

Unlocking Evidences

Introduction:

Evidences, as one describe in common language, is required for to verify the object, allegation or the person's identity. In this we are only going to use the evidences that are required in the courts in the criminal or civil proceedings.

This document is required to be understood the basics of the evidences and how it is going to make or break the allegations levied on the cases. Here the document is started with the General rule of the evidences in all cases, civil as well as criminal, followed by different types of evidences, relevance, burden of proofs, witness statements, weight of the evidences etc. The document also follows how to see the evidences in your cases and prepare yourself with the lies told in court and break the opposite side. Further, it also shows how you can use the evidence to your best and inter link different evidences to make or break the case.

This document is created with the specific of Marital disputes in India, with various laws like Divorce, DV Act, Dowry Act and accompany Penal Laws, child custody etc. which covers both civil and criminal proceedings. The aim of this document is to make you aware of the different evidences used how to use and to help you help in defending your case. In Medical Evidences, some of the medical related information is given which is handy. More can be searched on internet. The examples are given in *Italics*.

General Rule for giving or taking Evidences:

1. The object is to arrive at the truth of the cases and facts
2. It should bring out the motive in the controversy.
3. It should be relevant to the allegations and facts of the case.
4. The law of evidences are common for both civil and criminal cases.
5. No facts other that the rational probative value should be admitted as evidence.
6. All facts are admitted as an evidence

Types of Evidences:

There are various types of evidences which are given below with the small brief with example.

Oral and Written Evidence:

The statement made by either parties or their respective witnesses on OATH in the witness box are treated as oral evidences. Similarly, in civil or quasi civil cases, the written statements given by either parties or their witnesses under AFFIDAVIT are also considered as the form of Oral Evidences. In Criminal cases like 498a, there has to be oral statement given to the court and the written statement will not be considered. The evidence should refer to the fact or the allegations which is seen, heard perceived or has to give the option. The chances of fabrication of such evidences are more and so in criminal cases, such evidences are taken on Oath in the witness box to deal with fabrication, although it may not be 100% true. Some of the examples are:

Seen: *A person sees assault on another person clearly with his/her own eyes.*

Heard: *A verbal fight/shouts between spouses is heard by the person.*

Perceived: *A person walking out of the crime area is perceived as running away by another person.*

Option: *A doctor giving his option about the medical condition of wife.*

Circumstantial Evidence:

Circumstantial Evidence is the evidence of the circumstances around the crime area or over the period of time in case of happenings between spouses. This evidence may vary with the issue of fact, and can be subjected to the interference drawn by the court that the issue of fact has happened or not. Circumstantial

evidences require other evidences that support this evidence. The court has to find out the issue of fact that has happened or may have happened. The examples of circumstantial evidences are:

A fight happens between the spouses where the neighbours hear the verbal abuses/shouting. The husband opens the door and runs away from house which is seen by the neighbour. He takes the lift and goes down to ground floor, where another person sees that the husband has some injury marks on his face and clothes are torn. The husband then leaves the building where the watchman sees that he has not worn his shoes and is not dressed in proper state. A panwala outside the building sees that he is not able to walk properly. In this case, the statements given by the neighbour is the direct evidence who hears the fight happening and leaving the house, while person in lift, watchman and panwala are treated as circumstantial evidences. From the above evidences, the inference can be drawn by the court that the husband has been assaulted by the wife or the persons in that house.

Direct Evidence:

The evidence which can be accepted on the face value without any interference drawn by the court is the direct evidence. Direct evidences can be in any form, it can be either oral or documentary evidence which is relevant to the issue of fact. Some of the examples of direct evidences are:

The husband sees and hears wife abusing the mother in law is direct evidence.

The husband slapping wife seen by another person is direct evidence.

The person hears the plan to do the crime is the direct evidence.

The doctor's certificate/report stating the condition of wife is direct evidence

The X-Ray showing fractured body part is direct evidence

Emails are direct evidences

Police NC is the direct evidence.

Handwritten diary is the direct evidence.

Voice recording between 2 persons is direct evidence.

