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EDITORIAL

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The Great Insurance claim rejection puzzle

The Indian Insurance market is growing rapidly and is expected to cross 200 billion dollars by 2027. The vibrant market has also seen a booming rejection of claims by insurers for policy terms and conditions not being met, which has given rise to a flood of complaints to the Ombudsman and the consumer dispute redressal forum. In FY-23, LIC had 81.49 thousand complaints, while private life insurers had 45.88 thousand complaints against them. The burden of cases on the Ombudsman and the other judicial forums are increasing every day while the application of legal principles governing insurance are still evolving on a case-to-case basis.

The contra proferentem rule is one of the common principles employed in insurance cases. Simply put, contra proferentem means the person who drafted the faulty or ambiguous clause is to be the one losing. In ***Sushilaben Indravadan Gandhi and Another versus New India Assurance Company Limited (2021) 7 SCC 151***, the insurer agreed to compensate for those who were not employees of the hospital. A doctor travelling in the hospital vehicle died in an accident caused by the negligence of the driver. The insurer rejected the claim, stating that the doctor was an employee of the hospital. The Hon'ble Supreme Court took up the question - whether a doctor is an employee of the hospital, consequently probing if the contract between the doctor and the hospital was that of a "Contract for Service" or a "Contract of Service"? The SC ruled that the doctor cannot be assumed to be a regular employee of the hospital and that they must be considered as professionals discharging their duty. It further ruled against the insurer applying the contra proferentem rule and allowed a compensation of 37 lakhs.

One other significant principle is the non-applicability of an exclusionary clause when the insured is not duly informed of the same. In ***New India Assurance Co Ltd and Others versus Paresh Mohanlal Parmar 2020 SCC OnLine SC 1414*** the insured had taken a burglary and housebreaking insurance policy for Rs.20 lakhs for his godown. There was an incident of burglary during the insurance term, but the insurer rejected the claim, stating that there was no forced entry as a duplicate key was used to open the godown, and as such, the exclusionary terms and conditions were not duly informed to the insured. The lock of the godown was found on the street and the culprit was convicted under section 454 of IPC. The Supreme Court held that the insurer cannot reject the claim.

With the growth of insurance and the reliance of the Indian population on such mechanisms to protect themselves and their families, tighter legal processes and easier closure of cases need to be the priority of the lawmakers. Until such day, the insurance rejection puzzle keeps growing undesirably and causing many to wonder, "Is insurance all that worth?"

LEGAL CRISPS

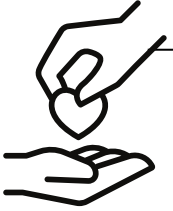
Third-party funding in arbitration proceedings

-Seethala B

Third-party funding (TPF) in arbitration is where a third party finances a party's legal costs in return for a share in the potential award. In India, TPF is legally permissible but it remains underdeveloped. In the case of ***Bar Council Of India v. A.K. Balaji [(2018) 5 SCC 379]***, the Supreme Court clarified that, while there is no explicit prohibition against advocates funding litigation, a combined interpretation of various Bar Council of India rules- specifically Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim), and Rule 22 (participating in bids during execution)-strongly indicate that advocates cannot finance litigation on behalf of their clients. However, there are no restrictions on third parties (non-lawyers) providing funds for litigation, with repayment occurring after the outcome of the case.

The key issues surrounding TPF in arbitration in India revolve around conflict of interest, confidentiality and the Funder's control. In the case of ***Tomorrow Sales Agency Pvt. Ltd. v. SBS Holdings, Inc. & Ors.,[2023 SCC OnLine Del 3191],*** the Delhi High Court recognized third-party funding in Indian arbitration. The court stated that "A person without the necessary means would have no recourse, in the absence of third party funders. **Third-party funders play a vital role in ensuring access to justice**....whilst there is no cavil that certain rules are required to be formulated for transparency and disclosure in respect of funding arrangements in arbitration proceedings, it would be counterproductive to introduce an element of uncertainty by mulcting third-party funders with a liability which they have not agreed to bear."

As TPF continues to develop in the Indian arbitration landscape, it is imperative to strike a balance between ensuring transparency and protecting the interests of funders, ultimately fostering an equitable and efficient arbitration process.



Beyond profit: the legal definition of benevolence

Nithyaparvathy R G

Benevolent object, in legal language, often refers to the purposes of institutions or individuals who seek to promote welfare without expectation of profit. Courts, for example, might consider gifts made for “benevolent purposes” as those designed to benefit a community or specific group rather than for financial gain.

When creating a trust or making a gift, the intention behind the deed is critical. Courts often look at whether the intention is in line with benevolent objectives. For example, a will that assigns funds for “charitable or benevolent purposes” gives trustees flexibility in allocating resources, potentially expanding the scope beyond just charitable operations. Benevolent purposes can include acts of compassion that do not fully correspond to the public benefit standard, as established for charity.

