

# Forgery of Medical Records – what recourse ?



- **Medical Negligence – a crime committed behind closed doors, on the uninformed and the unconscious !!**
- **By organizations with whole teams of lawyers ready to resort to all tactics to suppress justice opposing complainants generally not aware of even the basics of law, what to talk of medical jurisprudence !**
- **By those who think they can even commit forgery of medical records and get away – and mostly do ! Because the hapless patient has no recourse !**

- **With others conspiring to help out their “brothers” !**

Yet, in some cases, justice is done. As in this case. Sometimes God intervenes..others can only blame past sins, perhaps ?

This when the complainant is herself a doctor – imagine then the status of non-doctors !

Why doesn't the Consumer Forum have a SEPARATE BENCH , with medically competent people, for these category of cases ?

These excerpts hereunder taken from :

<http://timesofindia.indiatimes.com/city/delhi/botched-up-operation-victim-doc-gets-rs-80-lakh-in-damages/articleshow/58618109.cms>

Emphasis is mine. Read on, cry, and hope you are never in these hapless situations !

- The Delhi State Consumer Commission recently indicted the private hospital and its eye surgeon for medical negligence and deficiency of service, asking them to pay compensation and damages of nearly Rs 80 lakh, for botching an eye operation that led to loss of vision of Dr Prakash Sharma.
- The commission, presided by N P Kaushik, held Dr Sharad Lakhotia and Talwar Medical Centre guilty and asked them to pay Rs 19 lakh at 12% interest and Rs 20 lakh at 12% interest respectively. Interest will be charged from 1999, when the complaint was filed.
- The consumer watchdog also concluded that **both the doctor and the hospital fudged medical records relating to the case to escape liability.** Sharma had alleged that the hospital forged her husband's signature to claim he

**had given consent before the surgery.**

- The commission was surprised that despite evidence of fabrication and concealment of documents, an **in-house inquiry by Delhi government's health department gave the doctor and the hospital a clean chit even while admitting in the report that it did not have access to details of operation notes.** An earlier complaint by to the directorate health services, Delhi, had led to the constitution of a two member enquiry committee by the Gurur Nanak Eye Centre.
- **"In the absence of surgery notes, enquiry committee could not have arrived at a conclusion that there was no negligence on the part of the treating doctors,"** the commission pointed out, faulting the panel for giving an ex-parte order without hearing Sharma.
- Taking a stern view of the connivance of the doctor with the eye hospital located in Greater Kailash the Commission asked the Medical Council of India (MCI) and Delhi government's directorate of health services **to take action against him and the hospital for deficient service.** ( Would be interesting to see exactly WHAT action will be taken by these esteemed bodies .. how many doctors have been faulted by MCI til date ? )
- Through advocate Mohit Mudgal, the woman doctor informed the commission that she underwent a cataract surgery in 1998 at Talwar Medical Centre after which she lost vision in her left eye, forcing her to stop her medical career.
- Complainant (Sharma) by profession is an **obstetrician and gynaecologist.** She has been deprived of conducting surgeries on her patients. She became a social recluse after having lost sight in the left eye," the commission noted.
- Dr Sharma, widowed soon after the incident, welcomed the verdict. "I feel fortunate to have seen **justice served in my lifetime.** My husband, Wing Commander V K Sharma was working hard on this case on the day he passed away.

Wherever he is, I feel he will be happy to see his efforts have finally brought the guilty to justice.”

For those interested in seeing the Court Judgement in full, here are the relevant details to click on :

**IN THE STATE COMMISSION: DELHI**

**(Constituted under Section 9 of the Consumer Protection Act, 1986)**

**Date of Decision: 27.04.2017**

**[Complaint Case No. 283/2001](#)**

**If you are a sufferer of medical negligence – and need some advice on how the law works , talk to me – I would be happy to help ! And if you have any helpful suggestions to offer, you too are most welcome – comment in !**

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**[Ghost Surgery may kill you !](#)  
**[Read on to know what can /](#)****

does happen, more than you  
may think !



Ghost Surgery – a despicable crime !