Indirect Evidence:

This is just opposite to direct evidences, which needs some other supportive evidences to draw to the conclusion about the issue of fact. Indirect evidences can also be in any form. The evidence in itself may be the direct evidence, but from this evidence no facts or conclusion can be drawn. This evidence may be the part of other evidence which brings the chain of events necessary to conclude the facts. The example of indirect evidence is:

Fact alleged: *The dowry of Rs. 10 Lakhs is given in the form of cash.*

In support of this a photograph is produced with the bag containing cash given to opposite party. When asked the source of cash, the person says that he has withdrawn 2 lakhs from bank, and remaining 8 lakhs is taken from 4 persons, all of them who produce the document of loan on stamp paper as evidence. Here the photograph that has been produced is the direct evidence in itself. Similarly, the loan papers from 4 different persons is the direct evidence in itself, but all these evidences are not the direct evidences from the relevant of the fact that the dowry of Rs 10 lakhs is given. It all forms the part of indirect evidence and when seen together forms the part of evidences that support other evidences to bring out the fact.

Hearsay Evidence:

This is the most common type of evidence found in marital dispute. Hearsay as the name suggest is of 2 parts, Hear & Say, which together forms *Hear-say*. It is what you hear from one party and what you say to other party. Hearsay evidences are not received as the relevant evidences since the truth is diluted and diminished when it goes from person to person. It could also lead ample scope of fraud, perception and other ingredients which is far away from the truth or the original statement made. It is also seen that the different persons sees different things when told. The admissibility of Hearsay evidence can be objected in the court.

In stating that the circumstances do not lie, we are assuming that the witness is speaking the truth. If the main witness or complainant is telling the lie, then it is certain that the witness is also lying. The human mind is so constituted that the person giving the particular evidence has seen the fact, it may not accept it because of the possibility of mistake, and if the chain of events or circumstances are all logically pointing out to the existence of matter, the human mind will follow such events. To create such a chain of events and give the evidence is highly improbable seeing the human mind. Even so, facts and fiction are pointing out to the circumstances in one way; truth can be on another way. The interpretation by different persons is different and hence Hearsay evidence can be objected from being admissible in the court of law. Some examples of Hearsay evidence are:

Person A says, someone told me that there was a fight between the spouses of house X.

Person B says that person A has told him that there was a very big fight between spouses of house X.

Person C says that Person B has told that there was physical fights between the spouses of house X.

Person D says that person C has told that it was very big assaults between the spouses of house X.

Person E says that person D has told that the assault between the spouses of house X had weapons involved.

Person E says to Person A that knives were involved in the fight between the spouses of house X.

Other best example is the MIL asking DIL to do the household work. This is been spiced by DIL and told to her mother who then spices up further and tells this to her relatives. Thus the relatives believe that the wife is doing the household work for the full day. In reality the time taken for household work is much less.

Here see how the versions and things are changing. This cannot be the reliable evidence and hence most of the hearsay evidence is inadmissible in the court of law.

Substantive, Corroborative and Rebutting Evidences:

These 3 are the forms of evidences which are interrelated to each other and hence taken together.

When the evidence is given to the relevant fact of issue, it is called as **substantive evidence**. However, many statements, oral or documentary may not be relevant to the facts, are not deemed to be admissible, but become admissible to support substantive evidence. Such evidences are known as **corroborative evidences**. However, if there are evidences which are against the substantive evidences which brings out the lies, then such evidences are called **rebutting evidences**. It is true that the corroborative evidence is the supportive evidence, but if the main evidence is the lie, then the corroborative evidence is also not taken into consideration. In any chain of events, if any evidences is given in direct opposition to the corroborative evidences, then the truth about the chain of events are to be determined from the evidences placed and some of the evidences are not reliable or admissible. The logical conclusion has to be drawn out of the evidences.

