in India. A 2018 study⁵ highlights that the gaming industries in the United States, United Kingdom, and Canada have made a substantial economic impact, thereby incentivizing India with the prospects of massive tax returns, employment opportunities, and tremendous GDP growth.

The gaming industry is a golden goose that could play a crucial role in the development of the country, thereby necessitating a regulatory framework to foster a congenial environment for the gaming companies and other stakeholders. Backward and rigid taxation systems make doing

¹ Vikash Jain and others, 'Mobile Gaming: India's \$5B+ Market Opportunity' (BCG, 23 November 2021) <<https://web-assets.bcg.com/38/14/41fd494a9b84aaa32c47cc92b0/mobile-gaming-market-opportunity.pdf>> accessed 4 February 2022.

² NASSCOM, 'Applied Games in India: The Fun Begins' (November 2016) <<https://nasscom.in/knowledge-center/publications/applied-games-india-fun-begins>> accessed 5 January 2022.

³ Shriya Khanna and Venkatesh Meka 'Online Gaming-India Story Investment Trends' (Maple Capital Advisors, August 2020) <[www.maple-advisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20\(1\).pdf](http://www.maple-advisors.com/Online%20Gaming%20-%20India%20Story%20and%20Investment%20Trends%20(1).pdf)> accessed 25 January 2022.

⁴ 'Gaming and Esports: The Next Generation' (YouGov, 27 October 2020) <<https://commercial.yougov.com/rs/464-VHH-988/images/Global-Gaming-and-Esports-2020.pdf>> accessed 9 January 2022.

⁵ 'Retailing\Gaming Market' (FBI105730, Fortune Business Insights, 2020) <www.fortunebusinessinsights.com/gaming-market-105730> accessed 14 November 2021.

business impractical in India and fatigue investors. The government ought to adjust its strategies to globally acknowledged standards for centring on this emerging industry.

GAMING IN THE TIME OF COVID-19

The video gaming industry has arguably been one of the biggest beneficiaries of the COVID-19 pandemic. With the youth being stranded in their homes and taking refuge in technology, virtual gameplay became the primary source of recreation and entertainment. The four key segments of digital games: casual, fantasy sports, esports, and other e-computations, are either offered free for a freemium or require users to pay as they play. Each of these categories has gathered a large user base with a high consumption rate among the youth. A study conducted by the College of Humanities and Science in UAE to identify the impact of the COVID-19 pandemic and the risk of children's addiction to electronic games revealed the pandemic to be an incendiary for the increase in all types of risks of children's addiction to electronic games.⁶ To mitigate this harmful increase, measures to monitor the content and consumption of electronic games are necessary.

HISTORY OF GAMING LAWS IN INDIA

References to gambling can be found deep-rooted in Indian history and mythology through epics such as Mahabharata, which has a wager at its crux. Laws were formulated even during that era to regulate gambling. For instance, Yagnavalkya,⁷ Narada-Smriti,⁸ and Kautilya⁹ propagated regulation and control of gambling. Owing to the technological advancements over the ages, the idea of gaming has burgeoned from its traditional notion, which was restricted to gambling, wagering, and betting, to include virtual video games.¹⁰ Despite the distaste attached to gambling from a religious and moral perspective, the same has not acted as a deterrent to its perennial allurements. The inclination to self-inflicted damage is at the core of what makes gambling a legal and moral

⁶ Walaa Elsayed, 'Covid-19 Pandemic and its Impact on Increasing the Risks of Children's Addiction to Electronic Games from a Social Work Perspective' (2021) 7(12) Science Direct. <www.sciencedirect.com/science/article/pii/S2405844021026062> accessed 15 February 2022.

⁷ SN Sen, *Ancient Indian History and Civilization* (2nd edn, New Age International, 1999).

⁸ Walaa El sayed (n 6).

⁹ *ibid.*

¹⁰ Law Commission, *Legal Framework: Gambling and Sports Betting Including in Cricket in India* (Report No 276, 2018).

dilemma.¹¹ Currently, the primary central legislation that deals with gambling is the age-old and colonial Public Gambling Act, 1867 read with the Prize Competition Act, 1955. After the promulgation of the Constitution of India, betting and gambling came to be listed under the Seventh Schedule, List II (State List), thereby making it a subject of state monopoly. Consequently, most states have adopted the principles of the Public Gambling Act, 1867 which proved to be problematic and inadequate. With the dawn of the internet and the coming up of various new dimensions of games, the manner and mode of playing games have undergone drastic changes, the scope of which cannot be defined under laws formulated in the 1800s. The technology today has far outpaced the archaic regulations in place. As the gaming laws remain vulnerable, their application to an online format seems perplexing.

PRIMARY DATA

To gain insights into gaming behaviour, the authors conducted an online survey wherein 80 individuals within the age group of 18-25 participated. The culmination of the responses revealed pertinent and fascinating trends concerning the gaming preferences, themes and behaviours which enabled us to reach better informed and balanced results regarding the gaming legislation's requirements. The graphical representation of the results has been added in the subsequent parts.

