

PUBG BAN: NO MORE CHICKEN DINNERS FOR INDIANS?

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INTRODUCTION:

PUBG MOBILE is all set to make a comeback in India¹ after it after its partner company Tencent Games had decided to finally discontinue its operations in India² after announcing through a Facebook post that the PUBG MOBILE and PUBG LITE games will no longer work for its Indian users from 30th October. This announcement came after the gaming giant faced a ban³ by a sudden and unexpected government move banning 118 apps including these two over concerns of security threats from China. The ban on this game came at a time when all gaming platforms were expecting positive growth in the number of users due to the COVID-19 lockdown in the country, which also happens to be PUBG mobile's biggest market with its 25% users being Indians. The ban also came as a shock to professional gamers dedicated to this game who were left jobless resulting in a serious loss to their fan base.

Earlier in June, The Indian government banned 59 apps⁴ including TikTok, WeChat and UC Browser, among many others citing similar reasons while a follow-up decision was ordered nearly a month later through which the government decided to ban 47 cloned apps from China.

PlayerUnknown's Battlegrounds (PUBG) is an online multiplayer battle royale game developed and published by PUBG Corporation, a subsidiary of South Korean video game company Bluehole. The South Korean company was included in the ban because the mobile games were published by China's Tencent Games.

SECTION 69A, IT ACT 2000 AND THE NEED FOR PROPER DATA PROTECTION LAWS:

The ban was imposed under Section 69A of the Information Technology Act, 2000 on the ground that the app is engaged in activities that are prejudicial to sovereignty and integrity, defense and security of the country.⁵ Though India is not the only country which has banned this game and the list includes the likes of Pakistan, Jordan, Nepal, Israel, Iraq and surprisingly China itself over fears of its promoting violence-based activity. Most of the countries have banned this application mainly on three grounds: (1) that it is too addictive (2) has adverse effects on health and (3) that it propagates violence which may harm the users.

No legal order has been made public and the announcement was made through a press release which is not a legal order under the Information Technology Act.⁶ Also, the government has not provided any proof of user data-centric malfunctions by the game yet. Such a non-requirement of accountability from the government under this provision gives the government very strong control over the App market. The original purpose of section 69A was to block websites but the government by banning more than 170+ apps has over-utilized it. Also, according to some experts, the section is a mere stopgap measure and

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¹ Karanveer Singh Arora, *PUBG Mobile India planning a comeback*, THE INDIAN EXPRESS (November 21, 2020), <<https://indianexpress.com/article/technology/gaming/pubg-mobile-india-everything-you-need-to-know-7055783/>> (Last visited on December 4, 2020)

² Timesofindia.com, *PUBG Mobile will not work in India starting November, read Tencent Games official statement, TOI(Oct 30, 2020)*, <<https://timesofindia.indiatimes.com/gadgets-news/the-smallest-hope-of-pubg-mobile-returning-back-to-google-play-store-is-going-away-on-october-30/articleshow/78945627.cms>>(Last visited December 3,2020)

³ Ministry of Electronics & IT, 'Government Blocks 118 Mobile Apps Which are Prejudicial to Sovereignty and Integrity of India, DefenCe of India, Security of State and Public Order'(Release ID: 1650669, 2020)

⁴ Ministry of Electronics & IT, 'Government Bans 59 mobile apps which are prejudicial to sovereignty and integrity of India, defenCe of India, security of state and public order'(Release ID: 1635206, 2020).

⁵ The Information Technology Act, 2000, 21 of 2000, INDIA CODE (2000).

⁶ T.Rajkumar vs Union of India, (2004) 10 SCC 1.

hence, cannot be used to block websites completely.

The right to privacy is protected as an intrinsic part of the right to life and personal liberty under Article 21 and forms a part of the freedoms guaranteed under Part III of the Constitution.⁷ As India's Data Protection Bill is still pending parliamentary approval, such laws give the government unfettered power to regulate and control data online. Since it is the duty of the State to protect the data of its citizens and to do so, data protection laws are the need of the hour.

Once such a provision comes into place, it will provide guidance and best practice rules for organizations and the government to follow on how to use personal data and if the companies violate such norms, the government with proper justification on how and why the policies of a company violate the law would have authority to deliver graded penalties hopefully rather than a complete ban on such apps.

CAN THE BAN BE SAID TO BE VIOLATIVE OF FREEDOM OF SPEECH & EXPRESSION?