**Ghost Surgery – A Crime  
performed on the unconscious  
!**

Medical Definition of *ghost surgery*: the practice of performing surgery on another physician's patient by arrangement

**with the physician but unknown to the patient.**

*This is a DIRECT, PERSONAL experience, not hearsay, which is ongoing. In case you are / or know Public Minded Lawyers willing and capable to take this and other similar causes to Supreme Court , let us talk – or share this post with them so that they may contact me direct using form hereunder. In any case I request you to share this post in your groups, Whatsapp , LinkedIn, FaceBook , Twitter, Google Plus etc. etc. – simply paste the weblink <http://lawforall.in/ghost-surgery/> therein – or use any of the sharing buttons provided below. Thanks a LOT. You may save some people's lives !*

*Medical Negligence is a crime VERY difficult to prove since generally done behind closed doors of an Operation Theater. The guilty NEVER admit to their guilt, and even if caught go scot free mostly – – numbers speak for themselves ! If the trend continues, next time it could be you/yours/me/mine ! It has already been for my family and we are still suffering !*

## **The US Position :**

No “malice” or intent to injure, however, is required to establish battery in general or specifically, “ghost surgery.” In *Perna v. Pirozzi*, 92 N.J. 446, 457 A.2d 431 (1983), the Supreme Court held that **such a battery results when a medical procedure is performed by a “substitute” doctor regardless of good intentions.** The Court there took notice of standards published by the Judicial Council of the American Medical Association, which read:

**To have another physician operate on one's patient without the patient's knowledge and consent is a deceit.** The patient is entitled to choose his own physician and he should be permitted to acquiesce in or refuse to accept the

substitution. The surgeon's obligation to the patient requires **him** to perform the surgical operation: (1) within the scope of authority granted by the consent to the operation; (2) in accordance with the terms of the contractual relationship; (3) with complete disclosure of all facts relevant to the need and the performance of the operation; and (4) to utilize his best skill in performing the operation. It should be noted that it is the operating surgeon to whom the patient grants consent to perform the operation. The patient is entitled to the **services of the particular surgeon with whom he or she contracts**. The surgeon, in accepting the patient is obligated to utilize **his personal talents** in the performance of the operation to the extent required by the agreement creating the physician-patient relationship. **He cannot properly delegate to another the duties which he is required to perform personally.**

**.....Ghost surgery "remains a battery even if performed skillfully and to the benefit of the patient."**

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**What does Indian Law say on this ? Are you / anyone you know a Sufferer on this/any other aspect of Medical Negligence ? Contact me using form hereunder to share your experiences, get and give help and advice to eradicate the malaise of Medical Negligence ! Thanks a LOT and Be Well !**

Name :\*   
First

Last

E-mail:\*

Location and

Mobile Number :\*

Subject:\*

Message:\*

Word Verification:

SubmitReset

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## [Long, Long, Looooong Road to Justice, Indian Ishtyle !](#)



Justice Delayed is Justice Denied !

Justice Delayed is Justice Denied – so said Gladstone, and oft repeated by all the Wise (w0)men !

But there is Law, there are Lawyers and then there is the Complainant who hardly has any knowledge of



law, except that he has been wronged and a law exists, hopefully to help him.

Here is what happens. An example of a personal experience at a Consumer Court , repeated innumerable times in Indian Courts, I am sure. See carefully the attempts made. So that you can be forewarned what can / may happen in Courts.

Who is to blame ?

Those who are guilty. Since they will take recourse to all measures to delay. And for each delay, they rejoice since that is their measure of success, howsoever temporary.

Some say the judiciary also pitches in. Thankfully, that has not been my experience till date, at least from April 2015 when I started appearing in person in Court. Opposite Parties have been consistently fined for adjournments. But they still attempt. And now they attempt to mislead and obfuscate during arguments, as they have been doing all this time.

I pray to God they don't succeed and will do my utmost to see to it.

