
CASE ANALYSIS ON R.M.D. CHAMARBAUGWALLA V. UNION OF INDIA (1957)¹

Mookambika K S, UPES School of Law, Dehradun

Facts:

The petitioner M/S R.M.D.C were advertising and running prize tournaments in various Indian states where they had been doing their business of prize competitions in Bombay, since 1948 as well. They contested the constitutionality of the Prize Competitions Act (42 of 1955), section 4 and 5 which brought restrictions to the prizes offered that it must not exceed one thousand rupees in any month, alongside the number of entries shall not exceed two thousand and if the prize exceeds then it must be on behalf of the licence granted in accordance with the provisions of this Acts and the rules made thereunder. , and Rules 11 and 12, which were established under section 20 of the Act. In response to Article 32 of the Indian Constitution these petitions were filed. The petitioner contended that the definition of a “prize competition” in section 2(d) of the Act encompasses not only gambling competitions but also activities where success was largely dependent on skill. They also contended that this section is violating their fundamental right given under article 19(1)(g)²of the constitution.

Issue:

- Whether in the definition of ‘prize competition’ in s.2(d), the Act applies to competitions which involve substantial skill and are not in the nature of gambling.
- If the act is applicable in the aforesaid competitions, then whether the ex-concessis invalid provisions of Section 4 and 5 and Rule 11 & 12 that relates to such competitions can be implemented under the principle of severability against the competitions that are in the character of gambling.

Legal Provisions:

- Section 2(d) of Prize Competitions Act (42 of 1955) includes the definition of “prize

¹ R.M.D. Chamarbaugwalla v. Union of India, (1957) AIR 1957 SC 628

² INDIA CONST. art. 19 (1)(g).

competition”

- Section 4, 5 and Rule 11 & 12 of Section 20 of Prize Competitions Act (42 of 1955) imposed restrictions on the prizes offered, entries and license granted.
- Article 19(1)(g) of The Indian Constitution talks about fundamental right to practise any profession or to carry on any occupation, trade or business.
- Article 19(6) of The Indian Constitution states that Nothing in article 19(1)(g) do not prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, 2[nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—
 - (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
 - (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.

Judgment:

It was determined in the Civil Appeal No. 134 of 1956, which was heard concurrently with the petitions that gambling is *res extra commercium*, which means that it is outside the scope of the relevant articles of the Indian Constitution. This effectively meant that validity of restrictions imposed by Section 4 and 5, and Rule 11 & 12 of the Prize Competitions Act could no longer be contested under Article 19(6) of the Constitution and it was held that the question of violation of fundamental rights would absolutely stand invalid as gambling is not covered under the trade and hence no violation of fundamental right. If there is any part of the statutes which is found to be void, it can still be enforced in regards to the other existing statutes, if that statute is severable from what is invalid. The Court ruled that there is a clear distinction between the two forms of competition, just as there is a distinction between wagering and commercial contracts. In the light of the facts, the Court stated that it might be challenging to determine whether a particular competition fits into one of the categories or not, once the competition's true nature is ascertained, it will fall into one of the categories. The challenged

provisions were presumed to be applicable to all types of competitions by the definition in Section 2(d), but it was severable in their application to competitions where success is not significantly reliant in skills and the invalid provisions would be excluded from the Act and the valid part will be considered enforceable because if the valid part of the statute is assorted with the valid part to an extent to consider it as inextricable, the invalidity of that particular part will result in the invalidity of the entire act. In the end, the Court held that the contentions brought forward was found to be against the petitioners entirely and the petitions were dismissed because the petitions did not amount to any merit.

Analysis:

In the case *R.M.D. Chamarbaugwalla v. Union of India*, this particular doctrine of severability was significantly considered in order to determine whether the petitions should be allowed or not. The claim made by the petitions was that few provisions of the Prize Competition Act, 1955 were affecting the fundamental right to carry on business, trade or profession guaranteed under Article 19 (1) (g) and stated that the act should be declared invalid. However, after deliberate analysis and understanding regarding the validity and invalidity of the statutes the court declared that the act is valid by applying the doctrine of severability. The decision made by the court in this case is relied on one challenging and crucial aspect. The Supreme Court differentiated gambling in two different aspects, (i.e) gambling which can be thoroughly either skill set-based or chance-based.