THE PROBLEMATIC REALMS

There is a lacuna in the functioning and engagement with the video gaming landscape which was brought forth via survey. These glaring incongruities are stymieing the growth and expansion of the digital gaming industry. The lacunas identified are as follows:

THE SKILL V. CHANCE CONUNDRUM

In India, games are distinguished on two grounds, i.e., skill and chance. Games that are predominantly chance-based fall under the category of gambling and are largely prohibited, while games of skill fall outside the ambit of gambling. Fantasy sports, skill-based casual gaming, and social gaming are ordinarily considered to be outside the purview

¹¹ MB Majumdar, *Commentary on the Bombay Prevention of Gambling Act, 1887 (Bombay Act No IV of 1887), as in Force in Maharashtra and Gujarat* (NM Tripathi 1975).

of gambling hence, dividing the 'gaming industry' into two vertices.¹² Games of skill are excluded from the purview of gambling in most states. Still, confusion arises due to varied interpretations of 'game of skill' and its subsequent expulsion from gambling. This puts gaming companies in crosshairs, as it is difficult to paint them separately and concretely according to the different state regulations and interpretations in place, resulting in a loss of opportunity and revenue for gaming companies. For instance, states like Sikkim, Assam, Orissa, Andhra Pradesh, Nagaland and Telangana have their legislation related to gambling. The bulk of these acts, like the Sikkim Online Gaming (Regulation) Act, 2008 and the Assam Game and Betting Act, 1970, do not define gambling or gaming. While in others, like the Orissa Prevention of Gambling Act, 1955 terms like 'gambling' and 'gaming' are used interchangeably, hence blurring the distinction between skill and chance.

STRONG THEME

Strong language, sexual content and nudity often feature in the storyline of many popular games. For instance, Grand Theft Auto V, a game where the player engages in the game from a first-person perspective, includes instances of copulation with prostitutes.¹³ The most popular games that are played currently reference shooting,¹⁴ and are violent which tends to leave a deeper psychological and physical impact on the player, making them socially unequipped over time. Dr Jeanne Funk's research findings published in the Paediatrics Journal of India vouches for the growing enticement of these games with 29% of 7th and 8th graders being more inclined towards sports games with violent graphics and a mere 2% being interested in educational games. Games are thus divulging from their inceptive genus and have instead found their footing as delicate tools, birthing the need for age-appropriate and classified use. The following bar graph is a graphical representation of the responses gathered via an online survey conducted by the authors that vouch for

¹² 'The Curious Case of the Indian Gaming Laws' (*Nishith Desai Associates*, 2019). <www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/The_Curious_Case_of_the_Indian_Gaming_Laws.pdf> accessed 15 January 2022.

¹³ James Cook, 'The New 'Grand Theft Auto' Lets You Have Realistic Sex with Prostitutes' (*Business Insider*, 18 November 2014) <www.businessinsider.in/latest/the-new-grand-theft-auto-lets-you-have-realistic-sex-with160prostitutes/article-show/45192066.cms> accessed 18 February 2022.

¹⁴ 'Most Popular Video Game Genres among Internet Users 2020' (*Statista*, January 2021) <www.statista.com/statistics/1263585/top-video-game-genres-worldwide-by-age/> accessed 15 January 2022.

the nascency¹⁵ of the population when they are first introduced to online games

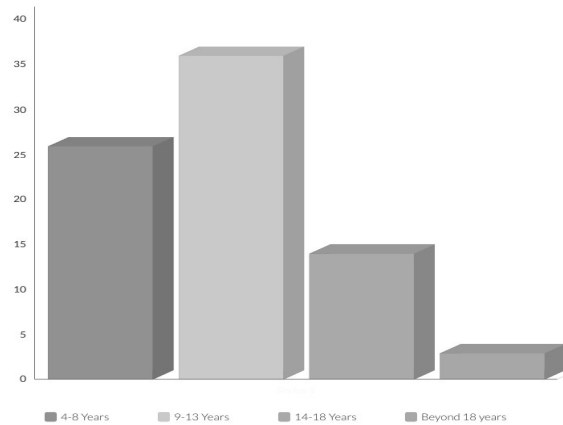


Figure 1: Product of a primary research conducted by the authors, collected via google forms with 80 subjects

In the United States, the Entertainment Software Rating Board (hereinafter “ESRB”) assigns age ratings to games. Within the European Union, games are rated according to the age group by the Pan European Game Information (hereinafter “PEGI”) system. Similarly, the United Kingdom has incorporated PEGI into its legislation and made it legally enforceable on any seller who sells a game to an under aged child. The International Age Rating Coalition (hereinafter “IARC”) administers a global rating system that includes the PEGI and ESRB ratings, as well as ratings used by Australia, Brazil, South Korea, and Germany. Google Play Store primarily employs IARC ratings to rate all its mobile applications.¹⁶ An India-specific rating system is imperative currently as the societal standard for what content is appropriate and acceptable should be defined by the country itself thus, formulating a rating system that is tailored according to the specific requirements of the country.

¹⁵ This data is a product of a primary research conducted by the authors collected, via google forms with 80 subjects.

¹⁶ Ikigai Law, ‘Unpacking a Billion Dollar Industry: Digital Games and Sports in India’ (*Internet and Mobile Association of India*, March 2021) <www.ikigailaw.com/wp-content/uploads/2021/03/IL-and-IAMAI_Digital-gaming-report_02032021.pdf> accessed 27 January 2022.

MICROTRANSACTIONS AND LOOT BOXES

In the case of *Varun Gumber v UT of Chandigarh*,¹⁷ the High Court of Punjab and Haryana opined that Dream 11's format of fantasy sport was a game of skill which was reiterated by the High Court of Bombay in *Gurdeep Singh Sachar v Union of India*.¹⁸ However, when we look at popular video games like PUBG, Star Wars: Battlefront II and Need for Speed: Payback, they entail micro transactions that involve spending small amounts of real money on in-game purchases such as character clothes, character attributes etc. The most popular type of micro transaction is a Loot box, which is a virtual box that contains numerous random items which are valuable to a player. Loot boxes can be viewed through the same lens as gambling since real money is spent to purchase and trade these 'wager boxes'. Research conducted at the University of Plymouth and Wolverhampton found that loot boxes "*are structurally and psychologically akin to gambling*."¹⁹ In 2018, the Belgian Gaming Commission released a report²⁰ which classified gaming loot boxes as gambling. On the same footing, the House of Lords produced a report on gambling where they recommended that the so-called 'loot boxes' in video games should be immediately reclassified by the government to fall under the remit of the 2005 Gambling Act.²¹ The jurisprudence around gaming loot boxes is at the developmental phase; it is only a matter of time before India is faced with similar concerns. Hence, it is essential to create proper segregation between gaming and gambling to avoid marching into legally grey areas.

