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ROLLING THE DICE ON LEGAL BOUNDARIES: A CASE COMMENATRY ON GHERULAL PAREKH V MAHADEODAS MAIYA

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ABSTRACT

In this upcoming case commentary, we delve into the intricacies of wagering contracts, exploring their significance and application within the framework of the Indian Contract Act, specifically under Section 30. We embark on a journey through the fundamentals of wagering agreements, unraveling their complexities. Our focus sharpens as we examine the landmark case of "Gherulal Parekh v Mahadeodas Maiya," which serves as a practical illustration of the principles outlined in Section 30. This case not only sheds light on the application of the section but also unravels the intricate arguments presented.

This comprehensive analysis goes beyond the surface, providing insights into the nuances of Section 30 and its real-world implications. The case of Gherulal Parekh v Mahadeodas Maiya becomes a guide, offering valuable lessons and serving as a precedent that continues to influence legal decisions to this day.

KEYWORDS: *wagering, definition, section 30, limitations, fundamentals*

RESEARCH METHODOLOGY

The methodology employed in this project adheres to a rigorous doctrinal framework. A doctrinal approach, by its very essence, represents a meticulously structured journey into the systematic study, analysis, interpretation, and assessment of doctrines. This methodology entails a thorough examination of textual sources, harnessing the power of comparative analysis, and a scholarly examination of doctrines within their historical and cultural contexts. Additionally, it demands a discerning exploration of their logical and practical facets. This exacting critical analysis serves as an indispensable conduit to unlock the profound significance, consequential impact, and far-reaching implications inherent in the doctrines under our scholarly scrutiny.

[1] The authors are first-year students at National Law University, Odisha

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INTRODUCTION

The Indian Contract Act of 1872, based on 3rd Law Commission recommendations, remains relevant in modern India for bilateral transactions. However, limitations exist. Restrictions are necessary to prevent exploitation for self-interest, avoid unenforceable contracts due to factual errors, and ensure compensation in cases of non-performance. Some of its provisions are enumerated below:

SECTIONS	
• S24	Agreements with unlawful considerations and object
• S25	Agreements with no consideration
• S26	Agreements in restraint of marriage
• S27	Agreements in restraint of trade
• S28	Agreements in restraint of legal proceedings
• S29	Agreements that are uncertain
• S30	Agreements by way of wager

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In this work, our discussion is limited to the S30 of the Indian Contract Act (wagering contract). Which states:

"Agreement, by way of wager, is void, and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide the result of any game or other uncertain event on which wager is made."

Exception: In certain prize of horse races (subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of five hundred rupees or upwards, to be awarded to the winner of the horse race)

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CONDITIONS OF WAGER:

1. Mutual chances of gain or loss

2. Determination of results beyond The parties' control

3. Money involved should be of parties

4. There should be only two parties

5. The only interest of the parties Should be the sum involved

INTRODUCTION OF THE CASE

Herein, we have dissected the case "Gherulal Parakh v Mahadeodas Maiya", 2with vital facts, and related

FACTS OF THE CASE

Petitioner: Gherulal Parakh

Respondent: Mahadeodas Maiya and others

On March 26, 1959, the Supreme Court of India, comprising Subbarao, K. Imam, and Syed Jaffed Sarkar, issued a judgment in the case involving Gherulal Parikh and Mahadeodas Maiya. They were joint family managers who entered into partnership agreements with two companies, Mulchand Gulzarimull, and Baldeosahay Surajmull, for wagering contracts involving the purchase of wheat. The agreement stipulated that both parties would equally share any losses incurred.

Mahadeodas Maiya entered into 32 contracts with Mulchand and 49 contracts with Baldeosahay, resulting in significant losses. When it came time to settle the debts, Mahadeodas paid his share and requested that Gherulal Parikh also pay his half. However, the appellant, Gherulal, refused to do so, claiming he was not responsible.

[2] SCR 1959 Supl. (2) 406

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DARJEELING SUBORDINATE COURT'S DECISION

In response to the other party's claim for half of the loss incurred in transactions with Mulchand, the Darjeeling Subordinate Court awarded them Rs 3,375 and allowed them to reserve rights for any additional pending amounts.

After this settlement, the appellant filed a new suit to recover Rs 5,300 with added interest, citing the dissolution of the firm.

The appellant argued that although the agreement to enter into a wagering contract was valid under "section 23 of the Indian Contract Act," it was illegal under "section 30 of the Indian Contract Act." The respondent claimed that the partnership was prohibited under "section 69(1) of the Partnership Act" as it was not officially recognized and registered and that the suit was barred under "section 2 rule 2 of the Code of Civil Procedure."

Judgment:

The court deemed the agreement illegal and against public policy since it was based on market-based wagering contracts with a forbidden objective. The claim related to transactions with Mulchand was not barred under "s2 rule 2 of the Code of Civil Procedure" as the cause of action had not arisen. The court also held that "S.69 of the Partnership Act" did not apply since the partnership was between the extended families of the parties, leading to the dismissal of the suit."