PUBG MOBILE provides a real-time voice chat facility where all teammates can interact with their teammates and enemies. So it can be argued that while using this feature, they exercise their Right to freedom of speech and expression given under article 19 of the Indian Constitution. The ban on the game curtails this right to free speech guaranteed under Article 19(1)(a).⁸ Also, the order in the present case has been issued without providing specific grounds on which the ban has been imposed as the government has not yet provided any proof of user data-centric malfunctions on the part of the game. As held in the case of *Om Kumar v. UOI*, the doctrine of proportionality states that no administrative action should be more drastic than is required for the accomplishment of the desired purpose.⁹ It has also held that proportionality involves exploring less invasive measures, particularly before resorting to a prohibition.

This principle has also been explained in the case of *K.S. Puttaswamy v. UOI* by the SC to mean a "set of rules determining the necessary and sufficient conditions for limitation of a constitutionally protected right by law to be constitutionally permissible".¹⁰ So possibilities of less strict measures like in-game warnings, sensitization to children and adults, parental controls, and restrictions on playing time (eg, a certain number of hours a day) should have been explored instead of putting a blanket ban on the application.

PUBG & OTHER GAMING APPS:

Along with PUBG Mobile, the government has also banned many other gaming applications like Chief Almighty: First Thunder BC, AFK Arena, Soul hunters etc.¹¹ The government has also previously banned apps like Blue whale challenge which according to the Ministry of information and technology is abetment to suicide as it hands out 50 tasks to the selected "players" that must be completed, documented and posted during a 50-day period. Players of the challenge can't stop playing once they've started; they are blackmailed and cyber bullied into completing the "game". Hence, it can be argued that the case of the blue whale is different from the PUBG MOBILE as it was established by the government that it was forcing young kids into the act of committing suicide. The government's main argument in this regard is that it will be a huge blow to the Pakistan economy which receives an enormous amount of funds from the Chinese government for supporting terrorist activities.

⁷ INDIA CONST. art, 21.

⁸ INDIA CONST. art, 21, cl 1(a).

⁹ *Om Kumar v. UOI*, AIR 2000 SC 3689(India).

¹⁰ *Justice K.S. Puttaswamy v Union of India* (2017) 10 SCC 1¶525.

¹¹ *Supra note 3*.

The Gujarat state government had banned the PUBG MOBILE application in March 2019¹² under section 144 of Cr.P.C., section 37(3) of Gujarat Police Act, 1951 and section 144 of Cr.P.C. that provides power to the Police to issue orders in urgent cases of nuisance or apprehended danger. The notification invoked by section 144 of Cr.P.C. is problematic, as the apex court, in the case of Acharya Jagdishwarand Avadhuta v. Police Commissioner, Calcutta, held that the nature of the order under Section 144 of Cr.P.C. is intended to meet 'emergent' situations. In the present case, the effect on the children's health and studies does not constitute an 'emergent' situation under which there exists any risk of apprehended danger.¹³

Therefore, instead of taking the drastic measure of the prohibition, the state in this situation should take on the role of an enabler; step in when and to the degree appropriate, instead of taking unreasonable and excessive steps. Regulation should be promoted in such cases which is usually more appropriate than prohibition. Outright bans will also lead to the problem of questioning the running of other similar apps in the country. If PUBG is banned, why not other very similar games like Fortnite Battle Royale?

A number of less stringent interventions, such as in-game alerts, child and adult education, parental controls and limits on playing time (e.g. a certain number of hours a day) should have been considered and explored for PUBG Mobile. But to arrest college students for playing a video game — when addictive video games have been around for years — seems excessive. Since the ban, PUBG MOBILE has taken a lot of steps to work upon the highlighted issues, including PUBG Corporation revoking distribution rights for the game in India from Tencent. It also went on to revise their entire privacy policy after the ban for its Indian users which was duly notified to them during an update. They have also decided to make the game violence free to promote healthy game play practices for youngsters by including the features like green hit effect and timely reminders. Even though the popular game has hinted towards making a return in the country using Microsoft Azure cloud services¹⁴ to offer the game and be compliant with local data regulations anytime soon, the company's previous move to leave the country of its own accord had been a serious disappointment to the fans that are hopeful of its return.

¹² Shweta Ganjoo, PUBG ban: 10 arrested in Rajkot for playing PUBG in public, INDIA TODAY(March 14, 2019), <<https://www.indiatoday.in/technology/news/story/pubg-ban-10-arrested-in-rajkot-for-playing-pubg-in-public-1477680-2019-03-14>>(Last accessed December 3,2020)

¹³ Acharya Jagdishwarand Avadhuta v. Police Commissioner, Calcutta [AIR 1984 SC 512].

¹⁴ Ashri Khandelwal, *PUBG Mobile may make a comeback in India with the help of Microsoft Azure: We explain*, TIMES NOW NEWS(Nov 09, 2020), <<https://www.timesnownews.com/technology-science/article/pubg-mobile-may-make-a-comeback-in-india-with-the-help-of-microsoft-azure-we-explain/679312>>(Last accessed December 4,2020)