**What is YOUR view ? And what you think should be done ? What can YOU do about it ? ? Comment in !**

**Or would you rather prefer to wait for**

# when, God forbid, you are on the receiving end of this " System " ?

S.N.	Date	Details
1	11-Mar-08	Complaint taken on record. Notice issued to OP.No reply from OP.
2	28-Apr-08	OP's LC seeks 6 weeks time to reply with Records. He says earlier Complaint had no accompaniments and only now he has got them but Page 52 is still missing. LC for CN says he shall supply this page before day's end.
3	16-Jul-08	Ld. counsel appearing on behalf of opposite parties seeks further six weeks' time for filing its written version. For this adjournment, opposite parties shall pay Rs.2000/- to the complainant as costs. Stand over for directions on 12.9.08
4	17-Oct-08	LC for OP seeks 1 week time to pay costs of Rs. 5,000 to CN. OP's reply filed across the table-may be taken on record. He has also given copy of same to CN's LC. LC for CN seeks 4 weeks time to file rejoinder. Granted.
5	28-Jan-09	Learned counsel for the opposite parties states that he will pay the cost of Rs.5,000/- to the complainant today itself. Learned counsel for the complainant is directed to file the rejoinder, if any, within four weeks. List the case on 7-7-2009 for further directions.
6	7-Jul-09	None appears on CN's behalf. Per record, CN has already filed rejoinder. OP says not received. Registry directed to supply him a copy. CN to file Evidence Affidavit within 4 weeks. Copy of proceedings sent to CN.
7	10-Sep-09	CN says will file EA during the day and will send a copy to OP's counsel. OP to file Evidence affidavit 3 weeks thereafter.
8	4-Nov-09	LC for CN directed to supply a copy of it's Evidence affidavit within one week to OP.
9	18-Dec-09	LC for CN directed to supply a copy of its EA to OP.
10	10-Feb-10	LC for CN directed to supply again a copy of its EA to OP
11	9-Apr-10	No ground for early hearing is made out. Misc. application is dismissed.
10		Listed for Directions on 9 <sup>th</sup> Oct. 2014
11	9-Oct-14	Learned counsel for the parties present. Arguments heard.The opposite party has already filed the evidence and before filing of the evidence, learned counsel for the complainant has moved an application that its evidence should be closed. This argument is meritless since the evidence has been filed. Therefore, this argument is left out of consideration.Learned counsel for the complainant is not ready with the arguments. Therefore, the matter is adjourned to 6.4.2015 for final arguments.
12	6-Apr-15	Counsel for the parties present. As we are busy in hearing a matter pertaining to the year 2001, the matter is adjourned to 28.01.2016, for final arguments.
13	5-Jan-15	An application has been filed by the petitioner. Notice be sent to the opposite parties returnable on 28.1.2016, the date already fixed. <b>Comments</b> : This is an application under S. 340. Evidence clear as water to the plain eye. Delivered PERSONALLY to OP's Counsel Office by complainant.
14	28-Jan-16	Complainant is present in person. Counsel for the Opposite Parties is present. Reply not filed. Last opportunity is granted for 10.03.2016. <b>Comments</b> : OP's Counsel says did not receive the S. 340 application !! Complainant showed the receipt to the Judge and explained he has personally delivered. When OP's Counsel said the person delivered to " has left the organisation" and they have no idea what happened to the application !!
15	10-Mar-16	As we are busy in hearing the arguments in another case, no time would be left to hear this matter. Therefore, the matter is adjourned to 02.06.2016 for final hearing.

16	2-Jun-16	<p>Complainant No. 3 is present in person. Counsel for the Opposite Parties has moved an application, seeking adjournment on the ground that due to personal reasons he has gone out of station, hence cannot appear.</p> <p>The complainant submits that he has come from Noida and incurred enough time and expenditure. The complainant further submits that he loses his salary for coming to this Commission. It was the duty of the counsel to inform the opposite parties (Complainants), beforehand.</p> <p>Adjournment is granted subject to payment of Rs.500/- as costs, which will be paid to the complainant, who is present before this Commission.</p> <p>Last and final opportunity is granted for filing written submissions and for final arguments on 18.07.2016. It is made clear that no other opportunity shall be granted. If the Counsel for the Opposite Parties is busy or cannot appear before the Commission on the date fixed, he must make some other arrangement. No further opportunity shall be given on any ground.</p> <p>It is brought to our notice that OP's advocate, Advocate, who has moved the application for adjournment, <b>has not even filed his Vakalatnama</b>. This point is being kept open and will be heard on the next date of hearing, i.e., on 18.07.2016.</p> <p><b>Comments :</b> Just <b>one day</b> before the hearing on 10th March 016, OP filed reply to S. 340 application of the Complainant. Court registry refused to accept (maybe since proof of delivery to Complainant did not accompany the application). Later, OPs moved an application for condonation of delay which was accepted by Court.</p>
17	18-Jul-16	<p>Despite of the clear directions and last opportunity given, opposite parties have failed to file written submissions. Learned counsel for the opposite parties requests for one more adjournment to do the needful. Matter is adjourned, subject to cost of Rs.9,900/- to be paid by the opposite parties to the complainants by way of bank draft of Rs.3,300/- each in the name of respective complainants. Needful be done within four weeks with copy to complainant No.3.</p>
18	27-Sep-16	<p>Complainant No.3 is present in person, vehemently objects for the presence of counsel for opposite parties on the ground that <b>there is no Vakalatnama on record till date from the said counsel</b> and, therefore, he has no authority to appear on behalf of the opposite parties. This issue was also raised during previous occasion. OPs LC undertakes to file his Vakalatnama within a week. The complainant seeks to impose cost for not filing Vakalatnama by the said counsel. This point will be decided on the next date of hearing. The complainant also brought to the notice that the opposite parties have not paid the cost imposed upon them during the previous proceedings (Rs.500/-). Therefore, it is also directed to OPs learned counsel, to verify and pay the cost, if any, due from the opposite parties by the next date of hearing. This case is already ripe for arguments which may entail lengthy arguments. Therefore, I prefer to hear the arguments before the Division Bench. Therefore, list the matter for final arguments on 21-11-2016.</p> <p>Both the parties are directed to file short synopsis of their arguments not exceeding three to four pages with cross references and pagination as per the court file within two weeks prior to the date of arguments with advance copy to each other.</p>
19	21-Nov-16	<p>An adjournment is sought on behalf of the opposite parties on the ground that the OP's counsel is in personal difficulty. An application in this regard was moved on 15-11-2016. On perusal of the application we do not find details of the actual difficulty which has prevented the counsel from appearing. We are not convinced with the ground for adjournment. Matter is adjourned subject to cost of Rs.10,000/- to be paid to the complainant No.3 through bank draft in his name on or before the next date of hearing.</p> <p>List on 20-12-2016 for final arguments. No further adjournment shall be granted.</p>
20	20-Dec-16	<p>(Abridged) : Hon'ble court found some prior record ( not directly relevant to case, but will only add to CNs case, as I know ) not given by CNs. Complainant seeks an adjournment to move an application seeking permission to file the record . Application, if any, be filed before the next date of hearing with advance copy to the learned counsel for the opposite parties. Cheque of Rs.10,500/- has been given to the complainant No.3 against the previous cost which is accepted subject to encashment of the cheque.</p>

