



*Spreading Legal and
Economic Awareness*

A Social Initiative by
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Special points of interest:

- How baggage is defined under custom law.
- Bailable warrants can be issued in civil suits also
- Accused can apply for bails in Sessions' court even when in custody
- Certified copies of proceeding are as good as primary evidence
- Mitigating factors of death sentences
- Tips on being careful when buying financial products in bundles

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How Baggage is Declared under Custom Laws

Baggage is classified in Customs Tariff in Chapter 9803 and reads as "All dutiable articles, imported by passenger or member of crew in his baggage". Customs Tariff gives the rates of duty on all the items.

In the Customs Act, elaborate provisions have been made for baggage as Indians have a craze for foreign goods. This craze continues, though lesser than before, even after many international brands are selling their products in India. This craze is mainly for goods like liquor, perfumes, gold, white goods, electronic items, etc. Section 2 (3) of the Customs Act states that "baggage" includes "un-accompanied baggage" but does not include motor vehicles, alcoholic drinks, goods imported through courier, or under an import license. . Baggage would thus include not only items that would come with the passenger but also dispatched after the passenger's departure.

Baggage therefore means all

dutiable goods (on which Customs duty is payable), imported by a passenger or by a member of a crew in his baggage and includes bonafide baggage accompanying passenger like wearing apparel, toilet requisites, and other personal effects.

The following are the general prohibitions:



- Foreign and Indian currency can be taken out/ brought in only as per restrictions of Reserve Bank of India under Foreign Exchange Management Act
- narcotic drugs are strictly prohibited
- Domestic pets can be brought as per law which includes health certificate regulations.

d) Exotic and rare birds, wind orchids and wild life is strictly prohibited to be taken out - and it may be noted that import of birds, animals, snakes, etc also have to follow strict restrictions.

e) Endangered species like flora and fauna such as ivory, musk, reptile skins, furs, shahtoosh or antiques are prohibited.

Declaration - An Indian Passenger returning to India has to fill a baggage declaration form. This is given to the Customs Officer. Rate of duty and tariff valuation shall be the rate and valuation in force on the date of declaration. Foreign nationals have to submit an arrival card plus baggage declaration form along with an arrival card (w.e.f 01. 03. 2014). This declaration has to be given even if a person passes through green channel. If this Declaration form is not filled or while filling there is concealment, then the goods to the extent not declared or concealed are deemed to be smuggled.

Can a Bailable Warrant be Issued in a Civil Suit?

In case a person who is either a party or a witness in a civil suit or is in possession of some document, does not appear despite the Civil court issuing summons to him, then in that case the Civil Court can

issue a warrant of arrest against him or may impose penalty on him or even both.

People have a misconception that in a civil case, they cannot be arrested or rather they have

a misconception that Code of Civil procedure is toothless. This power of issuance of a warrant of arrest is under Section 31 of the Code of Civil Procedure mentions of this power of the Civil Courts.

Even in Police Custody, an Accused can Apply for Bail in Sessions' Court

When faced with a criminal case, many a times, Magistrates, out of following a conservative process of decision making, very often give police custody. This is seen to be done sometimes even with people who are innocent and in cases where police custody is not required. People are in a fix as to where to go, many lawyers recommend to them that police custody is necessary and the bail can at the most lie only to the Magisterial court itself.

With due respects, this opinion is erroneous.



In police custody the accused is in police lock up, and in judicial custody which is done usually after police custody is over it is

in a State or Central Jail. Under Section 439 of the Code of Criminal Procedure 1973, the application of bail can go to the Sessions Court or to the High Court. The view is upheld in the case of *Niranjan Singh vs. Prabhakar Kharote* (1980) 2 SCC 559. In a latest decision of *Sandeep Kumar Bafna versus State of Maharashtra* Laws (SC) 2014- 3- 58, the Supreme Court has held the law laid down in *Niranjan Singh vs. Kharote* as good law.

Certified Copies of Proceedings given by a Court or Public Office are as good as Primary Evidence

As per Section 76 of the Evidence Act 1973, 'every public officer having the custody of a public document which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed, whenever such officer is authorized by law to

make use of a seal; and such copies so certified shall be called certified copies.'

The Evidence Act has also provided the categories of documents which can be regarded as public documents:

As per para 74, the following documents are public documents:

- (1) Documents forming the acts, or records of the acts-
 - (i) of the sovereign authority,
 - (ii) of official bodies and tribunals, and

(iii) of public officers, legislative, judicial and executive

And thereafter Section 75 states that all other documents which are not public documents are private documents.