Section 2(d) of the act also states that the restrictions can be allowed on those games which is based on the characteristic of chance, and alongside it acknowledged the matter that the competitions which are based on the element of skill will not be covered under the ambit of gambling because as per the analysis made, there is a clear distinction which can be seen between the games that is completely based on skill and chance, at no time both can be considered under one umbrella. This can be further clarified by the judgement in the case of *All India Gaming Federation v. State of Karnataka*, 2022³ where the entire Karnataka Police Amendment Act was considered to be violative of fundamental right (i.e.) Article 14, 19(1)(g) and 21. This case was brought years after the one under discussion, but the ruling also makes reference to the *R.M.D.C.* case because the Act made it illegal to play and offer games of skill for money in the state, including those played online. Even though the doctrine of severability

³ *All India Gaming Federation v. State of Karnataka*, (2022) SCC 435

was not applied here but the judgment points out that “It is egregious that the state has drawn no distinction between a ‘game of skill, and a ‘game of chance’ in the Amendment Act made by the state.” This clearly shows that there should be an existence of proper differentiation between the games of skill and chance, and here under Section 2(d) there is no significant applications of competitions that accomplish “skill” there. On the contrary, the term "betting" in Entry 34, List 2 of Schedule VII in the Indian Constitution would be rendered meaningless if it were taken to mean risking money or other valuables on the outcome of a "game of skill." This is because "gambling" and "betting" would then only refer to "games of chance." It was unnecessary for the word "betting" to be used in Entry 34, List 2 of Schedule VII to the Indian Constitution in order to cover only "game of chance" (and not "game of skill") if the word "gambling" already covers "game of chance."

On the other hand, fundamental rights are indeed an exclusive right given to every individual and every individual also has the right to seek remedy when those rights are infringed. But infringement of the rights alone cannot be the sole reason for a petition to be sustained and maintained when there are multiple other grounds to be considered as well. Even in this case challenging Article 19(1)(g) gives a clear distinction with the facts of the case and what exactly the provision mentions because the author of this analysis feels that there is a clear destination between what is “trade and commerce” and “gambling” because gambling is entirely different from “trade.”⁴

This is because gambling is always found with legitimate issue of public morality whereas not all trade is against the public morality in general. The background reason for this interpretation in our society heads back to history of gambling in pre-independence and post-independence period⁵. Gambling has its roots from the ancient history of Mahabharata itself when Yudhisthira had lost his kingdom and wife in the dice game.⁶ During the British rule, gambling was prevalent and games was introduced to maintain public harmony. The gambling games included horse betting, card games, tennis, bowling and etc. There was no clear distinction that existed between games that was associated with social evils and public harmony. Either ways

⁴Jeremy C. Marwell, *Trade and Morality: The WTO Public Morals Exception after Gambling*, 81 N.Y.U. L. REV. 802 (May 2006).

⁵ George, S., Velleman, R. and Nadkarni, A., ‘*Gambling in India: Past, Present and Future*’ Asian Journal of Psychiatry (19 January 2017) <<https://www.sciencedirect.com/science/article/abs/pii/S1876201816302258>> accessed October 1, 2024.

⁶ Deokinandan Sharma, A comparative Analysis of the Gambling Laws in India & Great Britain , 1.2 GSPR (2021) 129

the money collected from the gambling games were used by the government for developing the infrastructure. Post independence from British rule there was a confusion which existed regarding gambling activities in India. Later on it came to the notice that gambling, lottery and betting was pre-dominantly followed in the states, only the state legislature was given the authority to alter the laws regarding gambling.

