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Significance of R.M.D. Chamarbaugwala Case in Establishing Rules of Interpretation

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ABSTRACT

India has one of the most convoluted gaming and gambling histories in the world. A dice was discovered by the archaeologists who contend that it dates back to 3300 BC and is made up of terracotta and sandstone. In this case, the petitioners, who were advertising and running prize tournaments in various Indian states, challenged the constitutionality of the Prize Competitions Act (42 of 1955), Section 4 and 5, and Rule 11 and 12 framed under Section 20 of the Act. These petitions were filed in response to Article 32 of the Indian Constitution. Their argument was that a 'prize competition,' as defined in Section 2 (d) of the Act, included not only gambling competitions but also those acts in which success depended to a significant degree on skill, and that the Sections and rules infringed on their (the petitioner's) fundamental right to conduct business and therefore are violative of fundamental right guaranteed to every individual under Article 19 (6) of the Constitution. They also contended that the said part of the Act cannot be severed from it, hence the entire Act should be declared as invalid. Application to all types of competitions by virtue of the definition in Section 2 (d), and that they were severable in their application to competitions in which accomplishment is not dependent on skill to any significant amount. In this case, doctrine of severability played a major role while giving the judgement by the court. As it was in dispute whether Section 4 and Section 5 and also rule 11 and 12 of the Act is void in its application to those competitions in which success did not depend on any skill. Hence, it was to be decided by the court with reference to application of doctrine of severability that a statute which is void in part will be treated as void in overall or whether the valid part is capable of enforcement. In this research paper, we will focus only on the significance of the R.M.D. Chamarbaugwala case in establishing rules of interpretation .

Keywords: *Constitutionality, Doctrine of Severability, Gambling, Infringement.*

I. INTRODUCTION

The Fundamental Rights are exclusive to an individual residing in India. These rights also include the right to carry on business of one's interest. But does carrying on 'prize competition' as one's occupation as is defined in the Prize Competition Act, 1955² to include act of gambling

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² https://www.indiacode.nic.in/bitstream/123456789/1515/1/AAA1955__42.pdf

and those acts, the success of which depends on skill, affects other individual's fundamental right under Article 19(1)(g) and because of this fact, can the Act be struck down as invalid? This article has tried explaining all the aspects related to it with respect to one of the very famous case of *R.M.D. Chamarbaugwalla vs Union of India (1957)*.³

II. HISTORY OF GAMBLING LAWS IN INDIA

India has one of the most convoluted gaming and gambling histories in the world. A dice was discovered by the archeologists who contend that it dates back to 3300 BC and is made up of terracotta and sandstone. Furthermore, there is substantial evidence that Indus Valley residents engaged in cockfighting and betting. However, as every game requires certain rules and provisions to be followed, we have been provided with the gambling laws even before independence from the British rule.

(A) Before Independence

The Public Gambling Act of 1867, which was developed from both the Gaming Act of 1845 and the Betting Act of 1853 that governed British gambling rules, governed gambling in India before independence. The Public Gambling Act of 1857 made it illegal to gamble in public places across the country unless it was done privately. Games of skill, such as bowling and tennis, were exempted.

Everything about the lottery was run by the British government, although the funds were frequently used to construct towns. Apart from horse races and lotteries, gambling was generally banned, yet historians believe that India's gambling culture contributed to the country's immense expansion in the twentieth century.

(B) After Independence

Initially there were confusions regarding gambling laws in India after British Rule ended and the Constitution of independent India came into effect in January 1950. Because gambling and betting were largely the property of the state, only the state legislature had the authority to alter the laws. The state could also enact regulations governing the taxation of betting and gambling. In general, India adhered to the provisions of the Public Gambling Act of 1867, with a few exceptions. The most notable change was the State's overall control over gaming.

The Gambling Act is a core law that has been accepted by some Indian states, while others have developed their own legislation to control and oversee gaming/gambling activities on their own

³ R. M. D. Chamarbaugwalla vs The Union Of India 1957 AIR 628, 1957 SCR 930

land.

(C) Prize Competitions Act

The Prize Competitions Act of 1955 was enacted to regulate and oversee prize competitions. It is a comprehensive Indian gambling law that covers a wide range of prizes awarded through competition-based entertainment medium such as puzzles, number games, picture games, and any other game that awards a prize through a healthy competition.

The Act defines a “prize competition” as any competition (whether referred to as a crossword prize competition, a missing word prize competition, a picture prize competition, or any other name) in which prizes are awarded for solving a puzzle based on the construction, arrangement, combination, or permutation of letters, words, or figures. The Act also provides in Section 4 that no person shall promote or conduct any prize competition or competitions in which the total value of the prize or prizes to be offered in any month exceeds INR 1,000/- (Rupees One Thousand Only), and each prize competition may only have a maximum of 2,000 entries.

