

TREATMENT AND REGULATION OF ESPORTS IN INDIA

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WHAT IS eSPORTS?

Millions of people including us play computer games or video games in general as avocation or amusement, but for some exceptionally skilled players gaming is not just restricted to a means of pass time or amusement, rather, they intend on making a living of it. This professional video gaming has been dubbed as "eSports". The advent of this new vocation has been supported and accompanied by the development of a nascent professional infrastructure with features familiar from the world of physical sports and entertainment, including tournaments, leagues, fans, teams, team owners, player contracts, sponsors, and the like.¹

There has been a huge debate amongst the eSports enthusiasts and the policy makers of several countries as to the point whether "eSports" can be included within the definition of traditional "sports" and doing so can it be recognised as a type of traditional sports. According to Guttman's model, there are seven characteristics for a gaming activity to be considered as a sport²:

Guttman's first characteristic is that modern sport is secular and whilst throughout history sports and sport events have been seen as sacred or tied to religion, modern sport is separate from religion. eSports, a phenomenon belonging completely to the modern times, follows a similar path and has no religious ties whatsoever.

The second of Guttman's characteristic is equality. Equality as in every person is free to take up a sport, irrespective of his sex, race or any other characteristic features one possesses, one

¹T.L. Taylor, 'Raising The Stakes: E Sports And The Professionalization Of Computer Gaming' [2012].

² Dr Anita Greenhill, Rob Houghton, 'Esports And Streaming In The UK In 2017 White Paper'

<<https://www.britisheports.org/assets/esportswhitepaperfinalpdfpdf.pdf>> accessed on 2 January 2019.

is judged only on one's skill and no other ground. Similarly, in e-sports all the players compete in the same conditions regardless of gender, form or functionality.

To be considered a sport according to Guttman, all sports need bureaucracy. In esports industry though there is lack of unanimous body to conduct e-sports, yet bodies like Korean esports association or KESPA organise e-sports to achieve a common goal.

Fourth characteristic being rationality, i.e. making choices on the basis of available sports data. In e-sports, websites and online communities, report scores, as well as standings and player rank, which is considered by individual players as well as teams before they compete in a tournament.

The fifth characteristic is specialisation. Like in traditional sports, the players in eSports makes an athlete specialised in one of the games within the ambit of eSports, the players in a team are specialised in a specific role.

Sixth characteristic feature of a sport is physicality. eSports displays its legitimacy of physicality through its high requirement of intellectual skills, high intensity, refined motor skills as well as rapid and accurate eye hand coordination, there lacks however, the kind of physicality present on any of the traditional sports.

Guttman's final characteristic, and the one, which separates modern sports from pre-modern sports, is the pursuit of records. This refers to the documentation of all records, player statistics, rankings, and records of most attended tournaments and most viewed games, which is very well pursuant in the eSports industry, taking example of "Newzoo", which is a web platform specially established for collecting and analysing eSports data and statistics.

To conclude by traditional definitions such as those proposed by Guttman (1978), esports would be classified as a sport, however due to modern sports need for physicality as well as institutionalisation such as the world and national Olympic committees working in tandem, due to esports lacking these key criteria as argued by modern theorists, it is likely they are more a pseudo-sport, however esports are still a growing phenomenon and they still easily have the potential to be formally recognised as a sport, either through changes in definitions of a sport or through gaining physicality and institutionalisation.

This definition is not essentially right, Esports has a greater number of dissimilarities to traditional sports than similarity with it. This statement is in no way undermining the professional skill set requirements of an eSport, but with all the features of eSport it will be inaccurate or rather impossible to incapsulate eSport within the meaning of traditional sport. eSports can be seen as a separate “genus”, and all the games played professionally under eSports would then become its “species”. For example, where eSports is a genus, “League of Legends”, “Counter Strike Go” etc. are its species. This is similar to the structure of sports, i.e. where “Sports” as whole is a genus, Cricket, Football, Basketball etc. can be seen as its species.

Thus, the treatment of this parallel professional gaming, deserves equal level of consideration and respect from the government of a country, which it has not received until now, specially, in India. This inconsiderate and blind spot attitude of the public authorities have given an opportunity to exploit the rights of an eSport players.

