The Concept of Wagering Agreements under the Indian Contract Act, 1872

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ABSTRACT: ***This paper initially begins with defining the term "wagering". Wagering transactions or wagers are agreements signed between the parties on the basis or condition that, money or some decided amount of rupees is owed by the first party to the second party on the occurrence or happening of a potential unknown incident or event, and similarly, by the second party to the first party when the event or incident does not occur or take place. Further, the paper deals with the essentials and effects of wagering with respect to the Indian Contract Act, 1872. With respect to a wagering transaction, there should be a shared or an equal risk of profits and losses. Parties engaged or involved in a wagering transaction collectively and mutually agree upon the nature of the agreement that is to be won by either side. The paper concludes while giving some suggestions and recommendations which are required to be implemented within the current legislation, in order to control or curb the existence or prevalence of such sort of agreements within the Indian market. It is a wagering deal, where one of the party can win but not lose, or can lose but not win. The nature of a wagering agreement is that, none of the parties involved have any stake or interest in the transactions, other than the money it gains or losses.***

KEYWORDS: Agreement; Contract; Indian Contract Act, 1872; Section 30; Wagering; Wager.

INTRODUCTION

A wager is an arrangement between two parties, where one of the parties accept to render money on the occurrence of some unknown event or incident, taking into account that, if the event does not take place or occur, the other parties promises or agrees to pay the same amount[1].

In plain terms, a wagering agreement is an arrangement in which money or the value of the money is payable, on the occurrence or non-occurrence depending upon any potential unpredictable event, and may take several forms in real life from one person to another, but in each form the typical features of a bet will be quite witnessed[1].

The purpose and main aim of wagering is to bet upon something worth depending on the outcome of some unknown or future case, such as a horse race, or on the determination of the facts regarding some past or current events. All deals or agreements in the United Kingdom, whether in the nature of gambling or wagering are treated as invalid. In that it is immaterial whether the agreement is in the form if parole or written. Since the agreement was treated as null and void therefore for recovering of any amount or object no action shall be taken or maintained before any court of law or equity[2].

Wager, "something risked on an indeterminate or unstipulated event or an occasion" is the definition of this term. On the other hand, when the bets are placed for the outcome of the event like sporting event, that type of gambling is known as wagering. The wagering or placing a bet on an event with an unknown result of money or something of worth, with the ultimate goal of winning cash or material goods is concluded as an act of wagering. Therefore, it encompasses the existence of three rudiments: consideration, risk, and a prize[2].

The Indian Contract Act under Sec. 30 discusses on the subject of the agreement on wagering, which reads as "wagering engagements are invalid and unenforceable."The section does not define the term "wager", on the other hand, section 30 states that "Wagering deals are invalid and no action can be taken to recover:

a. any money believed to have been own on a wager; or
b. assigned to any individual to abide by the result of any game; or
c. other uncertain event on which a wager is placed."[3].

The law of contract in India does not specify the term wager in the Indian Contract Act. Though the word wager is not defined under the act classic concept of wager can be find in the case of *Carlill v Carbolic Smoke Ball Co*. A wagering contract is one whereby two-persons or parties, professing to hold opposing or contradicting viewpoints or perspectives about the issue of a potential unknown or strange case or event, jointly accept that there is no other consideration for any party to allow such a contract based on the decision of the event that one must win or lose[3].

Wagering was used earlier during many times and scenarios in Indian culture from ancient history, though there were no dice; Indians used the Bhibhakti Tree's nuts. If we go back to the Mahabharata times, one of India's oldest mythologies, where the opponent's abilities were measured not by battle, but by games and boards[3].

Agreements entered between the parties by way of wager is invalid and unenforceable, according Indian Contract Act as given under the Sec. 30, and no action or remedy measures shall be brought to recover:

a. any money believed to have been own on a wager; or
b. assigned to any individual to abide by the result of any game; or
c. other uncertain event on which a wager is placed.

The section does not describe the term "wager" but reflects the entire wagering agreement/contract legislation which is currently applied in India[3].

The paper attempts to examine secondary sources for analysis. Further, it deals with a detailed comparative analysis between the laws in India relating to wagering cases and the status of laws in English law. The paper would also discuss the various facets of wagering, such as its characteristics, enforceability, its exceptions, while contrasting it with the Gambling Act, 2005[4].