The above knowledge is useful to the readers who as lay men may not know which are the documents that authorities can or cannot deny while taking admissions in Colleges, Schools, before Marriage Registrars, for passport, income tax, court proceedings, criminal investigation and such other work. '

Law of Sentencing– Mitigating Factors for a Death Penalty

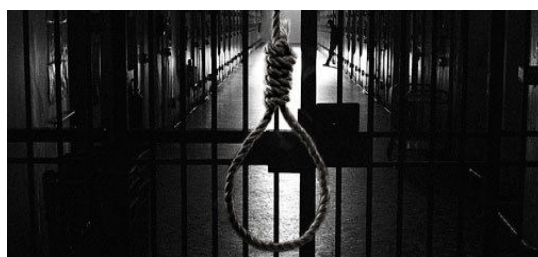
There are talks of abolishing death penalty, except in cases of terrorist activities. This has invoked a lot of curiosity amongst the public. While general plebiscite is against its complete abolition-the principles of awarding death penalty (in terms of sentence) have been more or less similar, right since the pronouncement of the Constitution Bench decision in the case of *Bachan Singh vs. State of Punjab* 1980 AIR SC 898. This pronouncement states as under:-

"In several countries which have retained death penalty, pre-planned murder for monetary gain, or by an assassin hired for monetary reward is, also, considered a capital offence of the first degree which, in the absence of any ameliorating circumstances, is punishable with death. Such rigid categorisation would dangerously overlap the domain of legislative policy. It may necessitate, as it were, a re-definition of 'murder' or its further classification. Then, in some decisions, murder by fire-arm, or an automatic projectile or bomb, or like weapon, the use of which creates a high simultaneous risk of death or injury to more than one person, has also been treated as an aggravated type of offence. No exhaustive enumeration of aggravating circumstances is

possible. But this much can be said that in order to qualify for inclusion in the category of "aggravating circumstances" which may form the basis of 'special reasons' in Section 354 (3), circumstance found on the facts of a particular case, must evidence aggravation of an abnormal or special degree.

Dr. Chitaley has suggested these mitigating factors :

"Mitigating circumstances :- In the exercise of its discretion in the above cases, the Court shall take into account the following circumstances :-



(1) That the offence was committed under the influence of extreme mental or emotional disturbance.

(2) The age of the accused. If the accused is young or old, he shall not be sentenced to death.

(3) The probability that the accused would not commit criminal acts of violence as would constitute a continuing threat to society.

(4) The probability that the ac-

cused can be reformed and rehabilitated. The State shall by evidence prove that the accused does not satisfy the conditions 3 and 4 above.

(5) That in the facts and circumstances of the case the accused believed that he was morally justified in committing the offence.

(6) That the accused acted under the duress or domination of another person.

(7) That the condition of the accused showed that he was mentally defective and that the said defect impaired his capacity to appreciate the criminality of his conduct."

WE will do no more than to say that these are undoubtedly relevant circumstances and must be given great weight in the determination of sentence. Some of these factors like extreme youth can instead be of compelling importance. In several States, there are in force special enactments, according to which a 'child' that is, 'a person who at the date of murder was less than 16 years of age', cannot be tried, convicted and sentenced to death or imprisonment for life for murder, nor dealt with according to the same criminal procedure as an adult. The special Acts provide for a reformatory procedure for such juvenile offenders or children."

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*A law and economics knowledge
sharing initiative*

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Chanderlawpal.com is an online legal advisory portal, for people from all over the world, seeking legal advice on Indian or/and international laws.

This newsletter is an initiative by Advocate Charanjeet Chanderpal for making public aware about the laws that exist in India for protection of common man. Legal jargons and financial language are seldom understood by laymen and this causes public to lose faith in legal and economic (financial) systems.

-An attempt to restore this faith and to help people use the existing machinery to become self reliant.

How buying financial products as a bundle can prove harmful How to be safe while buying them

Usually termed as 'tying', bundling means when sales staff approaches you to sell two to three financial products when you have actually asked for only one of them. Typical examples include: when you apply for a loan, your relationship manager informs you that you will have to 'compulsorily' take a home insurance policy or your loan would not get sanctioned, or banks asking you to buy mutual funds of a certain amount when you apply for a locker, or when you get calls from companies asking you to invest in their fixed deposits, with which you would get a free life insurance policy,

We as investors must understand that bundling in financial industry is not as fruitful as in other industries, such as when you get a shampoo free with your favorite soap. Even there, you are being pushed to use a shampoo

that you would otherwise not buy, thus damaging your hair. While damaged hair can be managed easily, a messed up financial life cannot.

When banks sell you products in bundles including products from insurance companies and other banks, after sales service poses a huge problem. Banks would ask you to call at the customer care service numbers and approach the companies directly, while companies would ask you to go back to the banks that you purchased the products from, get the sales executive code and other information and would then process your request, which would become cumbersome for you later on.

These products may be cheaper than being bought separately, you must inquire whether these products are available separately for sale and then

compare the terms and conditions of both. Many a times, customers come across a shorter term or a reduced service in bundled products. I once got a call from a corporate asking me to invest in a fixed deposit and I would get a free life insurance policy. After some prodding I found out that the term of the policy would coincide with the term of the FD!!!

When your sales executive tells you that buying other products is mandatory, when you have asked him for one of them, ask him to give you such written confirmation. Also ask them to write down for you, that if bought separately, these products would cost you higher prices and that the terms and conditions would be the same and you will soon experience the hoax!!

-Harjot Kaur