# Recording of Court

# Proceedings



**Not only must  
Justice be done; it  
must also be seen  
to be done**

.. is oft repeated. And indeed Justice is supposed to be done in public. Unless decided by the Court to be an " in camera " trial, one can simply visit the Court and watch the proceedings. Even Court Records – submissions by different parties and then the final judgement – is supposed to be Public and accessible to anyone.

*In Theory.*

Come the Digital Era then, the logical next step would have been recording of Court proceedings. And indeed the more advanced countries seem to have moved in such direction as you can find plenty such videos on youTube ....

In India, however, the Jury of honorable Judges is still out on the matter. Why they want to avoid public scrutiny is of course best known to them.

It is interesting , hence, to note of some attempts being made in this direction. For one such, see :

And for the full story on this, see :

<http://www.legallyindia.com/201402284392/Bar-Bench-Litigation/deepak-khosla-records-fight-with-clb-judge-about-audio-recording-before-clb>

And on more on the man, see :

<http://www.legallyindia.com/201308073894/Interviews/deepak-khosla-profile>

Taken from there, a truly utopian vision- as any who has ever been to any court would vouch ! :

“If it were utopia, the moment I go to court the judge would stand up and say to me: ‘Mr. Khosla despite our best efforts at devising laws whose objective would be to prevent people breaking the law, it seems in your case we have failed. So on behalf of society I owe you an apology and I apologise. Now please tell me what your problem is and how can I help you?’ That’s how a hearing should start,” 53-year-old law student Deepak Khosla tells me.

Indeed, the previous Government had made some plans in his direction See;

<http://archive.indianexpress.com/news/legal-reforms-government-for-video-recording-of-court-proceedings/1193581/>

Quoting :

“The Advisory Council met here. Unanimously the council believed that court proceedings must be videographed and that the technology (for the same) must be put in place now,” he told PTI here.

Explaining the reason behind the move, Sibal said the processes of the law must be “as transparent” like the processes of the government.

Sibal said the plan is to begin with video recording of the proceedings of the trial court.

“...start with the trial courts as it is the foundation of the justice system,” he said.

The Minister said the judiciary will be taken on board on the

issue.

UNQUOTE

And with the present Modi Government's push for transparency in all fields, one can only hope for the best !

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## Eleven Months Lease Deeds also need registration !



Lease

## Eleven Months Lease Deeds also need registration

It is a common misconception that Lease Deeds for a period less than a year need not be registered, per Indian Law for properties in India. Hence, many Landlords and Tenants proceed accordingly since in the process savings can be made on Stamp Duty. Besides, the time and hassle of going to the Registrar's Office is avoided. The confusion arises since the provisions of the Transfer of Property Act are NOT understood

properly since those relevant have to be read ALONG WITH that of the Registration Act

The Courts are increasingly clarifying and elaborating this. As in the case hereunder.

Case :

[Abdul Rasheed S/O Meeran Sab vs Srinivas S/O Kashinathrao on 16 April, 2014](#)

( Karnataka High Court Judgement )

**Issue :**

Whether a lease deed, where the term of lease stated therein does not exceed one year, requires to be registered under the provisions of the Registration Act, 1908 is the question that needs an answer in this writ petition.

**The question is answered in the affirmative.** In law, the lease deeds of the aforesaid kind also require to be registered and therefore, such unregistered lease deeds **cannot be received as evidence** of any transaction affecting the property.

...

**3.1** Sections 4 & 107 of the **Transfer of Property Act, 1882** read as follows:

**S.4.** Enactments relating to contracts to be taken as part of Contract Act and **supplemental to the Registration Act.**

The Chapters and sections of this Act which relate to contracts shall be taken as part of the Indian Contract Act, 1872 (9 of 1872) And section 54, paragraphs 2 and 3, and sections 59, 107 and 123 shall be read as supplemental to the Indian Registration Act, 1908 (16 of 1908).