Documentary Evidences:

Documentary evidences are all documents that are produced for inspection in the court. This are the evidences is to rely the truth of the statements. The examination of the documents involves the following:

1. The document is genuine
2. What are the contents of the document?
3. Are the statements of the documents true?

The first and the third points are given by the person who produces the document, while the second question is based on the contents of the document. The genuineness of the document or the truths of the contents are to be proved by the oral evidences. Some of the examples of documentary evidences are:

1. Marriage/Birth Certificate or Educational Documents etc.
2. Doctor's report, X-Rays or medical treatment records.
3. Wills, probates, housing documents, bank documents, photos, court judgements etc.
4. Bills, invoices, bank statements etc.
5. Letters written to another person etc.

6. Research papers, newspaper cuttings etc.
7. Any such document that is relevant to the fact of issue.

The documents are of 2 types, Public and Private Documents.

Public Documents are the document that forms acts, records, submissions etc. to the official bodies, tribunals, public offices, judiciary, legislative or any government bodies of any state or country. Some of the private documents kept for the public records are also public documents.

Private Documents are all other documents.

Certified Copies: The certified copies of the Public Documents are used as admissible evidence in the court of law, provided that the certified copies are certified by the authorised person. Sometimes the documents require proper attestation which is used for the admissibility as evidence. In cases of wills or partition deeds, in addition to the attestation, the stamp duty or registration is required for admitting the document in the court.

Genuineness of the document: All the documents are presumed to be genuine, but the contents can be challenged. In case of private documents, the contents are proved either by primary or secondary evidences, the truth of the contents are established by the means of independent, circumstantial and direct evidences.

Electronic Evidences:

Any evidence that contains the electronic records is the electronic evidences. This includes, but not limited to voice recordings, video recordings, documents copied on optical drives, hard disk, etc. emails, software, SMS, WhatsApps messages; Call Logs, Website pages, chat records, photos from digital camera/mobiles CCTV, etc. are electronic evidences. All electronic evidences are admissible in the court of law. The following care should be taken for the production of electronic evidences:

- a. The original media has to be presented at the time of inspection
- b. The copies of the original contents can be produced on the paper, supported by original device.
- c. The transcript of all voice recordings has to be submitted along with voice recording.
- d. The video recordings should be produced with the certificate or affidavit.
- e. Any electronic evidence should not be tampered or changed.

Primary and Secondary evidences:

Primary evidence means the document or electronic record in its original form produced in the court for examination. **Secondary evidence** means that the copies of the primary evidence without any modification so as to compare with the primary evidence. Some of the examples of primary and secondary evidence are:

Primary Evidence: Original Bills, Invoices, Doctors Reports, X-Rays, Wills, Affidavits, Voice recordings and video recordings in original media with recorder, mobile phone having SMS, messages etc.

A certified copy of the public document certified by authorised person is also primary evidence. Public document herein contains any documents submitted to the court by any party in their cases, orders/ judgements against the parties or even the printout of the copy from internet site.

Secondary Evidence: Copies of Bills, voice / Video recordings on CD/DVD/Optical Drive/hard Disk etc are the secondary evidences.

Arbitrators/Meditators:

Things spoken to arbitrators / meditators are not to be used as evidence in any court of law since such are acted in fairness to resolve the issue amicably.

Affidavits:

Some of the affidavits are excluded from taken as evidences, if it is based not only on knowledge, but also on **information and belief**. Such affidavits would come strictly on hearsay, which becomes inadmissible in the court of law. This can be helped in interlocutory matters, but not for the final disposal of the case, where the case is seen on other parameters of merits.

Dying Declarations:

Dying declarations is the only hearsay evidence which is admissible in the court of law, provided

1. The declaration is taken and written down by the competent authority like Magistrate or police in presence of independent witnesses.
2. The person who writes the dying declaration does not add or remove any words spoken by the person. If the person is not able to speak, then dying declaration is to be in the form of questions with Yes / No as answers.
3. The statement must be related to the cause of his death or the circumstances which have been resulted into his/her injury condition near to death.
4. No relatives/family or any other persons should be present while taking the declaration which has the influence on him/her.
5. The dying declaration should not be given under threat or undue circumstances or under influence from any of the persons.
6. After the declaration has been taken, it has to be read back to the victim, word by word, in presence of witnesses.
7. The witnesses who are present at the time of declaration being taken, will sign the copy of the statement taken and would testify in the court of law if needed.