THE WORST A CONTRACT CAN GET

One of the best examples of this kind of exploitation can be traced in the recent Asian Games eSports Player Contract fiasco. The said contract was drafted by the Esports Federation of India (ESFI), which at present has taken upon itself to manage the eSports activities in India. It is to be noted that ESFI has not been recognised by the Indian Olympic Association nor the Ministry of Youth Affairs and Sports, unlike other sports organisation, say, the Badminton Association of India, Boxing Federation of India, and All India Football Federation etc.³

This is the latest in a series of controversies that has dogged ESFI’s handling of the Asian Games. It began with the announcement of the qualifiers, which was done a mere day before they were actually held, via ESFI’s Facebook page, which has just over 2,000 followers, and a few other private channels. “The vast majority of the player base did not even know the qualifiers were happening,” said Nishant Patel, founder of AFK Gaming, a website that covers Indian eSports. “There was no formal announcement or PR or even a sign-up page. I don’t

³ Indian Olympic Association <<https://www.olympic.ind.in/member-units>> accessed on 17 January 2019.

think there was any formal structure behind the qualifiers.” This caused an uproar within the small but highly vocal Indian eSports community.⁴

This discontent of the eSports community in India exacerbated into anger, when a famous eSports broadcaster Sudhen “Bleh” Wahengbam, posted on his twitter page the contract an Indian eSports player had to sign to be able to represent India at the Asian Games, which was going to hold eSports as a demonstration game this year. The contract was termed as, “atrocious” and “vile” by Wahengbam.

The contract incorporated clauses, which essentially required the players to make themselves available for photoshoots, video recordings and promotions for sponsors and ESFI at their own expenses. Another clause, having similar language, required the participants and even the winners to pay for their travel to the Asian Games out of their own pockets and in a further clause the ESFI withdrew itself of all and any responsibility of the participants if they had to return from the competition for any emergency reason, may it be a health issue or someone dying in the family, by requiring the players to pay for every expense that might be required to be incurred, due the said emergency. Additionally, a winner of any of the events of the Asian Games, was required to “ensue cost, damages and expenses” to the ESFI, if he withdraws from the tournament for any reason whatsoever. The contract went onto include a non-disparagement clause that prohibited any of the participants to give any negative statement about the ESFI.

THERE CAN ALWAYS BE A “ROLE MODEL”

This role model is none other than the South Korea, where eSports has become a religion and has been taken very seriously both by the players as well as the Government.

In South Korea e-sports is being considered as a sporting activity with approximately 10 million regular viewers.⁵ So, there are some of the pertinent and necessary questions to ask about how the esports-boom came into the country? How the country oozed into mainstream culture? Why, in Korea, Couples going to game clubs is about as common as couples going to

⁴Visvak, ‘eSports Make its Way to Asian Games’ *The Hindu* (24 August 2018) <<https://www.thehindu.com/society/esports-is-on-the-rise-in-india/article24770235.ece>> accessed 17 January 2019.

⁵‘Video Game Addicts Concern South Korean Government’ *USATODAY* (23 February 2016).

the movies? How eSports has taken the position of one of the most popular genres of competition not in Korea only but also globally?

In January 1975, three units of the relabeled Pong machine Computer TV were installed in the Midopa Department Store in Seoul. It was considered as a TV game or a new machine.

Gradually but steadily the e-sports arena got a boom. But then the gambling aspect came into picture. By 1980, only 43 arcade establishments were government-approved, while many hundreds were opened illegally.⁶

To revolutionize e-sports and grow the market, companies like Samsung started to offer computers to schools to raise a computer-savvy generation. In this case even the dirty minds of companies couldn't be averred as the most infringing companies found ways to simply convert MSX games to the Gam*Boy, due to their similar architecture

Then there came huge demand of home consoles post the e-sports revolution in Korea. Around January 1993, home consoles in South Korea were estimated to be present in one of every four houses.