**S.107. Leases how made.**

A lease of immovable property from year to year, or for any term **exceeding** one year or reserving a yearly rent, can be made only by a registered instrument.

All other leases of immovable property may be made either by a registered instrument **or by oral agreement accompanied by delivery of possession.**

**3.2** Sections 17(1) & 49 of the **Registration Act, 1908** read as follows:

S.17. Documents of which registration is compulsory.

(1) The following documents shall be registered, if the property to which they relate is situate.....namely:-

(a) instruments of gift of immovable property;

(b) other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c) non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d) **leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;**

**S.49. Effect of non-registration of documents required to be registered**

No document required by section 17 or by any provision of the Transfer of Property Act, 1882 (4 of 1882), to be registered shall-

(a) affect any immovable property comprised therein, or



- (b) confer any power to adopt, or
- (c) be received as evidence of any transaction

affecting such property or conferring such power, **unless it has been registered:**

Provided that an unregistered document affecting immovable property and required by this Act or the Transfer of Property Act, 1882 (4 of 1882), to be registered **may be received as evidence of a contract in a suit for specific performance under Chapter II of the Specific Relief Act, 1877 (3 of 1877), or as evidence of any collateral transaction not required to be effected by registered instrument.**

4. As could be seen from the above quoted provisions, all leases not covered by first para of S.107 of the T.P. Act may be made **either by a oral agreement accompanied by delivery of possession, or by a registered instrument.** A lease, the registration whereof is not compulsory under S.17(1)(d) of the Registration Act, becomes compulsorily registrable, **if reduced into writing** in view of second para of S.107 of the T.P. Act read with para 2 of S.4 thereof. **A written unregistered lease of immovable property, even though the term of lease stated therein does not exceed one year, is inadmissible in evidence in view of S.49 of the Registration Act, 1908 read with second para of S.107 of the Transfer of Property Act, 1882 & second para of S.4 thereof.** A lease for a period of one year falls within the expression 'All other leases' stated in para 2 of S.107 of the T.P. Act and may be made by a oral agreement accompanied by delivery of possession.

.....

6. At this stage, learned counsel for the petitioner by relying on the proviso to S.49 of the Registration Act, submits that the proviso permits the petitioner to produce the lease deeds as evidence of any **collateral transaction not required to be effected by a registered instrument.** The

counsel is right in his submission. Accordingly, the petitioner is at liberty to apply to the trial Court by specifically stating the collateral purpose for which he wants to produce the lease deeds. If such an application is made, the trial Court shall consider the same in accordance with law.

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So, if you have an ORAL AGREEMENT of one year or less that is fine but the moment you reduce it in writing for evidentiary purposes it will require registration !! And for what "collateral purposes" will that UNRegistered Lease Deed be valid is not clarified !!

So, BETTER to get all Lease Deeds registered !

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**Loan your cash at your risk –**  
**S. 138 may not help you !**



Cash

# Loan your cash at your risk !

So you have a large “unaccounted cash ” lying at home. Unaccounted as in not declared in your Income Tax Returns. You loan it to someone and get a Cheque from him in return. The Cheque bounces.

Can you use the provisions of S. 138 of the Negotiable instruments Act to recover the amount ?

The Law says NO !

See :

[Sanjay Mishra vs Ms.Kanishka Kapoor @ Nikki on 24 February, 2009](#)

( Bombay High Court decision )

Held :

**” The provision of section 138 can not be resorted to for recovery of an unaccounted amount. A cheque issued in discharge of alleged liability of repaying “unaccounted” cash amount cannot be said to be a cheque issued in discharge of a legally enforceable debt or liability within the meaning of explanation of section 138 of the said Act. Such an effort to misuse the provision of section 138 of the said Act has to be discouraged.”**

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**Your face is – or could be –**

# your fortune !



## Your Face is your Fortune !

While the Cosmetics Industry has been trying to convince us of this for ever since we can recall, even the law says so ! Read on for how you can protect – or make – your fortune !

Your Face is your Fortune ! Any use of an image / photograph without permission can invite privacy suits. Right of Publicity has been held to be a part of Right of privacy.

**See :** [R. RajaGopal v. State of Tamil Nadu, \(JT 1994 \(6\) SC 514\)](#)

### **Where held :**

the first aspect of this right must be said to have been violated where, for example, a person's name or likeness is used, without his consent, for advertising – or non-advertising – purposes or for any other matter.

Definition of “mark” in Section 2(m) of the Trademarks Act 1999 does include names. However, there is no statute to protect publicity and image rights. Only a passing-off action may lie to protect a well known individual's reputation if it can be shown the misrepresentation would cause irreparable damage to his reputation.

