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Indian contingent contracts and wagering agreements: The distinction between the two

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According to the Indian Contract Act of 1872, a contingent contract is a contract in which the parties agree to do or not do something in the event of an accident, incident, or collateral to the said contract occurs or does not occur.¹ On the other hand, a wagering agreement is a kind of "quasi-contract" wherein one party offers the other party to pay out money if an uncertain event occurs in the future and the other party agrees to pay the money if the same event does not happen. The key purpose of this article is to compare how a contingent contract differs from a wagering contract. The paper essentially aims to investigate and answer "Why are some contracts, such as insurance and indemnity, subject to conditional contracts, while bets are subject to a betting contract that is initially invalid?". It uses a secondary data collection method to determine the legal standing of various countries like France and Australia on wagering agreements. To support the research findings, the researcher has also analysed recent relevant case laws. In the end, it also provides some suggestions in this area.

Keywords: *contract, contingent contract, wagering agreements.*

¹ Indian Contract Act 1872, s 31

INTRODUCTION

Contingent Contract: A contingent contract is a conditional contract for uncertain events, which can be enforced by law only when the conditions agreed by both parties occur or do not occur.² In the case of a contingent contract, the performance of the contract can only be requested after an uncertain event has occurred.³ In a proposal, without fulfilling the conditions, there is no contract.⁴ This is the difference between a conditional contract and an offer.

ESSENTIALS⁵

- The contingency must be collateral to such a contract.
- The contingency is dependent on the person's will.
- A contract is only formed when it involves performance or non-performance of an obligation.⁶
- The condition of contingency should be conditional.
- The event cannot be at the discretion of the promisor.⁷

Section 33 of the Indian Contract Act 1872⁸ stipulates that if future events become impossible, contingent contracts based on the absence of uncertain future events will not be executed.

The act further gives an illustration for the same -

"Illustration A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks."

² Mitra S, 'Contingent Contracts' (Legal Service India - Law, Lawyers and Legal Resources) <<https://www.legalserviceindia.com/legal/article-5046-contingent-contracts.html>> accessed 22 September 2021

³ J Chitty, *Chitty on Contracts: Vol 1 General Principles* (Sweet and Maxwell 1968)

⁴ *Ibid*

⁵ Kanwar J, 'Contingent Contracts' (*Law Times Journal*, 10 June 2019) <<https://lawtimesjournal.in/contingent-contracts/>> accessed 22 September 2021

⁶ Indian Contract Act 1872, s 32

⁷ Indian Contract Act 1872, s 33

⁸ *Ibid*

In the famous case of *Chandulal Harjivandas v Commissioner of Income Tax*⁹, it was recognised that “The contract of insurance and indemnity are contingent contracts”.

Wagering Agreement

Wagering agreements are nothing more than ordinary betting agreements because the term "wager" refers to something that is stated to be lost or won as a result of a disputed issue. Also, a bet on something that can bring a win or loss to the parties involved in case of an uncertain event is called wagering.¹⁰ According to A.K Sen, “*In the case of void agreements, collateral agreements which mean the agreements that are subsidiary or incidental to the main agreement are valid. Therefore, though wagering agreements are void, transactions collateral to such agreements is valid.*”¹¹

RESEARCH OBJECTIVES

The study entails the following objectives:

- To study the nature of contingency contacts and wagering agreements while analyzing the difference between the two.
- To discuss the validity of the wagering agreement in other countries.
- To analyze the use of contingent contracts and non-application of wagering agreements.

RESEARCH HYPOTHESIS

- **H0:** Wagering agreements are similar to Contingent contracts.
- **H1:** Wagering agreements are not similar to Contingent contracts.

RESEARCH QUESTIONS

- Is a Contingent Contract void?

⁹ *Chandulal Harijivandas v CIT* AIR 1967 SC 816

¹⁰ *Ibid*

¹¹ F Naveed, ‘The Legal Propositions for a Wagering Agreement’ (*LinkedIn*, 9 March 2018) <<https://www.linkedin.com/pulse/legal-propositions-wagering-agreement-faiyaz-naveed>> accessed 21 September 2021

- Sports Betting in India: Wagering Agreements or not?
- Are wagering agreements enforceable in South Africa and Australia?