The industry started to keep pace with the demand, but was slowed down by the decision of the Ministry of Culture and Sports, on July 1, 1993, to revise the censorship regulation, which made a prior evaluation by the Korea Public Performance Ethics Committee incumbent. The system was considered one of the strictest of the world in the 90s.⁷

The actual Korean e-sports history began in 1999 with the pro-gamer Korea open.⁸

To institutionalize the advancements in esports industry PC bangs were established. A PC bang (Korean: PC; literally "PC room") is a type of LAN gaming center, where patrons can play multiplayer computer games and browse the internet for a small hourly fee. In addition to this, there are organized leagues throughout the country that are financed generously and train gamers to compete in competitions.⁹ Moreover, the Korean government has also discovered

⁶Dong-a Ilbo' *Naver* (12 February 2014).

⁷Derboo, 'Part 2: The rise and fall of the package'*Hardcoregaming101*[2014].

⁸*Esports.or.kr*<http://e-sports.or.kr/page_kespa2018.php?_module=kespa&_page=greeting&ckattempt=1> accessed on 22 January 2019.

⁹Jennifer Veale, 'Where Playing Video Games Is a Life' *Time* [2012].

the promise of investing in e-sports and pro-gaming by funding the world's first e-sports stadium that was built in 2005.¹⁰

So, what we observe here is that these were the technology related transformations or a game of blend of widespread broadband availability and smart-phone adoption, which actually burgeon the esports market in Korea. Additionally, we observe that how by providing differentiated accessibility to esports fans through multiple ways, Korea has created competitive edge in the world.

Additionally, the Korean government has a department solely focused on the governing of e-sports known as the Korea e-Sports Association (KeSpa).¹¹ It is a member of the Korean Olympic Committee and the International e-Sports Federation. KeSPA was founded in 2000 after the approval of the Ministry of Culture, Sports and Tourism.

Working of KeSpa: “the association has been indulged in its objective to develop a streamline mechanism to foster professionalism among domestic esports professionals. The association also takes into consideration as its major task to create services for e-sports fans which firstly includes making provisions for the broadcasting of esports. It conducts various leagues and tournaments to promote e-sports. To represent Korea at international stage KeSpa provides a guideline and selects e-sports players. Considering match-fixing and doping it regulates the conduct of esports professional as the professionals are required to abide by the rules of KeSpa. Last but not least, the promotion of Korean e-sports culture around the world is another job of the association.”¹²

CAN A STRUCTURE SURVIVE WITHOUT A SOLID BASE?

Well, the answer to the above question is “NO”. The structure talked about here is the structure of a regulatory and governing body for eSports in India. Presently, eSports Federation of India

¹⁰Mozur Paul, ‘For South Korea, E-Sports Is National Pastime’ *The New York Times* (23 February 2016) accessed on 22 January 2019.

¹¹‘Pro Gamer Describes The Difference Between Playing In The US And Korea — The Mecca Of Video Games’ *Business Insider* (23 February 2016).

¹²<http://e-sports.or.kr/page_kespa2018.php?_module=kespa&_page=greeting&ckattempt=1>accessed on 22 January 2019.

(ESFI) has taken the role of this structure in the country, but the question is, whether this structure has a solid base?

“It is a not-for-profit organization established under the Companies Act, 2013.

It was established to promote, encourage, organize, educate, train and control Electronic Sports (Esports) in India and to provide facilities for training in esports, to build and sustain the ecosystem for esports in India not limiting to organizing League/Tournaments (Amateur, Semi-Professional and Professional), providing, conceptualizing, opening, managing, running, developing, facilitating, and promoting all areas of eSports and to provide all other possible and related form of eSports.

Its aim is to be the official organization in complete and sole in charge of all esports matters in India and to guard and enforce rules in co-operation with the States esports Associations/Federations of the country and in full and complete collaboration with the Indian Olympic Association, to select and control the Indian esports Contingent to the Olympics, Asian Games, Common Wealth & SAF Games and various other International competitions under the patronage of the IESF, OCA, IOA other Federations Associations and to stimulate the interest of the people of the country in promotion of esports.