Diverse states in India have adopted contrasting approaches of dealing this issue, being reason that one state permits and regulates gambling activities in the landscape of country while some other states in contrary to the above completely impose restrictions and compulsory banning on the gambling activities. For instance, under the Sikkim Online Gaming (Regulation) Amendment Act, 2009⁷, the state government is permitting the operators with the license for online gambling. Whereas, in contrary under the state of Tamil Nadu the legislation of the Tamil Nadu Gaming and Gambling Prohibition Act, 2022⁸ have completely enforced comprehensive ban on all forms of gambling games. The main reason for this restriction and banning is because the state believes that these games of gambling like lottery winning, online betting, Rummy involving money is causing the public morals and is also bringing social evils against the societal norms. This contradiction and inconsistency existing between states within a country must be considered and addressed, this could have also been considered as one among the issues of the case. In contrary, I as the author of this analysis also believes that the perplexed situation existed in regards to the Prize Competition Act in Bombay was majorly due to the lack of a unified national legislation to deal with gambling scenarios.

In order to replace the outdated laws with a single, unified approach, the Indian executive must take into account the authority granted by Articles 249/ 250 of the Indian Constitution. Furthermore, since judicial incompetence in India is higher than in the UK, it would be incorrect to entirely place the blame on the executive branch. The Geeta Rani case serves as an example of how Indian courts have not taken any judicial action on this issue, despite legal precedents in the UK explaining the distinction between sports betting and gambling. In order to codify and reinforce Indian laws, the Supreme Court of India has previously examined international laws, as evidenced in the Vishaka case⁹. In similar manner international laws can be examined to codify a proper central law for gambling activities so that the inconsistency

⁷ Sikkim Online Gaming (Regulation) Amendment Act, 2009

⁸ Tamil Nadu Gaming and Gambling Prohibition Act, 2022

⁹ *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241 : AIR 1997 SC 3011

exiting will be clarified.

The critical aspect held in this case is the “Doctrine of severability.”¹⁰ This doctrine tries to preserve the main purpose of the law made as much as possible. There are two major factors that the court need to be considering on when applying the doctrine of severability. They are:

- Background check: The purpose, history and objective of the Act should be examined to know the importance of the act.
- Loopholes: The violative provision of the act must be found out with proper justification.
- Legislative intent: If the court finds that the law made have the legislative intent behind the enactment favours severance, then the courts will apply the doctrine.
- Public Interest: If the application of this doctrine will serve the public interest, even then the court will apply this.
- Applicability of the Act: If certain part of the act is arbitrary in nature and if the removal of such part will not affect the applicability of the act, then this doctrine will be applicable.

In the case being discussed here, the section 2 (d) of The Prize competition Act consisted the definition including both the acts, (i.e.) acts that can be considered under the nature of gambling as well as the acts which involve skill set in it. Hence the court did not consider Section 2(d) severable because doing that will affect the entire act. Instead, the interpretation of section 2 was decided by the court and the doctrine of severability was applied to Section 4,5 and Rules 11 and 12. This was a fare judgment given for the case, where all the conditions of applying the doctrine was met. This can be substantiated with the case of *Naz Foundation v. Government of NCT Delhi, 2009*¹¹ where the section 377 of Indian Penal Code,1860 was challenged, which criminalised homosexuality. It was said that the section is violative of the fundamental right under Article 14 of the Constitution. The court applied the Doctrine of Severability and made that part of the section struck down and rest was kept and followed as it is.

After a significant amount of consideration of pertinent cases and a thorough interpretation of

¹⁰ Dr. Neeraj Kumar Gupta^a and Swati Kumari Mawandiya, Tools of Constitutional Interpretation in a Federal Setup : With Special Reference to India, 2.4 JCLJ (2022) 893

¹¹ Naz Foundation v. Govt. (NCT of Delhi), (2016) 15 SCC 619

the statute, the Hon'ble Supreme Court has appropriately concluded that the provisions that the petitioners have contented as invalid were in fact valid when the doctrine of severability was applied. This case has laid down proper interpretation and application of the "Doctrine of Severability" where future case after this judgment has referred to considered the outline laid in the case. This can also be deliberated as a sound example for sound judgment.