RESEARCH METHODOLOGY

The study was primarily dependent on secondary data employing a descriptive research design. Extensive research was conducted to identify articles from various databases such as Manupatra and IPLEADERS. The secondary data collected has been obtained through various other sources like internet sources, blogs, and published papers. Relevant case laws were collected from SSC online and Indian Kanoon using a comprehensive set of keywords.

RESEARCH ANALYSIS

Nature of Contingent Contracts

“Contingent contract is a conditional contract wherein the contingent condition can be precedent or else subsequent. It is precedent if the contract is not to be binding until and unless the event specified occurs, while it is subsequent if subsequent if a previously binding contract is determining whether the event occurred or not. Although it is mostly made on the contemplation of a future event, it can even account for a past event but the uncertainty is with regards to not knowing how it happened.”¹²

Contingent contractual obligations will bind all parties to comply with the following conditions:

- Before the event occurs, each party is eligible to withdraw from the agreement.¹³
- Before the event happens, the main obligations have not accrued but as long as the event has the possibility of happening, the parties cannot withdraw.¹⁴
- Neither party must do anything to prevent the occurrence of the event.¹⁵

¹² *Ibid*

¹³ *Pym v Campbell* (1856) 6 E & B 370

¹⁴ *Smith v Butler* (1900) 1 QB 694

¹⁵ *Mackay v Dick* (1881) 6 App Cas 251

Nature of Wagering Agreements

The gaming act, influenced the Indian Contract Act to create laws on wagering agreements, although it doesn't define wagering agreements. The case of case, Chimanlal Purushottamdas Shah v Nyamatrai Madhavlal¹⁶, gave wagering agreements a new form of interpretation, it stated that *"the essence of gambling and wagering is so that one party is to win and the other is to lose upon a future event which at present is of uncertain nature – that is, if the events turn one way 'A' will lose, but if it turns out another way, he would win"*.¹⁷ Essential features of a wagering agreement include the existence of two parties, mutual change of gain and loss, uncertain event, no interest other than the stake, neither party to have control over the event. Although wagering agreements and betting and gambling are considered to be the same but betting is always done against a second party who places his stake against the one placed by the first party.¹⁸

DISTINCTION BETWEEN THE TWO

The precedent of Carlill v Carbolic Smoke Ball Co¹⁹ explains the dissimilarity between a contingent contract and a wagering agreement by stating- *"if either of the party may win but cannot lose or may lose but cannot win, it is not a wagering agreement"*.

If the event becomes impossible under section 32²⁰, the contingent contract based on uncertain future events will lapse. While section 30²¹ of the Indian Contract Act deems wagering agreement void. The Indian Judiciary cannot entertain any suit that is brought for recovering anything won on a wager. The fact that it is against public policy and also considering the ethical viewpoint, morality justifies this. They are outlawed in order to protect society's moral underpinnings if they were enforced, as they would encourage illegal behavior if they were.²²

¹⁶ Chandulal Harijivandas (n 9)

¹⁷ Ibid

¹⁸ A Singhal, 'Sports Betting in India: Wagering Agreements or Not?' (Lexlife India, 1 March 2021) <<https://lexlife.in/2021/03/01/sports-betting-in-india-wagering-agreements-or-not/>> accessed 21 September 2021

¹⁹ Carlill v Carbolic Smoke Ball Co 1892 EWCA Civ 1

²⁰ Indian Contract Act 1872, s 32

²¹ Indian Contract Act 1872, s 30

²² Sheetal Kumar, 'Nature of Contingent Contracts in India and How They Differ from Wagering Agreements' (2020) 1 Lex Research Hub Journal

The element of future uncertain events is a key element in the case of wagering agreements while for contingency contracts are merely collateral²³. Also as wagering agreement are basically “game of chance” for the future events are the sole determining factors, while in case of contingent contracts future event is only collateral.

The parties to a contingent contract care about the occurrence or non-occurrence of events, while the parties to bet only care about the occurrence of the event in which they have won or lost the most money.²⁴ Another difference is in the existence of reciprocal promises.²⁵ They are definitely in the case of wager while in contingent contracts they may or may not exist.