Further, Section 14 of the Trademarks Act may be invoked . This prohibits registration of a Trademark falsely suggesting a connection with a living person / person who died within

last 20 years of the application of registration of Trademark. in the Montblanc case, one of the defence was such a permission had been obtained.

BUT Publicity rights are reserved for persons, not events. See :

[Delhi High Court in ICC Development \(International\) Ltd v Arvee Enterprises \(2003 \(26\) PTC 245 Del\)](#)

where it was held that the use of Cricket World Cup event name by advertisers NOT the official sponsors was NOT misuse.

Unauthorized exploitation of image, publicity and goodwill of a person by falsely indicating his endorsement of products/ services can certainly be the cause of a passing-off action.

**In several well known cases, the law has been clearly settled. For example :**

[The Montblanc campaign \( 2009 \)](#)

Montblanc released special-edition pens in India entitled 'Mahatma Gandhi Limited Edition 241' and 'Mahatma Gandhi Limited Edition 3000'. They had Gandhi's portrait engraved on the nib. Tushar Gandhi (Gandhi's great grandson) had given his permission and approval to their release. But the launch of the pens was contested under Emblems and Names (Prevention of Improper Use) Act 1950, which prohibits the use of names and images of nationally important personalities for any trade, business or professional purpose, unless permitted by the government.

Montblanc was forced to withdraw its advertising campaign and the pens from the market.

**DM Entertainment v Jhaveri (1147/2001)**

Whereby Daler Mahendi prevented registration of dalmehndi.net by a party, Delhi High Court recognising the

fact that an entertainer's name may have trademark significance.

### **Sourav Ganguly v Tata Tea Ltd- Calcutta High Court**

A well known tea brand was offering customers a chance to meet him, implying he was associated with the promotion when he was not. Successful challenge made, although dispute finally resolved amicably.

### **[Tata Sons Ltd v Ramadasoft \(D2000-1713, February 8 2001\).](#)**

Whereby Ratan Tata objected to the domain "tata " being taken by someone else. Via an arbitration, the domain was finally transferred to him.

### **[Jaitley v Network Solutions Private Limited \(\[181\(2011\)DLT716\]\)](#)**

Delhi High Court upheld the right of politician Arun Jaitley to domain arunjaitley.com

### **[Titan Industries Limited v Ramkumar Jewellers \(\[CS\(OS\) 2662 of 2011\]\)](#) -decided 26th April 2012**

Amitabh and Jaya Bacchan assigned all their personality rights to plaintiff in connection with marketing of its brand of jewellery " Tanishq". Defendant erected a hoarding identical to Plaintiff's, including identical photo of the couple. No permission taken from the couple, nor authorised by plaintiff. Court held the defendant liable not only for infringement of the plaintiff's copyright in the advertisement, but also for misappropriation of the couple's personality rights. The court granted an interim injunction in the plaintiff's favour.

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## Bigamy – the legal provisions



**Bigamy Is Having One Spouse Too Many. Monogamy Is the Same ☐**

Jokes aside, bigamy is a serious matter , legally. So if you are affected ( or considering ;- ) ) it will be helpful for you to read on !

There is NO bar in customary Hindu Law to a man entering second marriage. However, the customary law was codified by the enactment of the Hindu Marriage Act in 1956, which

declared a second marriage 'void 'during the subsistence of the first one. So, AFTER 1956, second marriages could be considered illegal.

Bigamy is both an offence against Marriage ( Per HMA ) as well as a Penal Offense ( under IPC ). The Hindu Marriage Act applies to Hindus, Jains, Buddhists ,Sikhs,Parsis and Christians [except Muslims]. Bigamy is one of the ground to seek divorce under Hindu Marriage Act 1955.The second wife is entitlement for maintenance ,she is not entitle for property rights. In August 2009, the Law Commission of India recommended that bigamy should be made a cognizable offense.

## **Section 17 in The Hindu Marriage Act, 1955**

□Any marriage between two Hindus solemnized after the commencement of this Act is void if at the date of such marriage either party had a husband or wife living; and the provisions of sections 494 and 495 of the Indian Penal Code (45 of 1860), shall apply accordingly.

Note that the marriage is VOID- that is, illegal from the outset itself. It is not VOIDABLE – which requires a party to go through the legal procedure ending with a Decree by the Court declaring the marriage void. This has serious implications for ay one caught up in a Void marriage.