III. R.M.D CHAMARBAUGWALLA V. THE UNION OF INDIA

Facts of the case

In this case, the petitioners, who were advertising and running prize tournaments in various Indian states, challenged the constitutionality of the Prize Competitions Act (42 of 1955), Section 4 and 5, and Rule 11 and 12 framed under Section 20 of the Act. These petitions were filed in response to Article 32 of the Indian Constitution.⁴

Their argument was that a ‘prize competition,’ as defined in Section 2 (d) of the Act, included not only gambling competitions but also those acts in which success depended to a significant degree on skill, and that the Sections and rules infringed on their (the petitioner’s) fundamental right to conduct business and therefore are violative of fundamental right guaranteed to every individual under Article 19 (6) of the Constitution.⁵ They also contended that the said part of the Act cannot be severed from it, hence the entire Act should be declared as invalid.

Whereas, on behalf of the Union of India, it was argued that the definition, when properly understood, meant and comprised only gambling competitions, and that even if that was not the case, the impugned provisions, being severable from the Act as contended in their application, were legitimate as far as gambling competitions were concerned.

The petitions were tried alongside Civil Appeal No. 134 of 1956, which challenged the

⁴Art. 32, the Constitution of India

⁵ Art. 19(6), the Constitution of India

constitutionality of the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 on grounds similar to those presented in the current petitions.

Issues

Whether the Act applies to competitions that require substantial skill and are not in the nature of gambling, based on the definition of “prize competition” in Section 2 (d).

And, if it does, whether the ex concessi invalid provisions of Section 4 and 5 and Rule 11 and 12 relating to such competitions can be implemented on the principle of severability against competitions that are in the character of gambling.

Judgement

The Civil Appeal No. 134 of 1956, which was heard concurrently with the petitions, found that “trade and commerce,” as defined by Article 19(1)(g) and Article 301 of the Constitution⁶, are the only activities that can be considered authorised trading activities, and that gambling is *res extra commercium*.

The Court held that the distinction between the two types of competitions is as distinct as the distinction between commercial and wagering contracts.

On the facts, or at one glance, the Court stated that it may be difficult to discern whether a given competition belongs in one of the categories or not, but once the true nature of the competition is determined, it will fall into one of the categories.

The challenged provisions were presumed to apply to all types of competitions by virtue of the definition in Section 2 (d), and that they were severable in their application to competitions in which accomplishment is not dependent on skill to any significant amount.

At last, the Court held that both the contentions raised were clearly found to be against the petitioners. The petitions were dismissed with costs, as they did not amount to any merit.

In this case, doctrine of severability played a major role while giving the judgement by the court. As it was in dispute whether Section 4 and Section 5 and also rule 11 and 12 of the Act is void in its application to those competitions in which success did not depend on any skill. Hence, it was to be decided by the court with reference to application of doctrine of severability that a statute which is void in part will be treated as void in overall or whether the valid part is capable of enforcement.

Doctrine of severability

⁶Art. 301, the Constitution of India

The other name for doctrine of severability is ‘doctrine of separability’. This doctrine provides that when any part of any statute comes in conflict with the fundamental rights of any individual as guaranteed under the Indian Constitution, then the courts will treat only the repugnant provision of the law in question as unlawful and not the entire statute/Act.⁷

As Article 13 of the Indian Constitution states:

“All laws enforced in India, before the commencement of the Constitution, in so far as they are inconsistent with the provisions of fundamental rights shall to the extent of that inconsistency be void.”

Meaning thereby that all those laws which were present and enforceable in India before the adoption of the Indian Constitution, and which are inconsistent with the provisions provided for it, then those laws will be void upto the extent of their inconsistency.

Under this Article, the doctrine of severability can be construed in the following two ways:

Article 13(1) of the Indian Constitution⁸ recognises all pre-constitutional laws and declares that any pre-constitutional legislation in force prior to the beginning of the Indian Constitution is void if they are incompatible with fundamental rights.

Article 13(2) of the Indian Constitution requires the state to not pass any law that deprives or restricts the fundamental rights guaranteed in Part III of the Constitution, and any law that does so will be declared null and void.⁹

However, if any provision of the statute that is incompatible with the Fundamental Right is necessary for the statute to function; i.e., if such a contested provision were absent, the entire statute would fall apart and then, instead of a single provision, the entire statute would be declared void.

How is the doctrine of severability related to the case of R.M.D. Chamarbaugwalla.

