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**WAGERING AGREEMENTS UNDER INDIAN CONTRACT
ACT, 1872****INTRODUCTION:**

An agreement is an accepted promise forming a valid consideration which is defined in section 2(e)¹ of Indian Contract Act, 1872.

A contract is a legally enforceable agreement between two or more parties for which a lawful consideration is also given. A valid contract includes:

- Ability of the parties to enter into a contract
- There should be a lawful consideration
- The object must be lawful
- It should not be declared void under Indian contract act 1872

This paper will throw light on agreements against public policy which is defined under section 30 of Indian Contract Act, 1872.

Conferring to the definition given by Sir William Anson a promise to give money or something as that worth of money for detection of an indeterminate event is known as a promise. The word '*wager*' means a '*bet*' or something that could be won or lost and

¹ Indian Contract Act, 1872

depends on the result of an indeterminate event and hence wagering agreements are usually betting or gambling agreements.

Illustration : A and B are two cricket teams. Reema Said that she'll pay 100 bucks to Sheena if A wins and Sheena said she'll pay 100 bucks to Reema if A loses. This is a wagering agreement between Reema and Sheena. The essential terms for getting into a wagering agreement are:

- The contradictory views of the parties on undetermined event - In *Jethmal Madanlal Jokotia v. Nevatia & Co*² case the court said that usually a wager observes an event of future but may also refer to an event which occurred in the past and the parties are still not aware of its results.
- Mutual chances of gain or loss of the parties - The essence of a wagering agreement is that both the parties should have equal and mutual chances of gain or loss otherwise the agreement could not be a wager. In the case of the parties of *Babasaheb v. Rajaram* there were no reciprocated gain or loss chances and the agreement was denied to be wager.
- The parties should not have control over the event - The parties to the transaction should not have the control over the happening of event because if control of the event goes to any of the parties than the agreement would lack its essential terms and won't be enforceable as in *Dayabhai Tribhovandas v Lakshmivhand*³
- The only interest of the parties should be the sum agreed as a stake to be won or lost - The parties should not hold any other interest as in the judgement of *Bhagwandar v. Burjoji Ruttonji*⁴ Sir Lawrence Jerkins said that the common intention of parties is essential in wagering agreements and mere speculation cannot deemed to be a contract by wagering.

VOIDNESS OF SECTION 30

Agreements by way of wager, void⁵. Due to the rationale that these agreements are void by various jurisdiction around the world, If these agreements are declared valid than the practices like gambling and various other ill practices would become common giving people the chance to earn money by doing nothing and this would create a

² Jethmal Madanlal Jokotia v. Nevatia & Co AIR 1962 AP 350,352

³ Dayabhai Tribhovandas v Lakshmivhand ILR 9188509 BOM 358,363

⁴ Bhagwandar v. Burjoji Ruttonji AIR 1917 PC 101

⁵ Twelfth Edition AVTAR SINGH, CONTRACT AND SPECIFIC RELIEF Eastern Book Company 2017

misconception that hard work is a choice and there are various other easy ways of earning money. This section says that the agreements by wagering are deemed to be void and a suit cannot be filed for any recovery of reward from it. A wagering agreement is void but not illegal. However, in the state of Maharashtra and Gujarat these agreements are announced illegal.

In the case *Badridas Kothari v. meghraj*⁶ two individuals entered into wagering agreement in shares and one of them became obligated to pay money to others. A note of promise was executed for the amount to be paid for debt. This was held not to be enforceable by law. Therefore a promise newly made to pay some amount of money won by means of wager is void equally.

The amount or reward paid by a third party to the winner of a wagering agreement can never be reclaimed from the loser. In *Gherulal Parekh v. Mahadeo Das*⁷ the apex Court held that a wager is void but is not forbidden by law. Hence under section 23⁸ the transaction warranty to the chief transaction is valid and enforceable.