ONLINE INTERACTIVITY

Video games, throughout the pandemic, were used as a medium to construct human connection in the time of 'social isolation'. Various researches reveal that the number of children engaged in playing video games has increased immensely over the past few years.²² Online inter-

¹⁷ *Varun Gumber v UT of Chandigarh* 2017 SCC OnLine P&H 5372: 2019 SCOR 36716.

¹⁸ *Gurdeep Singh Sachar v Union of India* (2019) 3 AIR Bom R (Cri) 467: (2020) 72GSTR75 (Bom).

¹⁹ James Close & Joanne Lloyd, 'Lifting the Lid on Loot-Boxes' (*University of Plymouth and University of Wolverhampton*, April 2021) <www.begambleaware.org/sites/default/files/2021-03/Gaming_and_Gambling_Report_Final.pdf> accessed 20 January 2022.

²⁰ Philippe Vlaemminck and Robbe Verbeke, 'The Gambling Law Review: Belgium' (*The Law Review*, 9 May 2022) <<https://thelawreviews.co.uk/title/the-gambling-law-review/belgium>> accessed 28 May 2022.

²¹ Committee on the Social and Economic Impact of the Gambling Industry, *Gambling Harm— Time for Action* (HL 2019-2021,79).

²² Maria Anna Donati and others, 'Gaming among Children and Adolescents during the COVID-19 Lockdown: The Role of Parents in Time Spent on Video Games and

activity is a blanket term for how a player experiences the story, environment, mechanics, in-game factors, user-generated content and user-to-user communication.²³ Games like Second Life have high online interactivity as they allow users to create a small world within the larger game system and then this is made publicly available on the game. Features like in-game communication allows a gamer to increase their engagement and team up with people from across the globe to accomplish quests, challenges, or even fight duels. With online streaming and two-way video chat, there is a risk that it could be used for child grooming, duping or terrorist activities.²⁴ According to the survey conducted by the authors, 60% of respondents identified as introverts, and video games provided them with a platform to build a community, with 75% of respondents having made friends online by engaging in conversations with people all over the world, thereby bolstering our argument about the increased risk to personal safety and wellbeing as gamers engage in online conversations. According to the 2021 report of Online Nation published by Ofcom,²⁵ around 70% of 8 to 11-year-olds and roughly 80% of 12 to 15-year-olds surveyed used in-game chat when they played online. The feature was used mostly to communicate with their friends hence aiding in social connections they missed while under lockdown. However, there have been various incidents of bullying and harassment quoted by children; more than half of the children surveyed from the age group of 12-15 said that they had negative online experiences such as being bothered by strangers, being exposed to crude language and sexual innuendo thereby raising concerns about stalking and predatory behaviour by paedophiles and exposing children to possible harassment, hate speech etc.

THE INTERSECTION BETWEEN VIDEOGAMES AND VIOLENCE

There is a widespread disconcert that excessive indulgence in violent video games inculcates aggression, anti-social behaviour, increased impulsivity, and desensitises a gamer to violence. In the past decade, video games have transformed into a very popular mode of entertainment and ergo, there has been an increase in exposure to video games. Anomalous results have been observed with some studies claiming

Gaming Disorder Symptoms' (2021) 18(12) IJERPH.

²³ Department of Communications and the Arts, *Computer Games Content Report* (2019) 39.

²⁴ UNICEF, 'Child Rights and Online Gaming: Opportunities & Challenges for Children and the Industry' (*Children's Rights and Business in a Digital World Discussion Paper Series*) <www.unicefirc.org/files/upload/documents/UNICEF_CRBDigitalWorldSeriesOnline_Gaming.pdf> accessed 25 January 2022.

²⁵ Ofcom, 'Online Nation' (9 June 2021) <2021-report.pdf> accessed 2 February 2022.

that violent video games negatively impact the behaviour and attitude of gamers especially if the gamer is at an impressionable age²⁶, however in contrast, some claim it ameliorates cognitive functions like quick decision-making and increased attentional resources.²⁷ Hence, the debate on the potential ill effects versus the benefits of video gaming remains heated. Copious disconcerting instances relating to gaming compulsion have caught the attention of the world. In South Korea, the police arrested a couple that starved their 3-month-old daughter to death because they devoted all their attention to playing an online game. Ironically, the objective of the game was to raise a virtual character of a young girl successfully.²⁸ In the United States of America, an 8-year-old boy allegedly shot his grandmother after playing Grand Theft Auto IV, a realistic game that has elements of violence just minutes before.²⁹ In India, a 17-year-old boy from Haryana committed suicide after his mother took away his phone since he was constantly playing PUBG.³⁰ In Madhya Pradesh, a 16-year-old boy died of cardiac arrest after spending six hours playing PUBG. The game's exhilaration, according to the examining doctor, may have generated a rush of adrenaline, resulting in cardiac arrest.³¹ The recent multiplicity of these occurrences has pushed countries to come up with regulations about indulgence in video games. Some nations, such as China, have enforced a timescale on playing video games, while others, such as Australia, have ramped up classification boards to categorize games by age group so that parents and children are better informed about the game's contents.

There was a predictable but difficult to name pattern of dependency that was observed in individuals who were experiencing gaming fixation. In May 2019, the World Health Organization officially classified

²⁶ Craig A Anderson and Karen E Dill, 'Video Games and Aggressive Thoughts, Feelings, and Behaviour in the Laboratory and in Life' (2000) 78(4) *Journal of Personality and Social Psychology* 772 <www.apa.org/pubs/journals/releases/psp784772.pdf> accessed 28 January 2022.

