**Faculty of Law,**

**Medi-caps University,**

**Indore**



**Assignment-2**

**Law of Contract Act**

On

Analysing Law Under Section 23 of the Contract Act

L.L.B(Hons.)

**Submitted to: Submitted by:**

Prof. Sakshi Soreng Arpita Shukla

LLB Hons 1stSem

Roll No. - 2402981

Batch of 2024-2026

Lawful Consideration and Lawful Object

Section 23 of the Indian Contract Act clearly states that the consideration and/or object of a contract are considered lawful consideration and/or object unless they are

specifically forbidden by law

of such a nature that they would defeat the purpose of the law

are fraudulent

involve injury to any other person or property

the courts regard them as immoral

are opposed to public policy.

So lawful consideration and/or lawful object cannot contain any of the above. Let us take a more in detail look at each of them.

Lawful Consideration And Lawful Object

1] Forbidden by Law

When the object of a contract or the consideration of a contract is prohibited by law, then they are not lawful consideration or object anymore. They then become unlawful in nature. And so such a contract cannot be valid anymore.

Unlawful consideration of object includes acts that are specifically punishable by the law. This also includes those that the appropriate authorities prohibit via rules and regulations. But if the rules made by such authorities are not in tandem with the law than these will not apply.

Let us see an example. A received a license from the Forest Department to cut the grass of a certain area. The authorities at the department told him he cannot pass on such interest to another person. But the Forest Act has no such statute. So A sold his interest to B and the contract was held as valid.

Case Name: Gherulal Parakh v Mahadeodas Maiya

Citation: AIR 1959 SC 78 Date: 26 March, 1959

Bench: Subbarao, K. Imam, Syed Jaffer Sarkar, A.K.

Facts of Gherulal Parakh v Mahadeodas Maiya

The central issue in this appeal of Gherulal Parakh v Mahadeodas Maiya pertains to the legality of a partnership agreement formed with the intention of engaging in wagering transactions, as defined by section 23 of the Indian Contract Act. The appellant and respondent No. 1 established a partnership with the goal of participating in forward contracts for the buying and selling of wheat alongside two other firms. The agreed arrangement stipulated that the respondent would execute the contracts on behalf of the partnership and any resulting profit or loss would be shared equally between the parties.

The transactions ultimately incurred a loss and the respondent, in fulfilling the financial obligations, paid the entire amount owed to the third parties. Subsequently, when the appellant disclaimed responsibility for half of the loss, the respondent initiated legal action seeking recovery. The appellant’s defence included the assertion that the agreement to engage in wagering contracts was unlawful under section 23 of the Contract Act.

Issues

The primary question in Gherulal Parakh v Mahadeodas Maiya at hand is whether the purported partnership agreement is deemed void ab initio due to being either prohibited by law, contrary to public policy or immoral under the Indian Contract Act.

Contentions

The appellant put forth the following contentions in Gherulal Parakh v Mahadeodas Maiya:

A wagering contract, being void under Section 30 of the Contract Act, is also considered forbidden by law under Section 23 of the Act.

The concept of public policy in India, post-independence, is broad and such a contract is argued to be against public policy.

Wagering contracts are asserted to be illegal under Hindu Law.

Judgement of Gherulal Parakh v Mahadeodas Maiya

The contentions raised in Gherulal Parakh v Mahadeodas Maiya by the appellant were found to be legally unsustainable and were rejected. While a wagering contract is deemed void and unenforceable under Section 30 of the Contract Act, it is not inherently forbidden by law. Additionally, an agreement collateral to such a contract is not unlawful within the meaning of Section 23 of the Contract Act. Therefore, a partnership formed with the purpose of engaging in wagering transactions is not prohibited by this section.

2] Defeats any Law

This means if the contract is trying to defeat the intention of the law. If the courtsfind that the real intention of the parties to the agreement is to defeat the provisions of the law, it will put aside the said contract. Say for example A and B enter into an agreement, where A is the debtor, that B will not plead limitation. This, however, is done to defeat the intention of the Limitation Act, and so the courts can rule the contract as void due to unlawful object.

3] Fraudulent Consideration or Object

Lawful consideration or object can never be fraudulent. Agreements entered into containing unlawful fraudulent consideration or object are void by nature. Say for example A decides to sell goods to B and smuggle them outside the country. This is a fraudulent transaction as so it is void. Now B cannot recover the money under the law if A does not deliver on his promise.