The contention that led to the case was regarding the definition of prize competition as contained in Section 2(d) of the Act. The petitioners contended that the definition not only included the acts which were gambling in nature but also acts which involved personal skills of a person. And which therefore, violated their fundamental right to carry on business as they were involved in acts which required substantial skill and were not gambling in nature. The petitioners have also contended that since the conditions imposed by Rules 11 and 12 with respect to the

⁷ Doctrine of Severability, <https://blog.ipleaders.in/doctrine-of-severability/>

⁸ Art. 13(1), the Constitution of India

⁹ Art. 13(2), the Constitution of India

gambling acts were correct, they (the conditions) were not aligning with the acts involving skill and hence, the Act should fail in its entirety. However it was the respondent's counsel that insisted and contended that the whole act need not be struck down when the impugned part of it is severable from the rest of the Act without even affecting the whole Act.

In this case the Court basically put forth two main issues to be discussed by it. First, that whether definition of prize competition under 2(d) included competitions which involve skill and which are not in the nature of gambling and second if it does, then restriction imposed by Section 4 and 5 and Rules 11 and 12 be applied for those acts which are in the nature of gambling, with the help of doctrine of severability.

The court in this case has referred to the case of the *Bengal Immunity Company Limited v. The State of Bihar and others*, (1955)¹⁰ wherein the Court had held that even if Section 2(d) the Prize Competition Act consisted of definition including both the acts i.e., acts which can be regarded as gambling in nature as well acts which involve substantial skill, they are still severable in their application because of the restrictions imposed by Rules 11 and 12 of the Act. And hence, cannot be regarded as void with respect to the gambling competitions.

Coming to the present case, the Court decided the interpretation of Section 2(d) by referring to the circumstances that led to the making of this legislation. Moreover, the court had to apply the severability principle as to the application of Section 4 and Section 5 and Rules 11 and 12 of the Act not only to the acts involving skill but also to the acts which did not depend on any skill. The court herein referred to many previously decided cases that acted as precedence in order to arrive at a conclusion. Also, the Court used certain criteria laid down by the American courts while determining the doctrine of severability. And came to the conclusion that the provisions challenged by the petitioners, are severable in their application to competitions in which success is not based on skill in any significant way.

Cases involving similar questions

In the case of *A.K Gopalan vs State of Madras* (1950), the Supreme Court of India concluded that eliminating preventive detention from Section 14 would make it lawful, and that doing so would not undermine the Act's validity and effectiveness.¹¹ The notion of severability was even utilised in the case of *Minerva Mills vs Union of India* (1980), where Section 4 of the 42nd Amendment Act, 1976 was struck down for being outside of Parliament's amending competence, while the rest of the Act was found lawful. Another well-known case is that of

¹⁰ *Bengal Immunity Company Limited v. The State of Bihar and others*, (1955)

¹¹ *A.K Gopalan vs State of Madras* (1950)

Kihoto Hollohan vs Zachillhu (1992)¹², sometimes also known as the defection case. In this case, paragraph 7 of the Tenth Schedule was deemed invalid because it violated the provisions of Article 368(2). However, the entire Section was not ruled invalid.

IV. CONCLUSION

In the given case of R.M.D. Chamarbaugwalla vs Union of India, the Doctrine of Severability played a significant role in determining whether the petitions should be allowed or not. The claim was made that few provisions of the Prize Competition Act 1955 were affecting the petitioner's fundamental right to carry on business guaranteed under Article 19(1)(g) and that the Act should be declared as invalid. However, the court by applying the said Doctrine ruled that the Act is valid.¹³

Fundamental rights are indeed the exclusive rights given to every individual, however whether its infringement is actually taking place or not, must be taken into consideration before coming up with a conclusion. As infringement of the Rights cannot be the sole reason for a petition to sustain when there are other scenarios to take into consideration. Because there is a clear distinction between what is 'trade and commerce' as referred to in Article 19(1)(g) and certainly 'gambling' is different from 'trade' and the challenged provisions were severable from the rest of the Act, the petition was dismissed declaring there was no infringement of any fundamental right.

¹² Kihoto Hollohan vs Zachillhu (1992)

¹³ Art. 19(1)g, the Constitution of India

V. REFERENCES**(A) Books Referred:**

- a) The Constitution of India, 1950
- b) "Interpretation of Statutes" by Justice G.P. Singh
- c) "The Art of Statutory Interpretation" by T.R. Srinivasan

(B) Articles Referable:

- a) Does gambling qualify as a 'trade, commerce or intercourse'? – Shefali Malhotra
- b) Gambling and fundamental rights with reference to R.M.D. Chamarbaugwalla v. Union of India (1957)