Alibi:

Alibis are the persons who can administer under the oath that the accused was with him at the given place at the given time. The burden is on the prosecution to prove that the accused was present at the scene of crime and has participated in the crime. The plea of alibi taken by the accused needs to be considered only when the prosecution has discharged the case successfully. When the plea of alibi is taken, the burden is on the accused to give heavy and strict proof to establish the plea of alibi. One of the examples of alibi is that the wife alleges that the husband has poured Kerosene at the particular time, the time given when he was in office and was immediately arrested from office within 1 hour of incident. (This is true incident)

Medical Evidence:

Any medical reports, treatment papers, case papers, X-Rays, sonography reports etc. of the party that suggests the medical condition of the party is the medical evidence for the fact of issue. Medical evidence consists of injury marks taken immediately after the incident, or the long standing disease for which the medication is been taken, or any such treatments taken by the person from the medical professional. In case of death by un-natural circumstances, the post mortem report is also taken as the medical evidence. Some of the evidences and information regarding to the medical conditions are listed below.

Prescription: This should clearly tell the tablets and the number of dose that needs to take every day. If there are antibiotics, then it should be supported by some Vitamin B-Complex tablets or Antacid tablets in the prescription. The prescription should be on the doctors or Hospital's/Clinic's letter head with the details like registration number, phone numbers, name etc. should be printed, Date and doctors signature should be in original. SCANNED signatures of DOCTORS are not allowed in prescription.

Bills: There are 2 types of bills, bills of consultation / labs / X-rays and bills for medicines. In the bills other than the medicine bills, the same has to be on clinic or hospital letterhead, and should clearly show the charges against the items. For medicine bills, it should clearly show the quantity, price, batch number, expiry date and the total amount. All the bills should be signed by the authorised persons.

X-Rays: Now days X-Rays tell many things. On the X-Ray, the name of the patient, date and time has to be clearly visible on one corner. It should also show which side is left or right. The prescription of the doctor is required for X-Ray and the final report of the X-Ray should also be given by the doctor. This report has to be on the letterhead, the doctor has to sign the report personally authorizing that he has seen the X-Ray himself and has prepared the report himself.

Doctors investigation: In cases of grievous assault, or bodily assaults, the photographs needs to be taken along with the line of treatment, x-rays etc to show the depth of the hurt or internal injuries. This has to be supported with the treatment plan, the results of the treatment and the recovery period. If the person is hospitalised, then all the hospitalisation bills, reports, dietary plans etc should be given to the court. In case of any body part taken and send out biopsy, then the corresponding biopsy report has to be submitted.

Laboratory tests: These tests can be blood, urine or any such hormone tests. Even ultrasound tests are the part of lab tests. The results should be signed by the competent doctor.

DNA: Only in some special cases, DNA report is required. For marital purpose, the primary use is to get the parenting rights, and hence the DNA is allowed, only if it is in the best interest of the child. In some cases of rape or murder, such DNA samples are useful in resolving the crime.

Autopsy: Autopsy or *post-mortem* is conducted in cases of murder, accident, burns or dowry death. For this the detailed report has to be given. This should include the date and time of death.

Psychiatric Treatments: Persons having much more mental disorders should be given the treatment and shocks as required. In such cases, the persons who are giving the treatment have to give the reasons for the treatment required, their findings, environmental circumstances, if they were hypnotised or not, fear in their mind, reasons for the fear etc. Some of this may be long term, natural illness, while others may be due to some incident that may have happened in life. Such instance needs to be taken into consideration. The complete history of such treatment should be kept. The symptoms of the patient should be mentioned for the clarity of the treatment given by the doctors. This will also help in keeping the record of the progress of the patient's mental health.