Agreement by way of wager is invalid pursuant to section 30; and no action shall be brought to recover:

a. any money believed to have been own on a wager; or
b. assigned to any individual to abide by the result of any game; or
c. other uncertain event on which a wager is placed[4].

This portion illustrates the entire wagering arrangement or contract law now applied in India, augmented by the Act to Avoid Wagers (Amendments) Act, 1865, which amended the Act to Avoid Wagers, 1848, in the Bombay State. The legislation relating to wagers in effect in British India was the Common Law of England until the Act of 1848[4].

An activity on a wager could be preserved under that law, provided, it is not against the interest of third-party feelings, did not contribute to lewd facts, and is not contrary to public policy. Inherently vicious and pernicious are the essence of gambling[4].

In Scotland, The United States of America and Australia, gambling practices that have been condemned in India since ancient times seem to have been similarly prohibited and looked at with disfavour. Subject to the terms of the Gaming Act, 2005 in effect in England, Wales and Scotland, gambling is currently legalized under English statute[4].

The word "wager" means a gamble in the vocabulary of a layman. The definition of the word "wager" in the Black Law Dictionary means, something risky, such as a sum of money on an unknown situation or occurrence of an event, on which the parties have no material interest other than reciprocal chances of "gain or loss." Thus, where two parties enter into an arrangement on the basis that the first party pays the second party a fixed amount of money on the occurrence of an uncertain potential events, such a sort of transaction amounts to "wagering"[5].

Wagering deals or agreements between the parties will not be executed or implemented in any court of law as per Indian Contract Act given under the Sec. 30, since they have been specifically found to be invalid and illegal. In the purpose of recovering something alleged to be gained in any wager or non-

compliance of any party to confirm with the outcome of the wager, no suit may be brought or executed in the court of law[5].

In the case of *Gherulal Parakh v. Mahadeodas Maiya*, the commissioners of two joint families entered into a bond, to carry out or perform wagering contracts with two corporations of Hapur, upon the understanding that the benefit and loss arising from the deals will be shared by them equally in fair shares. The claimant later declined the accountability to bear his share of the damage[5].

Wherein, the subordinate judge ruled that under section 30 of the statute, the wagering deal entered into by the partners are invalid. Subsequently, on appeal, the High Court held that, while the agreement signed by the parties was null and void, the object of the agreement was not unconstitutional, as was the case under section 23 of the same statute, and, thus, it remained and existed between the parties[5].

An interesting view of the case was that, while all unlawful agreements are null and unenforceable by statute, all unlawful agreements are not unlawful or unethical or contrary to public policy. Therefore, while all wagering agreements are invalid and unenforceable by statute, it is necessary to decide in a wagering agreement whether, under Section 23 of the Indian Contract Act, such an agreement is indeed unlawful to verify its legality[5].

DISCUSSION

Wagering deals or wagers are agreements reached and entered between the parties under the basis or notion of mind that, money is owed by the first person to the second person on the outcome of a potential unknown incident, and by the second person to the first person when the unknown incident does not occur or arise[6].

A wagering deal or agreement is one in which 2 people or parties who profess to hold professing to hold different views regarding a future event, jointly agrees that based on the detriment of that event, an amount of money or other stake shall be paid or allocated to him; none of the contracting parties has any interest in that contract other than the sum or stake he would win or lose[6].

It is important to note that, in a wagering arrangement each party can either win or lose. The occurrence of winning or losing the event is being dependant on the issue of the case or on the occurrence of the event, and thus, remaining unknown until that issue is understood or occurrence takes place. It is not a wagering deal if one of the partners can win but cannot lose. The merit of this argument is that all the important aspects that make a deal a wager are brought out or executed[6].

When the bets are placed for the outcome of the event like sporting event or a piece of trivia, that type of gambling is known as wagering. The dictionary sense of the term is “something risked on an unknown event”. Placing bet on an event with an unknown result of money or something of worth, with the ultimate goal of winning cash or material goods is referred to an act wagering.

Therefore, wagering needs 3 important essentials to be present in the contract wiz

a. consideration,
b. risk, and
c. A prize.