The Madras High Court recently, in the case of ***T. R. Ramesh vs. The Commissioner and Anr(W.P. No.29684 of 2024)***, refused to overturn an order that leased 2.50 acres of land from Sri Somanathaswamy Temple in Kolathur to Sri Kapaliswarar Temple in Mylapore for 25 years to develop an Arts and Science College.

The Court observed that upon scrutiny, the challenged order appeared to be for a benevolent object. The court stated that it was not inclined to intervene at this stage because the petitioner had the option of bringing his issue before the appropriate authority. The court consequently allowed the petitioner to approach the Hindu Religious and Charitable Endowment Department with his objections/suggestions and urged the authorities to evaluate them on merit.

“On scrutiny of the notification, which is impugned herein reveals that subject temple lands are meant for a long-term lease to run a college, and thus, the object is a benevolent one. When that be so, this Court is of the considered opinion that if the petitioner intends to point out some irregularities or procedural deviations committed by the respondents, the same can be submitted before the 1st respondent by way of written objections/suggestions. Hence, this Court is not inclined to interfere in the impugned notification at this stage,” the Court observed.

CASE CHRONICLE

Can a student be considered as a consumer?

-Sri Sai Kamalini M S

Case: New Delhi Institute of Management Studies vs Shamaneshwaram and 2 Ors
Citation: Revision Petition No. 346-347 of 2019

Education has been constantly developing, and many new courses and colleges are coming up every day. It has become a viable business, and the profit motive has been given a lot of importance. The present case is one example of misleading advertisements used to enrol students for more profits. In this case, the complainant enrolled in the two-year MBA course offered by the New Delhi Institute of Management Studies ("NDIMS") based on their advertisement that it was a regular two-year course associated with Madhuraj Kamraj University, and it was also stated that UGC approved the course.

The complainant later found out that the University advertised by NDIMS was unlicensed to start an off-campus study centre beyond the state's territorial jurisdiction. This was found through an RTI. Hence, aggrieved by the same, the complainant filed a case in the DCDRC, Patna, and they ruled in favour of the complainant. The DCDRC ordered NDIMS to refund the first-year fee of Rs. 1,55,000/- and awarded Rs. 25,000/- as compensation and for litigation costs. Both parties filed an appeal with the State Commission; however, the appeal of NDIMS was rejected, the appeal of the complainant was partially accepted, and compensation was enhanced.

The NDIMS has filed an appeal to the National Commission, contending that educational institutions do not come under the Consumer Protection Act, 2019 purview, and both commissions do not have proper jurisdiction to deal with the case. However, NCDRC stated that the **advertisements by NDIMS were misleading** as there was no proof that they were authorised to conduct this course, which is considered an unfair trade practice and upheld the order of the State Commission.

BEYOND THE OBVIOUS

AFSPA in Northeast India: Security necessity or human rights travesty?

-Adithya Menon

Armed Forces (Special Powers) Act, 1958 has sparked intense legal and ethical debate since its implementation in parts of Northeast India in 1958. This controversial legislation grants extraordinary powers to the armed forces in "disturbed areas," with the goal of maintaining public order. Initially, it applied only to Assam and Manipur, but its jurisdiction was expanded in 1972 to include all seven northeastern states. In 1990, Jammu and Kashmir was also added. However, its application has raised serious concerns about human rights violations and the erosion of civil liberties.

The provisions of AFSPA significantly empower the military. Under Section 4, armed forces are authorized to use lethal force, conduct warrantless arrests, and search premises without prior approval. While Section 5 mandates that individuals arrested by the military must be handed over to the police promptly, Section 6 offers extensive immunity to military personnel. This effectively means that prosecution for actions taken under the Act requires government sanction, placing military actions beyond civilian judicial scrutiny. Once a region is declared disturbed, this status is maintained for three months, as stipulated by The Disturbed Areas (Special Courts) Act, 1976, although state governments can recommend whether the Act should remain in force.

Legal challenges to the constitutionality of AFSPA have produced mixed outcomes. In ***Naga People's Movement of Human Rights v. Union of India (AIR 1998 SC 431)***, the Supreme Court upheld the Act but imposed guidelines to prevent misuse. This ruling highlighted the ongoing tension between national security and individual rights. Similarly, in ***Indrajit Barua v. State of Assam (AIR 1983 Del 514)*** the Delhi High Court dismissed claims that terms like "public order" were too vague.

The demand for AFSPA's repeal has gained momentum, exemplified by Irom Sharmila's 16-year hunger strike and widespread protests in Manipur. International bodies, including the United Nations, have urged the Indian government to reconsider this controversial legislation. As activists continue to advocate for change, it is essential to strike a balance between national security and fundamental rights, ensuring that measures taken in the name of safety do not come at the expense of individual freedoms. The ongoing dialogue surrounding AFSPA underscores the complexities of governance in a diverse nation like India, where the pursuit of security must not compromise citizens' rights.

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