APPLICATION OF CONTINGENT CONTRACT AND THE NON-APPLICATION OF WAGER AGREEMENTS

Insurance is ideally a form of contingency contract, wherein the offeror (insurance company) takes up the risk of the offeree for which the offeree agrees to pay to the company a certain amount of premium/money. In case of the occurrence of the contingency, the offeror would be liable to the offeree. **Insurable interest** is significant in this case, without which an insurance contract is no more than a wagering agreement- thus, void.²⁶

Another application of a contingent contract could be of Mergers and Acquisitions Unlike such a contract Betting through money is an example of a wagering agreement Betting in sports is illegal in India.²⁷ section 30 of the Indian Contract Act,²⁸ provides for certain exceptions wherein any contract that involves skills like horse races are not void. Horse races are explicitly recognized as exceptions under section 30 of the act. Online sports betting gives the

²³ Rajni, ‘Special Types of Contract-Contingent and Wagering Contract’ (2014) 4 Golden Research Thoughts

²⁴ *Ibid*

²⁵ Auroshree, ‘HomeNewsHot Off The Press276th Law Commission Report On Legal Framework: Gambling And Sports Betting Including In Cricket In India 276th Law Commission Report on Legal Framework: Gambling and Sports Betting Including in Cricket in India’ (SCC OnLine)

<<https://www.sconline.com/blog/post/2018/09/05/276th-law-commission-report-on-legal-framework-gambling-and-sports-betting-including-in-cricket-in-india/>> accessed 20 September 2021

²⁶ Sharma M, ‘Agreements against Public Policy: Wagering Agreement’ (*pdfcoffee.com*)

<<https://pdfcoffee.com/90110471-project-on-wagering-agreementsdocx-pdf-free.html>> accessed 21 September 2021

²⁷ *Ibid*

²⁸ Indian Contract Act 1872, s 30

same reasoning. Several online gaming platforms are now claiming to be games of 'skill'. The majority of these platforms revolve around cricket. This brings in a controversy as to whether such contracts are by the way of the wager or not. In sports betting, one person is usually required to form a team, and their profit is calculated based on the performance of their teammates. Also, a Sports competition is not wagers as if skills play a part in the result awarded it is not a lottery.²⁹ This is the reason competitions like crosswords and puzzles are not wagering contracts.

Betting is criminalized under the Public Gambling Act 1867³⁰ of India. Also, we have the IT Act 2000³¹ which governs the online platform also gives us some respite when it comes to betting. The Lottery does not come under the ambit of gambling.

ANALYSIS OF THE NATURE OF WAGERING AGREEMENT IN OTHER COUNTRIES

The laws of many countries/regions invalidate gaming or gambling contracts. It's important to note immediately that these laws do not make gambling illegal. All they did was block games and betting contracts.

- **Australia:** In Australia, any "contract by way of wager are void" under S 4(1)(a) of GAMING AND BETTING (CONTRACTS AND SECURITIES), 1985.³²
- **South Africa:** Section 3(a) of the National Gambling Act, 2004 defines gambling to include "*placing or accepting a bet or wager.*" It realises that in case the parties have any independent interest other than the outcome of the wager such debts are valid and enforceable. While, if no such interest exists then debts are valid but unenforceable.³³
- **France:** Its legislation is based on the principle that unless the operator benefits from an exception to law or has legal authorization from the French Administration, games of

²⁹ *State of Maharashtra & Anr v Bennet Coleman & Co Ltd* (1936) 1 KB 416 (DC)

³⁰ Public Gambling Act 1867

³¹ Information Technology Act 2000

³² Rathore A, 'Wagering Agreements: The Position of Law'

<<http://www.legalservicesindia.com/article/283/Wagering-Agreements.html>> accessed 21 September 2021

³³ *Ibid*

chance and betting are prohibited. Betting is illegal in France with the exception of horse racing.³⁴

- **England:** According to section 18 of the Gambling Law, all gambling contracts or agreements are invalid, and no lawsuits shall be instituted or maintained in any court or tribunal to recover any amount or any value of value allegedly won in a bet, 1845 Year (UK). Before that, England had no laws prohibiting betting contracts. Section 18 of this law provides for certain exceptions for commercial transactions with investments, such as stock market index spreads or bets.³⁵

The UK Gambling Act of 1845³⁶ was passed by most common law jurisdictions. The gaming laws of Malaysia, Singapore, Hong Kong, and New Zealand are all based on British gaming laws.