APPEAL IN THE HIGH COURT

In the High Court appeal, it was determined that the agreement was between the managers, not the families, making it valid. The partnership was intended for a single season, focusing on a single venture with merchants in Hapur. Therefore, it didn't fall under the provisions of "69(1) and 69(2) of the Partnership Act" and dissolved after the season. Although the transaction had elements of wagering, its object was not unlawful, and there was no evidence of repayment to the merchant, despite the claim of Rs 7615 to Baldeosahay.

As a result, a decree was issued in favor of the first respondent for Rs3,807.5 without interest due to the firm's dissolution.

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ISSUES WITH THE JUDGEMENT

- The appellant's counsel argued that the claim of the partnership ending at the season's conclusion lacked proper and substantial evidence.
- The original plaint did not mention the dissolution of the business or seek relief for the dissolved firm.

ISSUE

- If the partnership agreement of entering into contracts that are wagering was valid according to "section 23 of the Indian Contract Act".
- Whether something void equal to anything forbidden by law?

ARGUMENTS BY BOTH THE PARTIES

According to the plaint, the parties entered into contracts with two merchants as a group between March 23, 1937, and June 17, 1937. After June 17, 1937, the plaintiffs obtained full profit and loss accounts for the aforementioned transactions from the merchants in question. They then gave the defendants notice that they were to pay them Rs. 4,146-4-3, which is half of the total payments they had made on account of the aforementioned contracts.

It can be seen from the aforementioned pleadings that even though an express allegation of the fact of the partnership's dissolution was only made by an amendment on November 17, 1941, the defendant filed a further additional written statement on August 14, 1942, alleging that the allegations in paragraph 2 were false and that because the date of the alleged dissolution had not been mentioned in the plaint, the plaintiff's case based.

The learned counsel for the respondents said- There must be evidence that the contract was entered into with the understanding that performance of the contract would not be demanded, just the price difference would be paid. The parties to the wager should agree not to seek delivery of the items but rather to accept just the price difference upon the occurrence of an event. on the said alleged dissolution was unmaintainable.

As[3] an argument to this, it was contended that there was no evidence showing that the common

[3] SCR 1959 Supl. (2) 406

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interest of the merchants and respondent was not delivery of goods but gambling in difference in prices.

The defendants argued that the partnership's sole purpose was to conduct wagering transactions, with no intention of making or receiving deliveries of products. According to the evidence presented in court, the motive of both parties to enter into the partnership agreement was to deal with the differences in prices of the object and not with its delivery. This is a concomitant factual finding, and by the custom of this Court, the court declared that the appellant and the first respondent formed a partnership to conduct wagering transactions, and the claim pertained only to the loss sustained about those transactions.

The counsel of the appellant advances the following arguments-
(i) the object is forbidden by law
(ii) it is opposed to public policy
(iii) it is immoral

THE COURT SAYS

The Supreme Court held that the parties had a contract that was wagering in nature and also different prices. None of them had any interest in the delivery of the goods. "Section 30 of the Indian Contract Act" states that wagers are void but under "section 23 of the Indian Contract Act", stating that entering into transactions that are wagering are not supposed to be classified as guilty but if they are enforced, they are supposed to be considered as guilty. Hence, collateral arrangements in this case cannot be considered unlawful under "section 23 of the Indian Contract Act". Furthermore, when the appellant's counsel contended that a partnership of wagering cannot occur between people who have "agreed to share the profits of a business according to s.4 of Partnership Act, the court passed that since this was not put forward either in Subordinate Court or High Court nor for application in High Court for Supreme Court, and the appellant aimed at "whether partnership formed for the purpose of continuing a business is illegal under s.23 of ICA", it cannot let the appellant come up with a new plea, express no opinion and declare that the partnership

The common law of England and India never declared gambling as illegal but void. Although a wagering contract was unenforceable under "Section 30 of the Contract Act", it was not illegal

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under “Section 23 of the Contract Act”, and an agreement related to such a contract was not illegal. As a result, that section did not apply to a partnership that carried on wagering activities. Because the moral prohibitions against gambling in Hindu Law books were never legally implemented, it was difficult to claim that a clear head or principle of public policy had been established by courts or established by precedents that directly applied to wagering contracts. Based on any authority, the “Hindu Law” notion relating to the sons' obligation under the law to pay back their father's debt was not introduced into the field of contracts. The Contract Act's Section 23 was modeled after the English common law, and it must be understood as such.

Since the definition of "immoral" is exceedingly broad and variable, there is no single, accepted definition that can be used. Therefore, any law based on such a flexible idea would be ineffective. it's objective. “S. 23 of the Indian Contracts Act” said that the Legislature planned to make that provision. constrained meaning of a term. The restriction put on it by "The Court regards it as immoral" is a phrase that clearly showed that it was a part of the common law as well and therefore, be limited to established and accepted standards. It was concluded that immorality was only defined based on sexual immorality and not social immorality. Legal rulings limited it to sexual Immortality and gambling was not permitted to be appointed as new head inside of its fold. Hence, the appeal failed and was dismissed.

RATIO DECIDENDI

The court applies various principles to come to a decision.