²⁷ Daphne Bavelier and others, 'Brain Plasticity Through the Life Span: Learning to Learn and Action Video Games' [2012] *Annual Review of Neuroscience* 391.

²⁸ Mark Tran, 'Girl Starved to Death While Parents Raised Virtual Child in Online Game' *The Guardian* (South Korea, 5 March 2010) <www.theguardian.com/world/2010/mar/05/korean-girl-starved-online-game> accessed 12 February 2022.

²⁹ Lauren Russell, 'Police: 8-Year-Old Shoots, Kills Elderly Caregiver after Playing Video Game' (*CNN*, 26 August 2013) <<https://edition.cnn.com/2013/08/25/us/louisiana-boy-kills-grandmother/index.html>> accessed 19 January 2022.

³⁰ 'Pugb Addiction: Boy Commits Suicide after Being Scolded by Mother' (*Business Today*, 3 April 2019) <www.businesstoday.in/technology/news/story/pubg-addiction-boy-commits-suicide-after-being-scolded-by-mother-184976-2019-04-03> accessed 17 January 2022.

³¹ '16-Year-Old Dies after Playing Pubg for 6 Hours' *Business Standard* (Madhya Pradesh, 30 May 2019) <www.business-standard.com/article/news-ani/mp-16-year-old-dies-after-playing-pugb-for-6-hours-119053000993_1.html> accessed 19 January 2022.

gaming disorder as a mental illness. The decision was based on “reviews of available evidence and reflects a consensus of experts from different disciplines and geographical regions that were involved in the process of technical consultations undertaken by WHO in the process of ICD-11 development.”³² In the case of *Narendra Kumar v Union of India*³³, the Supreme Court attempted to review all the earlier decisions on the subject of ‘reasonable restrictions’ and held that the term ‘restriction’ even extends up to prohibiting something if such a thing shackles the grounds mentioned in Article 19(2). The Blue Whale game is a portent example of a game that shook the ground which has been mentioned in Article 19(2) because it provides a practical representation of how games or seemingly non-threatening things can very much threaten the internal security and the future of a country. A host of countries like Venezuela and Brazil have regulated, censored, or completely banned certain video games due to their gruesome graphics, excessive violence or content that violates the social order or threatens democratic rights, the state, and public security. Closer to home, several Public Interest Litigations have reached the Indian courts³⁴ in relation to the game PUBG. The game was also banned in certain cities of Gujarat as it was said to promote violent traits in children and increased aggression.³⁵ In an advisory released by The Delhi Commission for Protection of Child Rights (DCPCR) several popular games like the Grand Auto Theft series, PUBG, God of War and Pokémon were cited to caution parents regarding the “*harmful, negative and adverse impact on the brain of the children*”³⁶

In 2008, The Indian Censorship Board teamed up with the Ministry of Information and Broadcasting to censor video games. A draft bill was prepared in this regard to restrict the sale of video games to minors (the age bracket was yet to be finalized) additionally, the Censorship Board had the power to ask the game developers to modify game content and in case of non-compliance, the game could be banned in India. It is pertinent to note that no further progress was made in this endeavour. Even though this approach today may be retrograde, it is accurate that a robust

³² ‘Addictive Behaviours: Gaming Disorder’ (*World Health Organization*, 22 October 2020) <www.who.int/news-room/questions-and-answers/item/addictive-behaviours-gaming-disorder> accessed 15 February 2022.

³³ *Narendra Kumar Singh Gaur v Union of India* 1998 SCC OnLine All 112.

³⁴ *HC Arora v Union of India* 2006 SCC OnLine P&H 1492.

³⁵ Trisha Jalan, ‘Gujarat Bans PUBG in 5 Districts Citing Violent Behaviour Among Kids’ (*Medianama*, 11 March 2019) <www.medianama.com/2019/03/223-gujarat-govt-pubg-ban/> accessed 12 February 2022.

³⁶ Government of Delhi, ‘Advisory on Violent Video Games Causing Harmful, Negative and Adverse Impact on the Brain of the Children’ (11 December 2019) <<http://cms4s-school.com/Attachments/RSAd16000007/News/RSAd16000007270220191310032.pdf>> accessed 14 February 2022.

legal framework is important for any industry to prosper, and scrutiny of some calibre is crucial. Gaming companies have repeatedly sought a single regulatory board for online skill games³⁷ and efforts are being taken in the form of campaigns such as ‘games for future’ by bodies like the All India Gaming Federation to create awareness of the potential of the online gaming industry and e-sports.³⁸ Keeping in mind that most players are teenagers or young adults and this is when influences are the tritest, it is all the more important to direct them wisely. Liberal regulation can take us far in the prevention of extremist tendencies in children and adolescents in addition to the preservation of the integrity of the game and its inceptive thought as well. This can be seen as a way to manoeuvre the games to cater to specific audiences with proper and due care and give regard to their societal setup and quirks.

POSITION IN OTHER JURISDICTIONS

Australia

The Australian Classification Board is the authority for classifying games, films, and publications that are intended for sale and advertisement in Australia. It evaluates and classifies games in compliance with the Classification (Publications, Films, and Computer Games) Act 1995 and the National Classification Code (hereinafter “Code”) established under the Act. The board has the authority to give Refused Classification (hereinafter “RC”), a category of classification that can prohibit the sale and advertisement of said RC-rated game in the country. This is because RC-rated material is deemed to have a significant influence and is thus exempt from community rules.