ROLE OF THE INDIAN JUDICIARY

M/S Destiny Chit Fund Co. P Ltd vs Sxz7at Parkash,³⁷: The court on examining the facts concluded that the money the complainant company was asking for from the accused was related to chit fund vide and is not about any loan raised by the accused. The court stated that such an agreement is void. The Madras high court in the case of *Rajshree Sugars and Chemicals Ltd. v Axis Bank Ltd.*³⁸ held that since the transaction serves the purpose akin to insurance- it hedges the plaintiff's risk, therefore it is not a wagering agreement. *Jyothish Chandran vs Zee Tele Films Pvt. Ltd. (2019)*³⁹: To increase the sale of tickets the opposing party announced When the plaintiff won and went to collect his prize the opposing party alleged that "claim form was not readily available". The court held that the contract between the parties being wagering contract is null and void. Therefore, dismissing the complaint with no order as to cost.⁴⁰

³⁴ Auroshree (n 25)

³⁵ Rathore (n 32)

³⁶ UK Gambling Act 1845

³⁷ *M/s Destiny Chit Fund Co P Ltd v Sat Parkash* Crl Appeal No 1930-SB/2011 (O&M)

³⁸ *Rajshree Sugars & Chemicals Ltd v Axis Bank Ltd* AIR 2011 Mad 144

³⁹ *Jyothish Chandran v Zee Tele Films Pvt Ltd* Consumer Case No 44/2005

⁴⁰ *Ibid*

In a 2017 judgement of *Varun Gumber v Union Territory of Chandigarh*⁴¹, the petitioner claimed that Dream11 was a game of chance and wanted to file criminal charges as he lost money as a result of the fantasy game. In response, the respondent argued that the whole game depended on the skill of the player and the game includes the whole technique and skills of the participant as the petitioner had the chance to switch players if he felt there was a chance of loss. The court held Dream11 not liable and the appeal was as a result dismissed.⁴² In a similar case of *Gurdeep Singh Sachar v UOI*,⁴³ the petitioner filed a PIL challenging that Dream11 has components of chance and comes under the domain of gambling and betting. the petitioner's plea was rejected stating that such contracts do not come under section 30 of the Indian Contract Act and hence cannot be considered void.

CONCLUSION & SUGGESTION

Wagers are similar to contingent contracts, but Section 30 of the Indian contract act, prohibits its enforcement. It is important to remember that although all betting contracts are conditional, not all conditional contracts are betting contracts. The Indian Contract Act fails to provide any definition to wager or wagering agreement. Therefore, there is a need for an express definition to elucidate as to what is considered to be a wager, therefore removing any uncertainty about the nature of wagering agreements Also, a thorough analysis of various case laws on wagering contracts suggest that the Indian Judiciary faces inconvenience when dealing with the issue of the wager. Therefore, the scope of Article 30 should be expanded, and appropriate rules should be established on what is and what constitutes betting.

After the passage of the Indian Contract Law in 1872, gambling agreements became illegal. The reason for this is that the British Gambling Law of 1845 greatly influenced the Indian Contract Law of 1872. With the passage of the Indian Contract Law in 1872, all types of gambling contracts stipulated in Article 30 of the law were banned. Many things that were not mentioned in the Indian Contract Act of 1872 have been explained in many landmark decisions, but there are more things and statements that need to be reconsidered and

⁴¹ *Varun Gumber v Union Territory of Chandigarh* MANU/PH/1265/2017

⁴² *Ibid*

⁴³ *Gurdeep Singh Sachar v Union of India* 2004 (3) SLJ 69 CAT

considered. In addition to horse racing, there are many other skill-based games that are not considered exceptions to the betting agreement. Therefore, games and competitions need to be updated based on skills.

Although in India sports betting is void per se. online sports fantasy games are not deemed to be wagering agreements as the overall analysis of whether the betting on a particular game is valid or not, it depends entirely on the 'skill' and 'chance' factor. The government needs to reconsider the laws to suit the current conditions with regards to sports betting and rectify any grey areas that might be present. After all, laws should be clear and transparent.