(i) The contract is unlawful:

The learned Judge herein the case makes an important view that the contract of wagering is not illegal yet there will be no action if one partner pays for the resulting loss. This is based on Chitty’s Contract “In as much as betting is not in itself illegal, the law does not refuse to recognize a partnership formed for the purpose of betting. Upon the dissolution of such a partnership, an account may be ordered. Each partner has a right to recover his share of the capital subscribed, so far as it has not been spent; but he cannot claim an account of profits or repayments of amounts advanced by him which have been applied in paying the bets of the partnership."

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Finally, after taking into consideration the court decrees,

1) Both the wagering and the collateral contract are valid as per the English Contract Act.
2) Following the passage of the "Gaming Act, of 1845", a wager is henceforth void but not unlawful, i.e., not against the law. As a result, the primary wager contract is void but a collateral contract is still enforceable.
3) The conflict about whether the second part of S18 of the Gaming Act, 1845 "unpaid winnings accrued from gambling could be sued for in a court of law" is enforceable in a court of law or not. This was ultimately resolved with the aid of the "Hill v. William Hill4" case with the court's decision that such a claim was invalid, regardless of whether it was made by the provisions of the parties' original wagering contract or a substitute agreement;

(ii) The contract is against public policy

Before deciding the case, the court referred to various observations and finally applied these principles to arrive at a decision.

The court also took a look at the laws of England, and we noticed the contracts have never been struck down based on public policy. Although the statute declares them to be "void", they are not "illegal". Intriguingly, even though wagering contracts were void in England, collateral agreements about that were still enforceable till the Gaming Act of 1892 was passed. Indian states too followed this policy except the State of Bombay. This continued to be upheld even after "Article 21" of 1848 was passed but was later replaced by "Section 30 of the Indian Contract Act". There was a grave misuse of Hindu text laws in cases. Additionally, there are certain limitations present in gambling, suggesting that they are not an illegal practice. Furthermore, they kept the current situation in mind. Gambling was a lucrative source of income for the states. The court also reasons that gambling is a centuries-old practice well appreciated by the state and people alike. On another sphere, it contends that gambling is not a matter of "grave importance" and does not give "incontestable harm" to society. There is no need to form a new branch of public policy for wagering. Even if this is a matter of urgency, it is for the legislature to decide and do to come under the preview of courts' jurisdiction.

[4] "Gherulal Parekh v Mahadeodas Maiya AIR 1959 SC 781" (*One stop destination for DULLB students), available at* https://dullbonline.wordpress.com/2020/11/02/gherulal-parakh-v-mahadeodas-maiya-air-1959-sc-781-2/ (last visited on 12 September 2023)

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ORBITER DICTUM

The Privy Council rulings demonstrate the legal situation in India before the passage of Act 21 of 1848, namely, that wagering contracts were controlled by the common law of England and were not void and consequently enforceable in Courts. Indian Courts also had the same view.

The rules outlined in earlier rulings must be applied by the court either explicitly or by analogy. The judge must clarify, not enlarge, this specific area of the law. However, it is necessary to adapt the laws already established by precedent to the brand-new circumstances brought on by a changing environment.

Even though the contract appears to violate one of the accepted pillars of public policy, it won't be ruled unlawful unless the harm it causes is beyond question. Lord Atkin stated in a precedent-setting case that this doctrine "should only be invoked in clear cases where the harm to the public is substantially incontestable, and does not depend upon the idiosyncratic inferences of a few judicial minds."

Public policy’s rules are to be explained by the court and apply them whenever required. Lord Atkin contradicts Lord Halsbury’s dictum of the categories of the public policy being closed and mentions that they can be invoked only if the cases have “harm to the public substantially contestable”. Lord Thankerton and Lord Wright are of the view that for public policy, the same set of principles is to be applied to new circumstances.

For the third contention from the appellant’s side, the court observed the following,
Halsbury in his Laws of England, 3rd Edn., Vol. makes a statement, on p. 138:
" A contract which is made upon an immoral consideration or for an immoral purpose is unenforceable and there is no distinction in this respect between immoral and illegal contracts. The immorality here alluded to is sexual immorality."

In the Law of Contract by Cheshire and Fifoot, 3rd Edn., it is stated at p. 279:
" Although Lord Mansfield laid it down that a contract contra bonos mores is illegal, the law in this connection gives no extended meaning to morality but concerns itself only with what is

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sexually reprehensible."[5]

comments

The judges have rightly dealt with the case. We are in favor of the decision that the judges have come to. The fact that the judges have referred to several cases, both Indian and foreign, especially English, and considered the Orbiter Dictum of those cases into consideration before providing the final judgment proves the significance of the preceding cases. This case particularly makes us clear about the difference between Section 23 of the Indian Contract Act and Section 30 of the same and distinguishes between 'void' and 'forbidden by law'.

Conclusion

In the Gherulal Parikh vs. Mahadeodas Maiya case, we've explored the limits on freedom of contract in wagering agreements. This case clarifies that wagering can be legal but becomes enforceable only when carried out. It's crucial to distinguish between something declared void by law and something being illegal. This case sheds light on the nature of wagering agreements.

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[5] 1959 AIR 781 1959 SCR Supl. (2) 406