The consequence or result of the bet is always instantaneous and unknown, such as a single dice roll, coin flipping, a French roulette, or a horse crossing the finish line, but longer time spans are often prevalent, such as, betting on the results of a potential sporting game or even a whole sports season[6].

Millennium years ago, the 'throw of Aphrodite' was called rolling two sixes, which would mean conquest in a game. It can be said that betting was developed in Greece, as the ancient texts of HOMER refer to the game. Greeks played dice games, coin flipping and several other games based on chance, and even known locations were expressly provided for this game as well[7].

It was quite witnessed earlier that thunder god, sky god and underworld god in the ancient Greek religion played 'throw the dice' in Greek mythology to divide the world among them. However, when society-built

administration understood that gambling eats their state. Since by the time the government realises that betting would increase the chance of cheating and that could result in destroying law and order in the society. Thus they decided to put some restriction on the betting or completely banning the betting[7].

A betting deal is void ab initio, and S. 65 has no right to it. Payment paid immediately to the recipient of a bet by a third person cannot be collected by the loser. The pledge may not be upheld even if a loser makes a new offer to deliver for his loses in spite of his not being released; but if he offers a cheque in relief of his responsibility, owing to the commitment of the winner not to get the title posted, the cheque will not be contaminated with illegitimacy. The cheques may not be binding by the original account holder, but can be imposed by the holder of the cheque by a third person, even though he was aware of the facts that led to the cheque being issued[7].

An insurance transaction represents a bet. Any insurance policy is a bet if, in the event that settlement money is due, the insured has no insurance cover. The insurance value typically rests in the fact that the case is one that is prima facie detrimental to the insurance company interest. Whether a freight loaded on a ship is covered, his insurance is not a bet and his property is at risk mostly during journey; but if there is no freight on deck, the agreement is a wager; because if the ship is not missed, the insurance balance is paid[7].

Section 6 of the Marine Insurance Act 1963 states that a maritime insurance policy is invalid by means of bet; and that a maritime insurance cover is considered to be a betting policy where there is no terms of payment on the insured. The (English) Marine Insurance Act 1906 further specifies that if the beneficiary has no involvement in the game, a policy or insurance policies is considered to be a gambling or betting contract[7].

A conditional arrangement is not inherently a betting arrangement, and betting contracts must be differentiated from deals. In a category of situations where the agreements are signed into through traders, this differences come into significance. In this group of instances, the plaintiff's mode of operation is, when entering into a sales contract, to buy the same quantities before the day of vaida; and, when entering into a sales contract, to buy the same quantities before the day of vaida. Of course, if the selling and purchasing are to and from the same entity, this method of transaction has the impact of cancelling the arrangements, causing only discrepancies to be compensated[7].

If they are separate people, it positions the criminal in the role to satisfy his obligations indirectly. This is, certainly, a wildly dubious form of commercial transaction; but the arrangements are not betting arrangements, unless, at the time of entering into the contractual agreements, the two negotiating parties have the purpose of neither calling for nor giving delivery from or to each other. There is no rule towards betting as there is against gambling." A fortiori, betting arrangements are not considered to be negotiations between investment bankers, whose usual course of operation is occasional settling of discrepancies”[7].

An insurance contract is an indemnification arrangement which is intended to cover one party's interest from loss and which often includes an insurance policy. From the other side, a wagering deal is a reversible contract that has no stake in an occurrence occurring or non-happening. Unlike insurance contracts, betting contracts are invalid in essence and the purpose of a betting contract is to bet about the value of money or money, whereas protecting a benefit is the purpose of an insurance policy[8].

The complexity of a potential case is the most important aspect of a wagering deal. The consequence of the unpredictable case must not be common to the parties. The condition herein is that, even though the incident has taken place in the past, the participants must have no information about the results. This ensures that the hypothetical occurrence is not appropriate, but rather that the participants do not be informed of the results. In the situation of *Jethmal Madanlal Jokotia v. Nevatia & Co*, even though the incident has happened previously, the participants must not be mindful of the existence of the event[8].

The Insurance Policy is a two-party agreement, i.e. In this, the provider and covered entity agrees to pay the insurance carrier the benefits if an unknown potential occurrence exists or impacts the client who holds an insurance policy.

While a betting deal is an arrangement by which 2 people proclaiming to have different aspects on the question of a potential unknown case are jointly settled on based on the decision of the situation that an amount of money is to be gained by the other, none of the negotiating parties has any other concern[8].