An application can also be filed for the review of the Classification Board’s decision, this operates on a majority-based decision-making process where in the event of an updated decision the same is made publicly available on the website thereby providing gaming companies with the ability to make representations. The classifications provided are advisory and so are not legally binding. The rating system’s goal is to help people make more informed judgments regarding the information they consume.

³⁷ ‘Online Gaming Industry Urges Govt to Setup SelfRegulatory Body for Sector’ (*Business Standard*, 18 January 2021) <www.business-standard.com/article/economy-policy/online-gaming-industry-urges-govt-to-set-up-self-regulatory-body-for-sector-121011801056_1.html> accessed 29 October 2021.

³⁸ Mediawire, ‘Experts Recommend Single Self-Regulatory Body for Online Skill Gaming’ (*The Times of India*, 12 March 2021) <<https://timesofindia.indiatimes.com/business/india-business/experts-recommend-single-self-regulatory-body-for-online-skill-gaming/articleshow/81463088.cms>> accessed 3 January 2022.

A crucial case in the classification history of the country was *Crowe v Graham*.³⁹ The court clarified the meaning of ‘obscene’ and ‘indecent’ by using a ‘community standard test’ rather than a common-law obscenity test to interpret offences against the ‘modesty of the ordinary man.’

Germany

Germany has come up with meticulously stringent rules such as the German Interstate Treaty on Gambling and the constitution of the *Bundesprüfstelle für jugendgefährdende Schriften* to regulate the video gaming industry. It deals with licensing⁴⁰ and demarcation of the extent to which a user and an advertiser can operate. This has brought forth a regime that essentially fosters creativity and freedom in its users, making it an escape from reality. It has allowed private operators to apply for licenses and has also inculcated virtual simulations of Casino⁴¹ games and broadcasts of the same. The participant can thus be freed from the possible compulsive behaviours and addiction without having to lose out on the recreational aspect. It is thus providing and fostering an environment for private operators with requisite stringency via conditions such as security deposits, compliance requisites by the competent authority, live bags, and minimum spin time of 5 seconds,⁴² and the maximum bet of one Euro which has changed the platform’s approach towards video gaming. A range of incentives⁴³ is also provided for traversing through interest-reduced loans, equity capital/financing, networking possibilities, practical support, a wide range of monetary incentives, consulting/expertise, guarantees, and access to regional funding. It further makes diligent distinctions between games that are suitable for different age groups through a localised rating system with the help of *Unterhaltungssoftware Selbstkontrolle*. Such creative provisions if implemented in India would truly change the game. The legislation and policy decisions are proof of the changing times and a need for more innovative pieces of legislature.

³⁹ *Crowe v Graham* (1968) 121 CLR 375.

⁴⁰ Ayvar Gabidullin, ‘Germany’s New Regulations will Finally Allow Online Casino Licensing in 2021’ (*Yogonet*, 2 July 2021) <www.yogonet.com/international/news/2021/07/02/58246-germanys-new-regulations-will-finally-allow-online-casino-licensing-in-2021> accessed 10 November 2021.

⁴¹ Matthias Spitz and Joerg Hofmann, ‘Gambling 2022, Laws and Regulations’ (*International Comparative Legal Guides International Business Reports*, 18 November 2021) <<https://iclg.com/practice-areas/gambling-laws-and-regulations/germany>> accessed 27 December 2021.

⁴² Ayvar Gabidullin (n 4).

⁴³ ‘Gaming Industry’ (*Germany Trade and Invest*, 15 February 2022) <www.gtai.de/gtai-en/invest/industries/creative-industries/gaming-65554> accessed 20 February 2022.

Japan

The Japanese laws have been engulfed with a plethora of defensive legislature to protect the children and youth of the country from the social ineptitude that prolonged gaming invites. The Kagawa government came up with laws to protect and thereby prevent children less than 20 years of age to play video games for more than a prescribed time set by the government given the unshakable bulwark that the constitution of Japan is.⁴⁴ Japan is meticulous with its regulations and has come up with categorisations based on theme, age, and content which is done by plural judges trained by Japan's Computer Entertainment Rating Organization team.⁴⁵

With manga and anime becoming mainstream with the Cool Japan movement, a lot of the video gaming culture is becoming marketable to the global populous and consumer base. Taking a page from the Japanese movement will help India realise its marketable features and help us promote India in a more consumable mainstream manner.

THE UNITED STATES OF AMERICA

The video game business is widely acknowledged as a significant contributor to the American economy. Concerns have been raised about the content and delivery of online games, particularly to minors, as a result of the industry's exceptional but not unexpected rise over the last two decades. The Illinois Sexually Explicit Video Game Law⁴⁶ was an attempt to protect adolescents from the harmful effects of certain video games. Other states have attempted to implement this move, but federal courts have consistently ruled it down. The action came in the wake of the video game *JFK Reloaded*, in which a player inherits the character of President John F. Kennedy's assassin. In retaliation to the California law, the Entertainment Merchants Association, which represents the video game and software businesses, brought a pre-enforcement challenge to Federal District Court with the contention that the law infringed on the First Amendment right enshrined in the US Constitution. The matter reached the Supreme Court in the case of *Brown v Entertainment Merchants*

⁴⁴ Masayuki Fukuda, 'Gambling 2022, Laws and Regulations, ICLG' (*ICLG*, 18 November 2021) <<https://iclg.com/practice-areas/gambling-laws-and-regulations/japan>> accessed 20 February 2022.

⁴⁵ 'Rating System' (Computer Entertainment Rating Organization) <www.cero.gr.jp/en/publics/index/17/> accessed 2 January 2022.

⁴⁶ Illinois Sexually Explicit Video Game Law 2005 (USA).

