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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. IX th Semester

SUBJECT: COMPETITION LAW

SUBJECT CODE: BAL 901

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LECTURE 1

TOPIC: RESTRAINT OF TRADE UNDER INDIAN CONTRACT ACT

Section 27 of Indian Contract Act, 1872:

Agreement in restraint of trade, void Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1 : Saving of agreement not to carry on business of which good will is sold – One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.

Madhub Chander vs. Raj Coomar is the first case in which scope of the section came up for consideration before the Calcutta High Court. Here in this case restraint was only partial as he was restrained from exercising his profession only in one locality and that such restraints had been upheld in English law.

The Supreme Court of United States, in the leading decision in **Standard Oil Company vs. United States (6)** that as a ‘rule of reason’ that the term “restraint of trade” means that it meant at common law and in the law of the United States when the Sherman Act was passed and it covered only those acts or contracts or agreements or combinations which prejudice public interest by unduly restricting competition or unduly obstructing the due course of trade or which injuriously restrain trade either because of their inherent nature of effect or because of their evident purpose.

Section 27 of the Indian Contract Act, 1872 states that an agreement, which restrains anyone from carrying on a lawful profession, trade or business, is void to that extent. The main reason behind this section is that agreements of restraint are unfair, injustice as they impose an undue restriction on the personal freedom of a contracting party. However, as an exception, if a party sells his goodwill to another he can agree with the buyer that he will not carry on a similar business within the specified local limits.

Restriction for long period

The doctrine of restraint of trade has been reconsidered by the House of Lords in ***Esso Petroleum Co Ltd. vs. Harper's Garage Ltd.*** In this case, their Lordships struck down an exclusive dealing agreement because it extended to a period of 21 years, which was unreasonable. A five year period would have been held to be reasonable. They said that the doctrine applied only if a man contracted to give up some existing freedom which he had.

Zaheer Khan vs. Percept D'mark India (P) Ltd, AIR 2004 Bom 362, a contract restricting the party's future freedom to carry on his affairs in a manner he likes and with persons of his choice, held, unreasonable restraint of trade.

Coca Cola Company, (AIR 1995 SC 2372), where the defendant and the plaintiff used to carry on the business of ferrying boats and arrived at a business settlement whereby the defendant promised to pay a certain amount to the plaintiff in order that the plaintiff abstain from carrying on his boat business for a period of three (3) years, the court held that the agreement was void as the restraining covenant was a vital part of the agreement and did not fall under the "goodwill exception" to section 27 of the Indian Contract Act, 1872.

In Petrofina (Great Britain) Ltd. vs. Martin (5), Diplock L.J., a contract in restraint of trade is one in which a party (the covenantor) agrees with any other party (the covenantee) to restrict his liberty in the future to carry on trade with other persons not parties to the contract in such manner as he chooses."

In the same case, **Lord Denning M.R.** has expressed that: "Every member of the community is entitled to carry on any trade or business he chooses and in such manner as he thinks most desirable in his own interests, so long as he does nothing unlawful: with the consequence that any contract which interferes with the free exercise of his trade or business, by restricting him in the work he may do for others, or the arrangements which he may make with others, is a contract in restraint of trade. It is invalid unless it is reasonable as between the parties and not injurious to the public interests."

Exercise:

1. Agreement in restraint of trade is:
 - a) Void agreement
 - b) Voidable agreement
 - c) Valid agreement
 - d) None of the above
2. Agreement in restraint of trade is void. It has been contemplated in which statute?
 - a) Section 63, Competition Act
 - b) Section 61, Competition Act
 - c) Section 4, Competition Act
 - d) Section 27, Indian Contract Act
3. Sale of goodwill in business is
 - a) Valid agreement
 - b) Void agreement
 - c) Restraint of trade
 - d) Both (b) and (c)

4. A void agreement is

- a) Enforceable
- b) Not enforceable
- c) Void ab-initio
- d) Both (b) and (c)

5. Agreement in restraint of trade is void:

- a) True
- b) False