VAGUENESS OF SECTION 30

The section of Indian Contract Act, 1872 which is in question for its vagueness as it states about the agreements pertaining to gambling or wagering in nature but the main issue with the section is that it does not give definition of the term 'wagering', thus creating an ambiguity in this section. Where as some cases define the term wager like *Carlill v Carbolic smokeball co*⁹. and the definition by sir William Anson⁵ makes the term understandable.

The most descriptive definition of 'wager' is given in *Carlill v Carbolic smokeball Co.*² "A wagering agreement is one by which two persons admitting to hold contradictory views on the issue of a future uncertain event, mutually agree that reliance on the determination of that event, one shall pay or hand over to him, a sum of money or other stake; neither of the contracting parties having any other interest in

⁶ *Badridas Kothari v. Meghraj* AIR 1917 PC 101

⁷ *Gherulal Parekh v. Mahadeo Das* AIR 1959 SC 781 (1959) 2 SCR 406

⁸ Indian Contract Act, 1872

⁹ *Carlill v Carbolic smokeball co.* (1893) 1 QB 256 (CA)

that contract than the sum or stake he will so win or lose, there being no other real consideration for the making of such contract by either of the parties.

EXCEPTIONS OF WAGERING AGREEMENTS:

The most important issue in the wagering agreements are the exceptions. If gambling is prohibited than why some activities like gambling on horse racing considered legal and not void. The reason being that this activity requires some skills. In *state of Andhra Pradesh v Satyanarayana and ors*¹⁰ case the apex court stated In all the games in which cards are shuffled and distributed, there is a possibility of chances because the circulation of the cards is not according to the usual pattern but depends upon the place of the card in the shuffled pack. The differentiation between a skill based game and a game of lottery was made but the court. In case of horse racing the game is not purely based on luck but various other factors like the physical condition of a horse, the amount of pedigree intake and the prior preparation of the horse so the person who has some skills has some control over the event so it is not a wager. Also in *Moore v. Elphick* case the court held that when skill acts as an important part in the results and prizes given according to the ranking of the results, the competition is not a matter of chance. Else, it is.

In *Dr. KR Lakshman v. State of Tamil Nadu*¹¹ the court observed that horse racing does not constitute gambling and betting rather it is a game of skills. But here also the section depicts ambiguity as it only mentions this case of horse racing where as various other sports like in cricket where pure betting principle could not be applied as it requires understanding of the game of players on the field, their past performance, the knowledge of the field and ground condition to predict the winning or losing team. Section 10 of public gambling act exempts cricket as a gambling game and calls it a skill based game.

The competitions in which some skills are entailed , unidentified puzzles, cross words are not termed as wager as there is ranking of participants and they are awarded according to that ranking and skills involved in it also being the reason but in case of lottery or a prize won by chance it would be considered as wager.

¹⁰ State of Andhra Pradesh v. Satyanarayana and ors 1968 AIR 825, 1968 SCR (2) 387

¹¹ Dr. KR Lakshman v. State of Tamil Nadu 1996 AIR 1153, 1996 SCC (2) 226

WAGERING AGREEMENT IN CONTRAST TO CONTINGENT AGREEMENT:

A contingent contract is stated under section 31 of Indian Contract Act,1872. It is demarcated as a contract to do or not to do something if event collateral to such event does or does not happen. It is collateral to the main purpose of the contract where as in a wagering agreement the win or lose in a transaction depends only on the occurrence of certain event.

In a wagering agreement the interest of the parties do not have any interest other than the money or reward earned by betting but in case of contingent contracts the parties hold real interest in occurrence and non occurrence of the event.

CONCLUDING OBSERVATIONS:

After citing many cases under Indian Contract Act,1872 and going through them I came to a conclusion that Indian contract Act section 30 pertaining to agreements by means of wager needs to be reviewed so that it could provide a expressed definition as to what does the term 'wager' means thereby removing the abstruseness from this section.

While going through various exceptions there is a limited scope of the games mentioned as we came across horse race competitions declared skill based sport but other games like cricket were left unmentioned though this paper discuss various reasons for believing them to be based on skills rather than betting or gambling. The scope of the section should be made wider and ambit of games covered under this section should be increased and more games should be added in it. The section 30 should be amended and made exact.