*Assn*⁴⁷ where the court affirmed the decision of the District Court and held that videogames are entitled to First Amendment protection thereby barring the California law indefinitely. However, in a study conducted by Craig A. Anderson published in the American Psychological Association, the issue of the effects of media violence on adolescents was touched upon. In the study, it was inferred that although the effects of video games produced inconsistent results, a meta-analytic analysis of all relevant empirical investigations revealed five distinct effects with considerable significance. Increased aggressive behaviour, thoughts, and affect; increased physiological arousal; and lower prosocial (helping) behaviour were among the aspects linked to video games⁴⁸ Hence, it is noted from the above country-wise comparison that addictive behaviours and sensitive themes are tipping video game consumption and consumers to a unique fragility causing the need for the kid-glove treatment of the industry by creative legislative solutions.

THE LEGAL LACUNAE

The crucial worldwide legitimate rule of *ad eaque frequentius accidunt jura adaptantur* impliedly calls for making rules following the contemporaneous ongoings of the world. The gaming industry in India is at a nascent stage. There is no particular legislature because India's gaming business has only been growing for a few years, thereby causing a vacuole in the explicit legislative framework to govern different areas of gaming, particularly content and interaction regulation. With the advancement in technology, digital game designers have amplified sadist and violent content. In such a scenario it becomes crucial to have regulations in place to reprimand and keep a check on the influential population that contributes to most of the gaming community. With the Supreme Court upholding the Rajasthan High Court's dismissal of a petition⁴⁹ that sought a ban on a popular fantasy sport called Dream 11 on 30th July 2021, and the Madras High Court striking down Part II of the Tamil Nadu Gaming and Police Laws (Amendment) Act 2021, which criminalised playing games with stakes in cyberspace,⁵⁰ the doors to the online gaming realm can be deemed open *ab hinc*. The current legal framework is exclusive

⁴⁷ *Brown, Govt of California v Entertainment Merchants Assn* 2011 SCC OnLine US SC 79.

⁴⁸ Craig A Anderson, 'Violent Video Games: Myths, Facts, and Unanswered Questions' (*American Psychological Association*, October 2003) <www.apa.org/science/about/psa/2003/10/anderson> accessed 10 January 2022.

⁴⁹ *Avinash Mehrotra v State of Rajasthan* SLP (C) 18478/2022 (SC).

⁵⁰ Rahul Machaiah, 'Regulation of Online Gaming: Unconstitutional Paternalism' (*Bloomberg Quint*, 12 August 2021) <www.bloombergquint.com/opinion/regulation-of-online-gaming-unconstitutional-paternalism> accessed 11 January 2022.

to the gaming industry barring online gambling and wager games which have been heavily opined upon and discussed. Given the nature of online games, they tend to foster fantasy libertarian environments wherein individuals have the freedom of playing and interacting with each other at the same time, thus creating a unique blend of recreation, competitiveness, and socialisation. There is, however, certain regulatory laxity concerning this aspect of recreation. This boundless blend gives way to freedom that may be used inappropriately and the economic benefit of such a big market may also be lost out due to the same. Another anomaly with the sector would be the social interactions that it incentivizes, specifically the same not being explicitly read into the word ‘intermediary’ in the Information Technology Act, 2000 despite working within its ambit. An intermediary according to section 2(w) of the Information Technology Act⁵¹ would include “*any person who on behalf of another person receives, stores or transmits that message or provides any service with respect to that message*”. Videogames *prima facie* performs the same function in addition to graphic recreation but are still readout of the definition despite its liberal interpretation.

If included in the definition, it would help create a functional grievance redressal mechanism, stimulate a more accountable setup, specialise expedited takedown procedures for sexual assault cases, and account for the appointment of India based compliance officers. It would also aid in traceability requirements for specific purposes, identification of a physical address for service of legal notices, help deploy automated filtering software, enable the right of users to seek verification of their accounts in the games and such. This will help regulate an industry that otherwise seems to be completely devoid of the ambit of regulation of any sort. Notwithstanding the same, it has been readout of the sphere of the new IT intermediary rules.

Although ISPs, even websites that serve as assemblages for third party games shall qualify as intermediaries. This would cause sites like Addictinggames.com, Agame.com, girlsgames.com, etc., to come under the ambit of the legal framework with the socially interactive games remaining obscure from the regulated realms. Video games form a denomination of computer software in themselves, they are an amalgam of media and software which makes their bracketing and subsequent regulation tricky.

⁵¹ Information Technology Act 2000.

In the case *Tata v Greenpeace*⁵², the Delhi High Court took a stance on the matter of content-based regulations. The subject matter of the case revolved around the game '*Turtle v Tata*' that was formulated by Greenpeace and utilised the logo of Tata where the Tata logo was chasing the Turtles. The High court opined that the use of the logo in the game was in the manner of parody and the same can be offered protection under freedom of speech which is a right enshrined in the Indian constitution. Although the court did not explicitly recognize digital games as a mode of expression entitled to freedom of speech, it can be interpreted that the decision was aimed to convey that digital games are a form of expression that is no different from the conventional modes like books and literature and the court did not mean to limit the medium used as a mode of expression. Article 19(2) coupled with Article 39(f), Section 5(B) (I) of The Cinematograph Act, 1952 and Section 292 of the Indian Penal Code (hereinafter "IPC") collectively put and seek to influence this area. These bulwarks of directive policy and the precedents of certification put the prerogative on the legislature to draft a singular suitable law to protect and foster the video gaming space. In the case of *M.J. Sivani v State of Karnataka*⁵³, it was held that though the owners of video games have the freedom to conduct business, they do not have any power to expose children to unregulated video games. Due to the easy accessibility and penetration of violent games, the threat associated has become material and problematic. In the case of *Postal 2*,⁵⁴ the judges themselves played the game to understand the violent undertones that the game had, which goes on to further the contention.