To build infrastructure for esports, to establish, maintain and run academy, to provide the best education in the fields of computer education, character building, self-discipline and the development of the creative & social faculties, to grant scholarships or provide financial aid to poor/meritorious individuals in the field of sports and skill development.”¹³

That’s what is aimed and presented by the ESFI, but the reality portrays a poles apart picture of the organization. The “Contract Fiasco” that surrounded the ESFI, before the Asian Games, speaks at length about the requirement of a body that keeps checks and balances on this autonomous organization in the welfare of the eSports players and the development and diffusion of eSports in the country.

The South Korea model of esports can fructify the esports efforts in India. It is suggested that a government body like KeSpa in Korea should take birth in India to regulate and burgeon esports in India. Considering the negative ramifications of video gaming addiction, the

¹³*Esports Federation of India* <<http://esportsfederation.in/>> accessed on 22 January 2019.

government can take deliberate and take preventive steps under the tutelage of Korean government.

There can be another approach that can be taken to deal with eSports in the country; as stated by Ian Smith, a member of the ESIC, “Let the industry have a go, as you’ve let every other traditional sport have a go,” he said. “They had a hundred years to get it right, they failed. Esports deserves that chance because its young, organic and it’s grown from a community upwards.”¹⁴ On one hand this approach can, bring outcomes which would ensure healthy growth of eSports in India, but on the other hand, complete autonomy can facilitate unregulated behavior to the disadvantage and exploitation of the young eSports players, by the concerned authority, which is ESFI in the context of India. Thus, there has to be authority given to these organization with certain amount of responsibility, ensuring the welfare of the players and healthy growth of eSports, which ultimately can provide the present structure of ESFI with a much required “solid base”.

NOT ALL A FAIRY TALE

After reading and deciphering some of the flowery aspects of esports, it is important to highlight the dark side of the same. Gaming to a certain extent is feasible for both mental and physical health, but the moment professionals in e-sports try to overdo the things there are harmful consequences, which even include death. Carpal tunnel, migraines, sleep disturbances, backaches, eating irregularities, and poor personal hygiene are some of the most common deterrent effects of gaming addiction.

Due to problems of widespread video game addiction threatening the health safety of players and after different incidents related to it,¹⁵ the Korean government has invested considerable amounts into new clinics, campaigns, and support groups to minimize the problem.¹⁶

¹⁴ Graham Ashton, ‘Esports’ First EU Parliamentary Discussion Puts Policy and Regulation At the Forefront’ *The Esports Observer* (7 September 2017) <<https://esportsobserver.com/esports-eu-parliament-discussion/#>> accessed on 23 January 2019.

¹⁵ Soonhwa Seok, Boaventura DaCosta, ‘Problematic Mobile Gameplay Among the World’s Most Intense Players: A Modern Pandemic or Casual Recreational Pursuit?’ [2012] Sage Journals.

¹⁶ ‘Video game addicts concern South Korean government’ *USATODAY* (23 February 2016).

By late 2011, the government took a step further and imposed the "Cinderella Law", also known as the Shutdown law, which prevents anyone aged under 16 from playing games online between 10 pm - 6 am.¹⁷ "Minors are required to register their national identification cards online so that they can be monitored and regulated".

Another program created by the Korean government is the Jump up Internet Rescue School, a camp created to cure children who are either addicted to online games or the internet. The program involved having a wide variety of treatment for 12 days and 11 nights. The facility will allow participants to engage in outdoor activities and sports instead of playing video games. The program is divided into two stages which are training activities and education activities. The education activity consists of mental training, brain education about the frontal lobe, emotional control, and brain system training. The role of the mental and brain training is to recall the participant's cognitive skills.

The Indian authorities can always study these problems before formalizing any kind of regulation with respect to eSports in the country. These observations would act as precautionary measures, and thus save time cost in dealing with addiction to video gaming in young children.

One of the example which indicates the efforts to tackle gaming addiction in India relates to the ban on PlayerUnknown's Battlegrounds, which is popularly known as PUBG, in the schools of Gujarat. Gujarat government issued a circular, in this regard, directing all district authorities to ensure the ban on 23rd January 2019. In the same vein, the National Commission for Protection of Child Rights (NCPCR) has recommended a ban on the game across India.¹⁸

THE NEED FOR STANDARDIZATION OF INFRASTRUCTURE

According to Newzoo, a global leader in games and eSports analysis, China has the highest number of game revenues in the world.¹⁹ There are several factors which deserve credit for this

¹⁷'Technology | S Korean dies after games session' *BBC News* (8 October 2005).