Rape: In cases of rape, the complete medical examination of the women has to be done within the shortest timeframe available. If the incident of rape is reported after the considerable time frame, then it is not possible to arrive to the certain conclusion. The semen sample should be taken and preserved to match with the accused. There has to be other signs of assault on the body to support rape. Otherwise it can be treated as consensual sex.

Unnatural sex: This involves penetration in the carnal area. Some of the ingredients should be that length and thickness of penis should be enough for penetration in that area. If not, then this would be not useful. This also requires some of the more stringent proofs to support the claim.

Pregnancy: The first evidence of pregnancy is the Urine test which shows if the women is pregnant or not. During the full pregnancy, all the records are to be maintained. It would be necessary if one maintains the diary to note down the daily routines or tasks for pregnancy. This report includes regular checks, blood reports, sonography, illness or complications faced during pregnancy. In some cases, the women can have high swelling of hands and legs, known as oedema which is caused by the baby putting some weight on the kidneys. In some cases, the BP can go very high, which is also known as pre-ecemplia, could be harmful for the baby. This need to be controlled through medicines and bed rests. In cases where the waters are more or less, the complete bed rest is required.

The average weight of baby is 5.5-6 kgs or 2.5 pounds. The weight for first 6 months would not be more than 600 gms, but in last trimester, the weight is gained rapidly. Here the health of the baby is determined from the weight. The womens weight can be increased by 20 kgs during pregnancy.

Wife's put the allegations that she was not given any food to eat during pregnancy or has suffered a lot during this time. All these allegations are rebutted by the weight of the baby and APGAR score of the baby. This APGAR score shows the health of the baby and is taken at 2 and 5 minutes after the birth of the child. If the score is 7 or more out of 10 each time, then the baby is perfectly normal. More about APGAR score will be found on internet or Wikipedia. Such counters are to be given for the pregnancy related stuff. If the wife puts pregnancy related complications as cruelty during the pregnancy, then it has to be medically supported and the effect on the baby should be noted. Such complications are easily understood by the doctors. The other counter is that the wife was doing the things on Doctors advice and you can tell the court that when asked, she uses to tell that this is what the doctor has advices and she is doing the same thing. This will shift the burden of proof.

Sonography: This is also known as ultrasound, and is mostly done in cases of pregnancy. Here the mother has to give the declaration that she or anyone should not ask for the gender of the child. Only after the declaration, the sonography is conducted. The results of sonography should include Estimated Due Date, the gestation time, the weight of baby, the size of baby, the head circumference etc.

MTP: This is **Medical Termination of Pregnancy**, commonly known as **abortion**. This can be of 2 types; one is with the tablets which can be done within 10 weeks of gestation, while other is through surgery, which is till 20 weeks of gestation. The doctor performing MTP has to take the consent of mother and the father, if married. Without the consent of mother, the pregnancy cannot be terminated. Before signing the form, the doctor needs to give the consultation to the mother about saving the life, while has to record the reasons why the pregnancy should be terminated. If satisfied, then only the doctor should go ahead for termination else refer the matter to counsellor.

In some cases of ectopic pregnancy or abnormalities of the baby or the threat to the women's life, the doctors can suggest termination of pregnancy, which should support all the necessary documents, paper work, sonography reports showing deformation etc. This would be done, if the life of mother or child is in danger.

The termination of the pregnancy after 20 weeks can only be done in cases where the child is dead inside the womb. This would serve no purpose to keep the baby for rest of the period, and would also be harmful to the mother.

Scopes: In some cases, scopes like colonoscopies, endoscopes etc. are done to determine the internal complications mainly in lungs, stomach or intestine areas which are not known otherwise. Some of the scopes are used to treat infertility.

