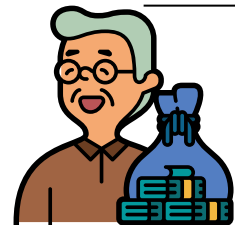


LAWBY WRITES





EDITORIAL

Dear Senior Citizens, Do not settle your properties to your children without mentioning this



P. Arun Sugavaneshvar
Founder

A report by the World Health Organization (WHO) in the year 2022 estimates a total number of 144 million elders in India above the age of 60, taking us to the second spot in the tally of the highest number of elders living in a country. Almost 30 percent of elderly live alone or with aged partners in India. It would be prudent to note the following legal safeguards provided by the Indian legal system to protect oneself better at an older age.

1. **Section 4 of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007** provides that the children who have attained the age of majority and are of sound mind must maintain their parents when the parent is unable to take care of themselves through income from a property or any employment. If there are no children, any person being a relative may maintain them if there is a means to do so by virtue of income from property possessed by the senior citizen.

2. **Section 23** of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007, provides for the declaration of a transfer of property by way of settlement or gift to one's children as void if the children fail to provide basic amenities and ensure basic physical needs. It is of utmost importance that the senior citizen must transfer the property on the condition that the children must provide basic amenities and care for them.

3. Any person abusing a senior citizen can be booked under **Section 506 of IPC, 1860** for criminal intimidation, which provides for a punishment of imprisonment of up to 2 years and a fine or both.

4. Any person who is responsible for the care of senior citizens abandons them, then such a person may be punishable with a jail term of 3 months or with a fine of Rs.5000 under the Maintenance and Welfare of Parents and Senior Citizens Act, 2007

5. **14567 is the toll-free national helpline number** for senior citizens in India under the Ministry of Social Justice and Empowerment to provide support to senior citizens who need emotional support, accommodation requirements or any legal guidance or to provide any information regarding social schemes for senior citizens.

The Supreme Court of India, in the case of ***Sudesh Chhikara v. Ramti Devi & Anr [Civil Appeal No.174 of 2021]***, has clearly stated that an express condition by the transferor to provide basic amenities and needs is mandatory to exercise the provisions u/s.23(1) of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007.

It would be best if all of us remembered we won't be young forever, and we must train our youth in the service of elders, strengthening bonds of family and the fabric of society.





LEGAL CRISPS

What is Parens Patriae Jurisdiction?

-Anoushka Samyuktha A

Every citizen has the right to live peacefully and a right to life with dignity in the country. We widely discuss **Section 125 of the CrPC, 1973** regarding the maintenance of wives, daughters, and old parents, but have we sufficiently addressed the needs of individuals who are unable to care for themselves or lack support from others? Do they get as much recognition as the others? What about their right to life with dignity and equality? To answer all these questions, we have to talk about the Parens Patriae Jurisdiction. Parens Patriae Jurisdiction is when the state must exercise care for adults with mental health problems who lack family support.

In the recent case of ***Gurunathan v. Deputy Director, Directorate of Public Health and Preventive Medicine & Ors. (W.P.(MD) No. 10956 of 2024)***, the Madras High Court ruled that **Section 9(2) of the Rights of Persons with Disability Act 2016**, which addresses support for children with disabilities, should also apply to adults with disabilities. Adults who suffer from mental disabilities who do not have support from their families or who are orphans. In this case, a father approached the Madras HC to seek the help of the judiciary to direct the authorities to admit his son to the hospital for a speedy recovery as he could not afford treatment otherwise. The Court held that people with disabilities have the right to equality and a life with dignity as well. It is discriminatory to ignore them for any reason, including their not being able to afford treatment.

There are NGOs and other support groups that work towards helping people in need of medical help, and the Court directed the State government to fund such organisations and provide any support they need. By doing so, it not only reduces the burden on the government but also helps those in need to a large extent. The government shall set up a board to conduct visits to these shelters and NGOs from time to time to ensure fair administration and treatment by them. Every human being is born the same; what is a disability to one may be an ability to another. Therefore, to curb this discrimination, not just the government but we as a society must work together to provide a more inclusive and safe space for all.





Is Executive Secretary a workman?

-Sri Sai Kamalini M.S

Section 2(s) of the Industrial Disputes Act of 1947 defines the term “workman”. In the case of *Bhuvaneshwari vs Management of M/s. Ambuthirtha Power Private Limited, Writ Petition No.49982/2018 (L-TER) C/W Writ Petition No.6531/2019 (L-RES)*, whether an executive secretary will be included in the term of “workman”, was discussed. Section 2(s) mentions the workman as a person inclusive of the apprentice, and it also includes persons employed to do supervisory work, manual, unskilled, skilled, technical, operational, and clerical work for hire. It also mentions that the person who is employed in a managerial or administrative capacity does not fall under the definition of the workman.

The applicant was appointed as the Executive Secretary for a salary of Rs.30,000, and she had 17 years of work experience. The applicant was terminated from her job, and she filed a case against the termination. The Labour Court provided an order in favour of the applicant.

It held that she was a ‘workman’ as defined under Section 2(s) of the Industrial Disputes Act, 1947 and also held that the management has to provide a compensation of Rs.5,00,000/-. However, the applicant rejected the prayer as she wanted continuous employment with all the benefits. The respondents also filed an appeal contesting that the applicant does not fall under the category of workman.

The Karnataka High Court, upon review, determined that the executive secretary’s work was more in line with a managerial position, and their salary exceeded the definition's limit. As a result, the High Court allowed the respondent's appeal and dismissed the applicant's appeal, concluding that the position of Managerial services and the work done by her was in the nature of managerial and supervisory duties and it would not be considered a 'workman' under the definition, and no further claims could be made based on it.