RECOMMENDATIONS

According to Nobel Laureate economist Richard H. Thaler, libertarian paternalism aims to lead people's choices in welfare-promoting directions without diminishing their freedom of choice. Thus, instead of limiting the scope of individual choice, it seeks to nudge people to make more informed decisions. The video gaming industry has a wide scope and to foster a haven for the same we must keep up with the changes in technology and adopt central legislations to address the lacunas in the area without infringing upon individual autonomy to create a robust gaming industry. It is essential that India revamps its archaic laws and creates a regulatory environment that fosters development and innovation.

⁵² *Tata Sons Ltd v Greenpeace International* 2011 SCC OnLine Del 466.

⁵³ *MJ Sivani v State of Karnataka* AIR 1995 SC 1770.

⁵⁴ *Brown, Governor of California v Entertainment Merchants Assn* 2011 SCC OnLineUS SC 79.

CREATION OF A CENTRAL LEGISLATION FOR GAMES OF SKILL

There is no legislation in India on gaming, the closest one pertains to gambling. The interchangeable use of the two terms relinquishes a fostering environment for the vibrant and flourishing video gaming industry as it comes to be squeezed under gambling laws. The terms ‘gambling’, ‘gaming’, ‘wagering’ and ‘betting’ are interchangeable in much-statured gambling legislation which is perplexing hence it should be clarified that all state laws should use gambling only to classify chance-based activities. While interpreting the law on gambling, High courts use the dominating factor test as laid down by Supreme Court in *State of A.P. v K. Satyanarayana*⁵⁵ to check whether a game is predominantly skill-based or chance-based. However, what constitutes a game of skill has been interpreted differently in various cases; for instance, Poker has been interpreted as a skill-based game by Karnataka High Court⁵⁶ and as a chance-based game by Gujarat High Court.⁵⁷ As a corollary, central regulation that adopts a defined technique of categorizing what constitutes a game of skill might eliminate such discrepancies. Various situations have been noted in which the centre has been advised to do so, such as The Sports (Online Gaming and Prevention of Fraud) Bill 2018, which proposed a central law for online skill games and was also recommended by the Law Commission of India.

FORMULATING A CLASSIFICATION SYSTEM FOR DIGITAL GAMES

For instilling accountability, a statutory body under centralised legislation can be instituted to classify the types and genres of games in the country into age-appropriate categories. In light of the analysis of the various countries’ gaming regulations, the same comes out as an imperative. A certifying authority to facilitate the objective of the legislation would further legitimise the operation and access of the games and provide requisite checks and balances to an otherwise risky platform in terms of access, privacy and internal security of the nation and its populace. The authorities can review the gameplay to grant a rating and the rating granted can be made legally enforceable. An Indian rating board is crucial to alleviate sensitive matters that have been unique to India, such

⁵⁵ *State of AP v K Satyanarayana* AIR 1968 SC 825.

⁵⁶ *Indian Poker Assn (IRA) v State of Karnataka* 2013 SCC OnLine Kar 8536.

⁵⁷ *Dominance Games (P) Ltd v State of Gujarat* 2017 SCC OnLineGuj 1838.

as religiously delicate material. Aggrievance redressal procedure can also be specified to allow gaming businesses to make representations.

LIBERAL INVESTMENT FRAMEWORK IN INDIA TO PROMOTE FOREIGN INVESTMENT

Video game development is an ultra-modern art and science that harbours creativity in the digital manufacturing industry. It has the potential to generate high-value exports and high-tech jobs.⁵⁸ The global gaming market is projected to grow from USD 229.16 billion in 2021 to USD 545.98 billion in 2028 at a CAGR of 13.20% in the forecast period, 2021-2028.⁵⁹ Due to the absence of support for game development by the central government, the economy has not been able to reap the growth of the gaming sector to its possible extent. The central government is only just touching the surface of the potential that investment in the gaming sector holds, an example being - a task force for the Animation Visual Effects, Gaming, and Comics (hereinafter “AVGC”) sector which will prepare India to play a larger role in creating job and investment opportunities in the gaming sector. An analysis of the United Kingdom (hereinafter “UK”) and France’s video game tax offsets shows that every \$1 invested by the government returns roughly \$2 in tax income⁶⁰, thereby endorsing significant tax revenue for the exchequer by videogaming.⁶¹ The Consolidated FDI Policy⁶² includes the prohibition of lottery businesses, including government/private lottery, online lotteries etc. In light of the aforementioned grey area of loot boxes in games falling under the ambit of gambling, the investment and propagation of the industry is difficult. Such discrepancies and overlapping of various laws call for the enactment of a specialised law appreciating and regulating video games.

⁵⁸ Interactive Games and Entertainment Association, ‘Pre-Budget Submission to the Treasury 2021-22’ (*IGEA*, 26 January 2021) <https://treasury.gov.au/sites/default/files/2021-05/171663_interactive_games_and_entertainment_association.pdf> accessed 10 January 2022.

⁵⁹ Market Research Report, ‘Gaming Market Size, Share & COVID-19 Impact Analysis’ (*Fortune Business Insights*, August 2021) <www.fortunebusinessinsights.com/info-graphics/gaming-market-105730> accessed 4 January 2022.

⁶⁰ *ibid.*

⁶¹ Ikigai Law, ‘Unpacking a Billion Dollar Industry: Digital Games and Sports in India’ (*Internet and Mobile Association of India*, March 2021) <www.ikigailaw.com/wp-content/uploads/2021/03/IL-and-IAMAI_Digital-gaming-report_02032021.pdf> accessed 27 January 2022.

⁶² Ministry of Commerce & Industry Department for Promotion of Industry and Internal Trade, ‘Consolidated FDI Policy Circular’ (15 October 2020) <<https://dpiit.gov.in/sites/default/files/FDI-PolicyCircular-2020-29October2020.pdf>> accessed 12 February 2022.