Women's menstrual complications: Menstrual irregularities are common abnormalities of a woman's menstrual cycle. Menstrual irregularities include a variety of conditions in which menstruation is irregular, heavy, painful, or does not occur at all. Common types of menstrual irregularities include:

1. Amenorrhea - When a teenager does not get her period by age 16, or when a woman stops getting her period for at least three months and is not pregnant
2. Dysmenorrhea – Painful menstrual periods, pain in pelvic and belly areas
3. Menorrhagia – Heavy menstrual periods
4. Oligomenorrhea – Menstrual bleeding occurring more than 35 days after the last menstrual period, that is, less than 10 periods a year
5. Polymenorrhea – Menstrual bleeding occurring less than 21 days after the last menstrual period, that is, more than 12 periods a year
6. Spotting – Light irregular vaginal bleeding or vaginal bleeding between periods
7. Cervical Cancer – Cancer cells in cervix of women.
8. Uterine Cancer – Uterus showing abnormality
9. Uterine Fibroids – Tumours in Uterus
10. Fibrocystic Breasts – Lumpiness in breasts, sometimes breast tenderness and pain
11. Polycystic Ovarian Syndrome(PCOS) – Irregular or no periods, having small cysts in ovaries.

Menstrual irregularities or their symptoms, such as abnormal vaginal bleeding, can be caused by a wide variety of abnormal conditions, including pregnancy, hormonal imbalances or changes, infection (sexually transmitted diseases and other infections), malignancy (cervical, uterine or vaginal cancer), trauma, and certain medications. Treatment of menstrual irregularities varies and is tailored to the individual case, the underlying cause, the severity of symptoms, and the presence of any complications. There are many other diseases which are not listed here. You can find some in Internet. During this period, the women can undergo mood swings, and sometimes can be much more harmful.

Infertility: It means that not able to produce the child within certain facts of parameters. If the married partners are having regular and frequent sex, then the chances of pregnancy are more. For the women, the gestation or ovulation period is very less, probably 48 hours when the egg is been released from ovary. This happens around 10 – 12 days from the start of cycle, which varies in the women. At times, when the egg is released from ovary, ovulation happens and the body temperature is increased by 1 degree Celsius. Now even the ovulation strips are available which tells about the ovulation. From the date of ovulation, the eggs are in the fallopian tubes for 36 to max 48 hours before entering uterus. The egg needs to be fertilized during this time, within the fallopian tube otherwise once the egg enters uterus, no fertilization happens. The sperms have the life of 72 hours and daily sex during the days from 9 to 14 will be useful in getting pregnancy. This can be done for 4-6 months and if no results happen, then one should see the doctor. The infertility can happen in both man and women. The common causes of infertility in man are low sperm count, damaged sperms, low mobility, more dead cells or low mortality. A count of 20 million is threshold, while the average is 80 million sperms. Count below 20 million is troublesome. The common causes of infertility in women are age, ovulation problems, blocked fallopian tubes, uterine problems, dieting etc.

For some couples, the cause of infertility is never found. If the cause is determined, a specialist can work with you to establish the best course of treatment. Treatment for infertility is determined based on your age, overall health, and medical history; extent and cause of the disorder; and your preference. Most infertility cases are treated with conventional therapies, such as medication or surgical repair of reproductive abnormalities. Depending on the cause, there are many options for an infertile couple, including insemination procedures, laboratory fertilization, sperm injections, donor eggs, and more.

Impotency: Infertility and impotency/frigidity are different. Impotency is also known as ED or Erectile Dysfunction. This may result from the total inability to achieve erection, an inconsistent ability to achieve an erection, or the ability to only sustain a brief erection. Some of the common causes of impotency are:

Premature ejaculation (PE): Premature ejaculation is the inability to maintain an erection long enough for mutual satisfaction. Premature ejaculation is divided into primary and secondary forms. Primary premature ejaculation is a learned behaviour that begins when a male first becomes sexually active (as opposed to organic or physical) impotence. Secondary premature ejaculation occurs when, after years of normal ejaculation, the duration of intercourse grows progressively shorter. Secondary PE is due to physical causes, usually involving the penile arteries, veins, or both.

Performance anxiety: Performance anxiety is a form of psychological impotence, usually caused by stress or anxiety. This can also be the part of virtual impotency.

Depression: Depression is another cause of psychological impotence. Some antidepressant medications cause erectile failure.