4] Defeats any Rules in Effect

If the consideration or the object is against any rules in effect in the country for the time being, then they will not be lawful consideration or objects. And so the contract thus formed will not be valid.

5] When they involve Injury to another Person or Property

In legal terms, an injury means to a criminal and harmful wrong done to another person. So if the object or the consideration of the contract does harm to another person or property, this will amount to unlawful consideration. Say for example a contract to publish a book that is a violation of another person’s copyright would be void. This is because the consideration here is unlawful and injures another person’s property, i.e. his copyright.

6] When Consideration is Immoral

If the object or the consideration are regarded by the court as immoral, then such object and consideration are immoral. Say for example A lent money to B to obtain a divorce from her husband C. It was agreed once B obtains the divorce A would marry her. But the court passed the judgement that A cannot recover money from B since the contract is void on account of unlawful consideration.

7] Consideration is Opposed to Public Policy

For the good of the community, we restrict certain contracts in the name of public policy. But we do not use public policy in a wide sense in this matter. If that was the case it would curtail individual freedom of people to enter into contracts. So for the purpose of lawful consideration and object public policy is used in a limited scope. We only focus on public policy under the law.

So let us look at some agreements that are opposed to public policy,

Trading with the Enemy: Entering into an agreement with a person from a country with whom India is at war, void be a void agreement. For example, a trader entering into a contract with a Pakistani national during the Kargil war.

Stifling Prosecution: This is a pervasion of the natural course of law, and such contracts are void. For example, A agrees to sell land

CONCLUSION

Under Section 23 of the Contract Act, courts can refuse enforcement of contracts which are contrary not just to express or implied statutory provisions but to any delegated rules, regulations, notifications, circulars, or directions having statutory force.

In addition, contracts which are not unlawful but their performance may result in an unlawful act or consequence are also hit by Section 23. For instance, Section 144 of the Companies Act, 2013 provides that a company’s statutory auditor cannot provide certain services like internal audit, investment advisory services, and management services to the said company or its holding/subsidiary company. While contracts for provision of non-audit services by qualified chartered accounts by themselves are not illegal, there is a clear prohibition in law on auditors rendering non-audit services to companies where they are conducting the statutory audit. While chartered accounts contravening Section 144 are separately liable for misconduct by the regulator i.e. ICAI, courts are likely to hold that contracts for non-audit services between companies and their statutory auditors are unlawful under Section 23 of the Contract Act.

On similar lines, performance of a contract resulting in levy of penalty prescribed by statute will render the contract unlawful under Section 23. However, there are notable exceptions to this rule. It, therefore, becomes necessary to determine whether a contract will be enforceable based on the facts of each case. The Supreme Court has held that what is to be seen is whether the illegality goes so much to the root of the matter that the claimant cannot bring his action without relying upon the illegal transaction into which he had entered16. Indicating that courts may also consider equities while deciding on the contractual disputes, the Supreme Court observed that when both parties are confederates in the fraud, courts will have to find out which approach would be less injurious to public interest17.

In addition, contractual clauses requiring compliance with “applicable law” are common and one must bear the wider interpretation of Section 23 in mind while entering into contracts. There is no material difference between the expressions “existing law”, “law in force”, and “Indian law”18. Therefore, parties must remain alive to applicable laws and subordinate legislation while determining their rights and obligations under any contract, particularly since subordinate legislation can override existing contracts19.

Footnotes

1.Superintendence Co. of India v. Krishan Murgai, (1981) 2 SCC 246, para 25.

2.Union of India v. L.S.N. Murthy, (2012) 1 SCC 718, para 15.

3. Khoday Distilleries Ltd. v. State of Karnataka, (1995) 1 SCC 574, para 64.

4.G.T. Girish v. Y. Subba Raju, (2022) 12 SCC 321, paras 95-96 : 2022 SCC OnLine SC 60, para 69.

6.Abdul Hameed v. Mohd. Ishaq, 1974 SCC OnLine All 111, para 14.

7.State of U.P. v. Babu Ram Upadhya, AIR 1961 SC 751.

8. Peerless General Finance and Investment Co. Ltd. v. RBI, (1992) 2 SCC 343, paras 51-52.