## **Indian Penal code 1860, Section 494.**

**Marrying again during lifetime of husband or wife:** Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

**Exception-**This section does not extend to any person whose



marriage with such husband or wife has been declare void by a Court of competent jurisdiction ,nor to any person who contracts a marriage during the life of a former husband or wife, if such husband or wife, at the time of the subsequent marriage, shall have been continually absent from such person for the space of seven years, and shall not have been heard of by such person as being alive within that time provided the person contracting such subsequent marriage shall, before such marriage takes place, inform the person with whom such marriage is contracted of the real state of facts so far as the same are within his or her knowledge.

HOWEVER,. this of offense is attracted only when the second procedure was conducted legally so as to give it a legally accepted marriage status. If not, there is no second marriage to begin with and so no second wife and so, no bigamy.

## **Bigamy- legal definition?**

A person commits bigamy when he/she:

- When husband or wife living,
- marries ,but such marriage is void,
- by reason of its taking place during the life of husband or wife.

## **When is Bigamy offense ?**

Section 5 of the Hindu Marriage Act, 1955, clearly states that a marriage could be valid only if neither of the party has a living spouse at the time of marriage. Section 11 of the Act declares second marriage to be null and void.

## **Bigamy shall NOT apply if:**

- the first husband or wife is dead, or
- the first marriage has been declared void by the Court of competent jurisdiction, or
- the first marriage has been dissolved by divorce, or

- the first spouse has been absent or not heard of continually for a space of seven years. Here The party marrying must inform the person with whom he or she marries of this fact.

## **Religious Conversion for contracting second marriage...**

NOT allowed. In Sarla Mudgal v. Union of India (1995 AIR 1531 SC), the Supreme Court held that a man who has adopted Islam and renounced Hindu religion, marries again without taking divorce from the first wife, then such marriage is not legal. The person shall be punished for committing bigamy under section 494 of Indian Penal Code (IPC).

## **Where to file complaint under Bigamy law-section 494?**

The person aggrieved ( which is the Legally Wed person – the first “husband” or “wife” ) can file a case of bigamy either in court or at the police station. The father of an aggrieved wife can also make a complaint under section 494/495 of the Indian Penal Code.

A petition for declaring the second marriage as void can be filed by the parties of second marriage and NOT the first spouse.

## **What Proof is required for for lodging complaints under Bigamy law**

NONE ! The Supreme Court has held that while lodging a criminal complaint it is not necessary for the aggrieved party to prove that marriage ceremonies were performed as it is for the trial court to decide the veracity of the allegations.

“Truthfulness or otherwise of the allegation is not fit to be

gone into at this stage as it is always a matter of trial. Essential ceremonies of the marriage were gone into or not is a matter of trial," a bench of Justices D K Jain and C K Prasad said in a judgement.

The apex court gave the verdict while upholding the appeal of a woman K Neelavani, challenging a Madras High Court order quashing the charge sheet filed against her husband S K Siva Kumar under IPC Sections 406 (breach of trust) and 494 (bigamy-second marriage).

[in a hearing between the same parties, the Madras High Court has also held that :](#) ( K. Neelaveni vs S.K. Sivakumar on 21 August, 2008 ) :

To maintain the charge under section 494 IPC, there should be evidence to show that essential ceremonies were performed at the time of alleged second marriage and such ceremonies and other requirements for a valid marriage have to be established by adducing evidence in the course of trial and a valid marriage between a man and woman **cannot** be presumed from the fact that a child was born out of their relationship.

## **What if the person hides the first marriage and contracts another one ?**

Complaint for cheating can be filed under section 415 of IPC

## **What is Punishment under the Act?**

Bigamy is a NON-cognizable offense. It is bailable and compoundable with the permission of court if the offense is committed under section 494 of the IPC. Punishment is imprisonment, which may extend till 7 years or fine or both. In case the person charged of bigamy has performed the second marriage by hiding the fact of first marriage, then he shall be punished with imprisonment of up to 10 years or fine or both. Such offense under section 495 is not compoundable.

## **Attending 2nd marriage is abetting bigamy?**

“It is a settled law that mere participation in the second marriage would not ipso-facto make the relatives or the participants liable for abetment to bigamy since abetment connotes an active suggestion or support to the commission of the crime.” ruled Delhi High Court.

## **Status of Scheduled Tribes**

This penal provision will not apply if the offender is a member of the Schedule Tribes.

## **Registration of Marriage compulsory?**

In order to stop second marriages and child marriages ,the registration of marriages is made compulsory as directions of Supreme Court

## **What about Property matters ?**

As per Hindu code, only the first wife is a legal heir of the husband while the second wife is NOT entitled to any share in the ancestral estate and, if the husband has died without leaving a will, even in his self-acquired property.

Once the second marriage is declared null and void, the wife concerned cannot even claim maintenance as a matter of right.

BUT, The high court of Bombay at Goa has held that the first wife is entitled to half the share while the share of the second wife in the property of the husband is 1/8th, while ruling that a second wife marrying in good faith has a share in the estate of her husband. The court ruled that in such cases the first wife gets half the share, the second wife is entitled to 1/8th of the share and the remaining 3/8th is to be shared among the children from both marriages.