CASE CHRONICLE

Termination of Arbitral Proceedings

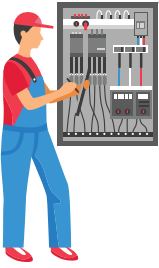
-Seethala B

The Supreme Court in the case of ***Dani Wooltex Corpn. Vs. Sheil Properties (P) Ltd. [2024 SCC OnLine SC 970]*** addressed the legality and validity of the order of termination of the arbitral proceedings **u/s 32 (2)(c) of the Arbitration and Conciliation Act, 1996**, passed by the Arbitral Tribunal. This case involves a dispute between Dani Wooltex Corporation (First Appellant), Sheil Properties (First Respondent) and Marico Industries (Second Respondent) over land development in Mumbai. Dani Wooltex allowed Sheil Properties to develop part of its property under a Development Agreement 1993 and agreed to sell another part of its property through a Memorandum of Understanding(MOU). Sheil objected to the sale to Marico, leading to lawsuits by both Sheil and Marico against Dani Wooltex. Whereas Marico's claim was resolved in 2017, Sheil's claim remained unsolved.

Dani Wooltex requested the dismissal of Sheil's claim, alleging that the company abandoned the arbitral proceedings. The Arbitral Tribunal scheduled multiple meetings with delays due to the Covid-19 pandemic. In August 2020, the first appellant formally applied for dismissal u/s 32(2)(c) of the Arbitration and Conciliation Act,1996, claiming Sheil abandoned the proceedings by taking no action for eight years. In December 2020, the Tribunal terminated the arbitral proceedings for Sheil's claim. Sheil challenged this termination in the Bombay High Court, which set aside the Tribunal's order and directed the arbitration to continue. On July 2023, the sole Arbitrator expressed unwillingness to continue.

The Supreme Court, in its decision, clarified that termination u/s 32(2)(c) should only occur when genuinely unnecessary or impossible, based on substantial material. The Court also stated, "The abandonment of the claim can be either express or implied. The abandonment cannot be readily inferred. There is an implied abandonment when admitted or proved facts are so clinching that the only inference which can be drawn is of the abandonment." In this case, finding no evidence of abandonment by Sheil Properties, the Supreme Court upheld the High Court's decision, directing the continuation of the arbitral proceedings.





BEYOND THE OBVIOUS

Compensation For Frequent Power Cuts

-Sowmiya R K

In the event that it can be demonstrated that electricity distributors purposefully carried out blackouts, interrupting consumers' access to power, they must compensate electricity users. Furthermore, consumers have the right to compensation in the event that a distribution business for electricity (DISCOM) neglects to offer services like connecting, disconnecting, reconnecting, moving, altering the load or consumer category, invoicing services, and handling complaints about voltage and bills. If there is compensation for deliberate load shedding, your power bill will automatically be adjusted to reflect it.

As per **Rule 12 of Electricity (Rights of Consumers) Rules, 2020**, the electricity distributors are obligated to compensate the consumers. The respective State Electricity Regulatory Commission will decide the standards of performance established under **Section 57 of the Electricity Act, 2003**, that should be carried out by the distributor and compensation that should be paid to the consumers in case of violation of standards of performance by distributors. Automatic compensation shall be paid to consumers for which parameters on standards of performance can be monitored remotely.

Here are some of the specific criteria established under **Rule 13 of Electricity (Rights of Consumers) Rules, 2020**, as a compensation mechanism. You can claim compensation if the service is not provided and it meets the conditions set by the state electricity commission, which may vary from state to state.

- 1.No supply to a consumer beyond a particular duration, to be specified by the Commission;
- 2.Number of interruptions in supply beyond the limits as specified by the Commission;
- 3.Time taken for connection, disconnection, reconnection, shifting;
- 4.Time taken for change in consumer category, load;
- 5.Time taken for change in consumer details;
- 6.Time taken for replacement of defective meters;
- 7.Time period within which bills are to be served;
- 8.Time period of resolving voltage related complaints; and
- 9.Bill related complaints.





Can You Sell a Trademark?

-Nithyaparvathy R G

In India, the process of trademark assignment is a legal one. It allows the owner of a trademark to sell it to any person or organisation, thereby transferring the rights of the trademark to the new owner. This procedure is governed by the **Trade Marks Act of 1999**, ensuring a systematic and regulated transfer of trademark ownership.

The individual or organisation selling the trademark is the assignor, and the other party (who is acquiring) is the assignee. Either the assignor or the assignee must apply for trademark assignment. The transfer process typically takes six to twelve months, provided that the credentials are successfully verified. Assignments involving registered trademarks must be recorded with the Trademark Registrar.

Types of trademark assignment:

Complete Assignment: A trademark's entire vested rights are transferred to a third party.

Partial Assignment: This kind of assignment guarantees the transfer of specific rights. A trademark owner may convey a restricted set of rights to an assignor by means of a partial assignment.

Assignment (with goodwill): In this kind of trademark assignment, the assignor, or trademark owner, gives all of the rights and worth of the trademark to the assignee.

When a trademark assignment is done with goodwill, the brand and its reputation are transferred, enabling the new assignor to sell the goods under the same name.

Assignment (without goodwill): The assignor does not transfer all of the trademark rights. The registered owner sells the trademark to an interested buyer and authorises the new trademark owner to use it in connection with distinctive goods and/or services.



MEET THE TEAM



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