The Indian Contract Act under Sec. 31 describes "contingent contract" as an arrangement to do or not to do anything, whether there is or does not exist a contingent incident to that contract, while a betting arrangement is an arrangement that only rests in one manner on the occurrence of an event. In the conditional arrangement, the promisor will have some stake in the activity, while the participants have only involvement in the sum of money they have invested on in the wagering agreement. Whereas the betting arrangement is not, the conditional arrangement is legitimate and legally binding[9].

The Indian Contract Act under Sec. 30 explicitly specifies that the wagering arrangements are invalid and also that the participants to the arrangement are unable to make a lawsuit for the restoration of the contract award. But the betting deal is not unconstitutional, rather it is invalid, which means that they will be rendered in the court room but are not binding[9].

Two people engaged into betting contracts in stocks in *Badridas Kothari V. Meghraj Kothari*, and one was debtor to others. A promissory note for the settlement of the loan was performed. The note was found not to be binding. In other words, it is similarly void of a new offer to deliver money earned on a bet[9].

The Indian Contract Act under Sec. 30 specifies that the betting deal would not be an invalid agreement dependent on wins and losses the horse. A membership or donation, or an arrangement to subscribing or donate to any sheet, reward or pot of cash, of the worth or total of INR 500 or up to the champion or champion of any horse race shall not be invalid under that clause. The cause horses are omitted from the roll is that horse races aren't just based on opportunities or chance, but also on the horse's previous training, which involves exercise, food, upkeep. Instead of chance, these races are focused further on the abilities of the horse[9].

For a wagering deal, it is important that each side can either succeed or fail under it, whether they can win or lose based on the issue of the case, and thus remain unknown until the problem is understood. It is not a wagering deal if one of the partners can benefit but could not fail. The validity of this argument is that all the important aspects that reach an agreement of a wager are brought out[10].

Wagering deals are entirely void: the beneficiary of a wager will also not reclaim the balance pledged by the loser. That does not impact contingent trades, so the betting deal is not unconstitutional. Collateral contracts are not invalid, but are true and actionable. So a leverage deal is a cash loaned to engage in a betting investment and this cash is due and payable[10].

CONCLUSION & IMPLICATION

The judicial system faces a lot of discomfort when grappling with what actually constitutes a bet and what has been beyond the meaning of wagering requirements since the Indian Contract Act of 1872 does not specify what comprises a wager. Section 30 only states that all betting deals are null and legally binding, leaving a great deal of doubt as to their understanding. The meaning of the word wager should then be changed and the range of this clause extended.

The wager is focused on incentive. Therefore, both sides need to have a fair chance of winning and both sides need to be granted shared chances to win or fail. Arrangements of which one side decides the outcome then it should not amount to wager. The case would have two results, because the parties can each be given an equal chance. There is no bet whether winning or losing is totally dependent on talent.

Only the result where they've already pinned their capital must be the priority of the parties to the deal. In a case apart from winning or losing, the participants should have no other purpose. So the primary intention must be gambling. A betting option would not be considered a reimbursable value in the agreement. To render it a betting deal, there has to be the lack of some sort of interest by the participants.

And last, there have been some inconsistencies that have yet to be worked out after working throughout the whole wagering deal. The first and foremost point, however, is that betting was thought against

morals, but it was an event of the past as civilization evolves, because it also evolves behaviour and so should be the rules, and not allowing betting will not fix the question, rather it raises further so it will be done by one who is into betting, even if it is not allowed.

It should also be allowed so the minimum money gained from gambling will not go ignored, but it will be paid for and recorded, when citizens have now begun to use betting in a constructive manner that is more of a talent activity than luck.

And even if we speak about the difference not just sporting event, there are so many other sports that are focused on ability and only on abilities, and in all those sports the participant who bets may understand about the abilities of the participant upon which he bets, and so the notion of potential confusion may decrease since he knows how the player can play and the fundamental aspect of placing a bet.

And so baseball as well as other activities should be called competitions dependent on talent and simply on chance, and that no other sport apart from horse racing has been removed from section 30 of the ICA, making the concept very specific, there are improvements which need to be made to expand the variety of sports protected by this concept.

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