## **Can children born out of wedlock inherit father ancestral property?**

The Supreme Court has ruled that children born out of wedlock have the right to inherit their father's **ancestral** property. In *Revanasiddappa vs Mallikarjun* case, Justices G.S. Singhvi and A.K. Ganguly ruled that children from a second wife had rights to their father's ancestral property.

## **Status of Live In Relationships...?**

The supreme court of India in *Kushboo* case virtually equated Live-in relationship to marital relationship. In another case, the supreme court also said Children born out of live-in are not illegitimate. "The live-in-relationship if continued for such a long time, cannot be termed in as "walk in and walk out" relationship and there is a presumption of marriage between them.." Supreme Court in 2004 in the *Rameshchandra Daga vs Rameshwari Daga* case, where the maintenance rights of women in "informal relationships or invalid marriages" were upheld. These cases virtually encourage relationship outside-marriage, this created confusion in the minds of people.

The law of bigamy is NOT applicable to live-in relationship as there is no legally contracted marriage. In order to prove offence of bigamy, there should ample evidence to prove they have contracted second marriage without nullifying the first marriage.

## **Is S. 498 A of IPC 1860 applicable to the Second Wife ?**

The section 498 A of IPC is not applicable to second wife since the second Wife is NOT a "wife" in the eyes of Law.

( 498A. Husband or relative of husband of a woman subjecting her to cruelty.)

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# First Information Report – FIR – the Basics



- ▶ It is mandatory for the SHO to lodge an FIR if a complaint made by you discloses the commission of a **cognizable offence**. You have the right to obtain a copy of the FIR.
- ▶ In case your complaint discloses the commission of a **non-cognizable offence**, an entry is required to be made in the daily diary and you have the right to obtain a copy. You may thereafter approach the area magistrate u/s 155 Cr. P.C. for appropriate orders.

**IF SUCH ACTION IS NOT TAKEN ON YOUR COMPLAINT YOU MAY INFORM THE VIGILANCE CONTROL ROOM (24X7) - 23213355**

You may also file your complaint with the DCP of the District, Jt. CP of the Range, Special CP/Vigilance or Commissioner of Police.

**DELHI POLICE**  
**CITIZENS FIRST**  
www.delhipolice.nic.in • E-mail : delpol@vsnl.com  
e-mail to CP, Delhi at : ys.dadwal@nic.in

DP/0266/10

**FOR IMMEDIATE POLICE HELP CALL 100 TO SHARE INFORMATION CALL 1090**

## An FIR ( First Information report )

can only be lodged for a " Cognizable " Offense. The Offense category is clearly explained in the CrPC / IPC section it falls under. So, if there is no FIR to begin with, the issue

of Bail does not arise.

### **Cognizable Offence**

Police is empowered to register the FIR and investigate only the cognizable offenses. Police can arrest an accused involved in cognizable crime without the warrant from the Court. Theft, robbery, murder and rape are some instances of cognizable offenses.

### **Non-cognizable Offence**

Here, Police can neither register the FIR nor can investigate or effect arrest without the express permission or directions from the court . Includes minor offenses such as abusing each other, minor scuffles without injuries, intimidation etc. For such cases, Police Station is required to record an abstract of such complaint in the General Diary which is called N.C. and advise the complainant to file the complaint in the concerned court as police is not empowered to initiate action in such matters without the directions of the court. Copy of such entry into the General Diary is provided free of cost to the Complainant.

### **First Information Report (FIR)**

Report pertaining to occurrence of a cognizable offence, received at the Police Station is called First Information Report, popularly known as FIR. On receipt of this information police registers the report in a FIR Register and begins the investigation of the crime.

No charges/ costs are leviable for filing an FIR and a Copy of the same is to be provided to the Complainant Free of Cost.

### **Lodging a False FIR**

Is an Offense under S. 182 and S. 211 of IPC. People affected by such a complaint could also have recourses. For example, defamation per S. 182 of IPC.

### **Police Refusing to File FIR for a Cognizable offence**

You have the following recourses, depending upon the

circumstances of the case and the facts/ evidences available with you.

**1) Send information in writing** to Senior Police Officers such as Commissioner police, SP of the zone by Registered post, AD. Even E-mail can nowadays start the process.

**2) File an RTI**

**3) File a Vigilance/ Anti Corruption complaint** against the concerned Police Officers.

**4) Use S. 190 CrPC which says :**

#### **Cognizance of offenses by Magistrates- section-190 of Cr.P.C**

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offense –

(a) upon receiving a complaint of facts which constitute such offense;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offense has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offenses as are within his competence to inquire into or try.