FORMULATING POLICIES TO ENCOURAGE GAMING COMPANIES

Making policies and efforts to make Indian culture more consumable on the world platform can act as a booster for the gaming industry. In the UK, Video Games Tax Relief (hereinafter “VGTR”) has been available to games companies. It provides reimbursement to game developers with up to 20% of their core video game production costs. This allows studios to reduce their corporation tax if their game makes a profit or receive a cash tax credit if the game makes a loss and substantially reduce the cost of game development. These developments coupled with the fact that India is a young country, are calls for us to take forth the requisite steps to promote local gaming content, professionals, and industry. This would have the dual effect of utilisation of the existing resource of software development and creative individuals, and exploitation of this industry of which we are already becoming a consumer.

FINANCIAL AND TAX POLICIES

The gaming companies and their workings are covered under the provisions of the Income Tax Act,⁶³ Companies Act⁶⁴ and such. The winnings are covered under Section 115BB of the Income Tax Act, with a 30% plus cess⁶⁵ being levied on all winnings and part winnings earned. This heavy taxation along with the existence of surcharges, cess and such discourage gaming and gambling alike. There is however lack of legislation covering video games or even mentioning them in their own right. Under Section 194B of the Income Tax Act, the platform that is paying for the winning is to deduct the TDS, if the winning income is more than Rs. 10,000. Such incentives aid in the fosterage of creative games and history. Hence, there is a pertinent need to update taxation laws and for the Ministry of Corporate Affairs to come up with taxation and investment opportunities and respites catered to this industry.

ENHANCED PROTECTION UNDER INTELLECTUAL PROPERTY LAWS

The core of any video game is its Intellectual Property. Video games are an amalgamation of different elements which can be classified into two parts; a) the audio-visual element like pictures, videos, and sound

⁶³ Income Tax Act 1995.

⁶⁴ Companies Act 2013.

⁶⁵ Income Tax Act 1995, s 115BB.

and, b) the audio-visual software that lets the user engage with the digital game. Video games are not copyrightable in India as a whole, but individual aspects that make up the game, such as the characters, the soundtrack, and so on, are copyrightable. This is attributable to the fact that copyright law does not recognise digital games as a distinct category. Hence, it is evident that the current framework is not in alliance with the tempo of the gaming industry in terms of the legal protection offered. Video games are classified either as computer programmes or audio-visual works, but there is an oddity in this classification since video game developers are clearly distinguishable from writers and directors of audio-visual works, and their classification as computer programmes is also inexact since most video games use the same source code such as Battlefield and Need for Speed: The Run. The distinguishing components are built using a customized source code hence making copyright protection for software of games redundant.⁶⁶ Amendment in the Copyright Act 1957 to include video games as a separate category under Section 13(1) of Copyright Law can address this issue. In furtherance of the same, World Intellectual Property Organization has highlighted the need for and importance of a separate legal category of video games to be entitled to copyright protection.⁶⁷ This would enhance the protection provided to video games and may in turn even reduce the evils of game piracy and will also protect the interest of game publishers.

**EXPEDITE THE DATA PROTECTION BILL
AND WORK WITH ISPS TO BAN NOTORIOUS
WEBSITES FOSTERING CHEAT CODES**

A legal framework in the country that pertains to securing the country's data and privacy of the populace formulates an essential in the modern-day technologically driven world. The same was brought forth potently by the recent WhatsApp fiasco where we noticed the dealing differences between India and the GDPR equipped European Union. Furthermore, to provide a working and realizable setup, the government can closely work with the Internet Service Providers to provide a secure and concrete setup. This will help in instilling confidence in the gaming industry's key players as to the probity and fair play in the country.

⁶⁶ Andy Ramos Gil de la Haza, 'Video Games: Computer Programs or Creative Works?' (*World Intellectual Property Organization*, August 2014) <www.wipo.int/wipo_magazine/en/2014/04/article_0006.html> accessed 31 January 2022.

⁶⁷ Andy Ramos and others, 'The Legal Status of Video Games: Comparative Analysis in National Approaches' (*World Intellectual Property Organization Report*, 10 December 2013) <www.wipo.int/edocs/pubdocs/en/wipo_report_cr_vg.pdf> accessed 3 February 2022.

RECOGNISING THE NICHE OF THE GAMING INDUSTRY IN THE COUNTRY

Taking a leaf from Google's 'Change the Game' initiative, gaming has the potential to inspire creativity, build connections between people, and serve as a gateway to new worlds and passions. The gaming industry provides its players with skills like better reflexes, creativity, heightened observation, concentration and decision making. However, the ignorance and the lack of updates about the real-world developments of the legislature can be noticed in the imminent and flourishing video gaming industry being compressed under gambling. The Unlawful Internet Gambling Enforcement Act (hereinafter "UIGEA") created a safe harbour for online fantasy sports. With the absence of regulation and lack of policy clarity, there is an imperative need for uniform operating standards based on sound concepts and best global practices as well as monitoring of adherence to these principles and practices.

CONCLUSION

An ideal regulatory strategy necessitates a transition from hard paternalism to libertarian paternalism. The former justifies the restriction of human liberty for the individual's good, while the latter takes a non-coercive approach. This study aims to shine a light on the opulent gaming sector and the need for comprehensive, innovative laws to encourage and regulate it. As a young country with an impressionable populace, the government in its function as *parens patriae* must guard against addictiveness, triggering themes, and a lack of appropriate regulations while expanding the gaming sector. We hope that the authors' comparative research and survey have added to the potential misuse and harms associated with an unregulated gaming sector. As noted in the report, a delicate balance has been iterated, and recommendations have been made in this regard.