¹⁸ Rohan Jaitly, 'PUBG Addiction: Gujarat Government Issues Notice To Ban Students From Playing PUBG Or Any Other Addictive Game' *Timesnownews.com* (23 January 2019) accessed on 23 January 2019.

¹⁹ 'Top Hundred Countries/Markets by Game Revenues' <<https://newzoo.com/insights/rankings/top-100-countries-by-game-revenues/>> accessed on 21 January 2019.

achievement of the country's gaming market, and one of the major factors responsible for such a booming gaming industry is the Chinese government's pro-gaming stance. The Chinese government was able to realize the growth potential at a very early stage and with proper investment it has brought out enormous results for the country's gamers. One of the recent examples which can be cited to test the authenticity of the above the statement is the country's first "Electronic Arenas Operation Service Specifications". These specifications are meant to specify the minimum standards to be followed by every eSports venues/ centres/ arenas operating in China. These standards were drafted by Alliance eSports, which at present operates China's biggest eSports venue. The draft of the standards was adopted and commissioned by the Chinese Ministry of Culture and Tourism. These standards provide a practical, well-documented and unified standards to be followed by the operators of the eSports Arenas, which will further ensure standardization of eSports events and professionalism.²⁰ With the announcement of eSports included as a medal game in the upcoming Asian Games 2022, this move of the Chinese government will have far reaching consequences.²¹ Having a comparative analysis of the trends of the gaming industry in China and India, we observe certain things which should be taken into account by the public bodies in India, in order to tap in on the growing Indian eSports market. The observations are as follows:

1. Total Population:
China - 1,420,062,022
India - 1,368,737,513
2. Total Internet Population
China – 850 Million
India – 481 Million
3. Total Game Revenues (in UD Dollars)²²
China – 34,400 Million
India – 1,105 Million
4. Analysing the above figures, there's no denying the fact India is not lacking much behind China in at least the total population numbers and can be placed on almost the

²⁰'China's First "Esports Venue Operation Service Specification" Released' *China News* (10 August 2018).

²¹ Asa Butcher, 'Rules for China's Esports Gaming Centers Released' *GB News* (10 August 2018) <<https://gbtimes.com/rules-for-chinas-e-sports-gaming-centres-released>> accessed on 21 January 2019.

²² 'Top 100 Countries/Markets by Game Revenues', *Newzoo*<<https://newzoo.com/insights/rankings/top-100-countries-by-game-revenues/>> accessed on 21 January 2019.

same scale in terms of population. The next thing to be seen is the total internet population, which is definitely on the rise and it not something that the government should be concerned with at the moment, but what the government and all the stakeholders in the Indian gaming industry should be concerned with is the, ‘gaming revenue per internet user’, which for China is \$40.5 and for India it is dismal \$2.3, which is a far cry. It is to be taken very seriously, and channelizing the usage of the internet, specially gaming to something productive and ultimately ensuring healthy growth of eSports in the country.

CONCLUSION

eSports is fairly new to India. It is on the rise, but not at a pace and efficiency that it should be at. One of the reasons for this inefficient growth can be traced in the weak organisational and bureaucratic management of eSports in the country. It has been observed that there is need for government support and regulation in order to prevent the exploitation of the group of very young eSports professionals as well as aspiring professionals. Government interference becomes all the more crucial, when one takes into consideration the average age and sophistication level of many of these professional players-high school and college-aged students who, in some cases, have dropped out of school to pursue careers in eSports and have an average age of 24.56 years.²³ But, complete government control can also be damaging, as stated mentioned by Ian Smith, this is a new industry and it should be allowed to grow, but at the same time the government has to play the role of a parent, and ensure that the growth is healthy and to the advantage of the players. This would provide a strong base to this new structure and prevent “contract fiascos” or other related dangers of eSports to taint the growth of eSports in India.

²³Katherine E. Hollist, ‘Time to Be Grown-Ups about Video Gaming: The Rising eSports Industry and the Need for Regulation’ [2015] ArizLRev823.