Organic impotence: Organic impotence involves the penile arteries, veins, or both, and is the most common cause of impotence, especially in older men. When the problem is arterial, it is usually caused by arteriosclerosis, or hardening of the arteries, although trauma to the arteries may be the cause. The controllable risk factors for arteriosclerosis--being overweight, lack of exercise, high cholesterol, high blood pressure, and cigarette smoking--can cause erectile failure often before progressing to affect the heart.

Many experts believe that when veins are the cause, a venous leak or "cavernously failure" is the most common vascular problem.

Diabetes: Impotence is common in persons with diabetes. The process involves premature and unusually severe hardening of the arteries. Peripheral neuropathy, with involvement of the nerves controlling erections, is commonly seen in persons with diabetes.

Venous leak: Venous leak may be caused when the veins in the penis cannot prevent blood from leaving the penis during erection. This may be congenital or result from damage to the veins of the penis.

Neurologic causes: There are many neurological (nerve problems) causes of impotence. Diabetes, chronic alcoholism, multiple sclerosis, heavy metal poisoning, spinal cord and nerve injuries, and nerve damage from pelvic operations can cause ED.

Drug-induced impotence: A great variety of prescription drugs, such as blood pressure medications, anti-anxiety and antidepressant medications, glaucoma eye drops, and cancer chemotherapy agents are just some of the many medications associated with impotence.

Hormone-induced impotence: Hormonal abnormalities such as increased prolactin (a hormone produced by the anterior pituitary gland), steroid abuse by body-builders, too much or too little thyroid hormone, and hormones administered for prostate cancer may cause impotence. Rarely is low testosterone responsible for impotence.

Peyronie's disease: Peyronie's disease is a rare inflammatory condition that causes scarring of erectile tissue that may result in curvature of the penis. This condition can impair sexual function.

Frigidity: Failure of a female to respond to sexual stimulus; aversion on the part of a woman to sexual intercourse; failure of a female to achieve an orgasm during sexual intercourse. This disorder can stem from psychological or emotional problems such as stress, anxiety, depression, fatigue, worry, guilt, fear of painful intercourse and fear of pregnancy. It can also develop from the undesirability of a partner, the undesirability of the setting, and the use of alcohol or drugs.

Osteoporosis: Osteoporosis is a condition characterized by a decrease in the density of bone, decreasing its strength and resulting in fragile bones. Osteoporosis literally leads to abnormally porous bone that is compressible, like a sponge. This disorder of the skeleton weakens the bone and results in frequent fractures (breaks) in the bones. Osteopenia is a condition of bone that is slightly less dense than normal bone but not to the degree of bone in osteoporosis. Normal bone is composed of protein, collagen, and calcium, all of which give bone its strength. Bones that are affected by osteoporosis can break (fracture) with relatively minor injury that normally would not cause a bone to fracture. The fracture can be either in the form of cracking (as in a hip fracture) or collapsing (as in a compression fracture of the vertebrae of the spine). The spine, hips, ribs, and wrists are common areas of bone fractures from osteoporosis although osteoporosis-related fractures can occur in almost any skeletal bone. Bone mass (bone density) decreases after 35 years of age, and bone loss occurs more rapidly in women after menopause.

Diabetics: Diabetes is a chronic condition associated with abnormally high levels of sugar (glucose) in the blood. Insulin produced by the pancreas lowers blood glucose. Absence or insufficient production of insulin causes diabetes. The two types of diabetes are referred to as type 1 and type 2. Former names for these conditions were insulin-dependent and non-insulin-dependent diabetes, or juvenile onset and adult onset diabetes.

Scientific and Experts Evidences:

Now-a-days modern scientific developments have the serious impact on the evidences in some cases which may be required to bring the truth. Some of these areas are:

- a. Blood Strains and Blood Groups

- b. DNA to determine the parenthood
- c. CCTV camera or photographs taken from Automatic cameras
- d. Alcohol or breath test in case of accidents
- e. Lie Detector tests
- f. Finger prints / Foot Prints
- g. Computer related transactions/crimes
- h. Finance Related crimes including hawala transactions

Relevant Facts for which the Evidence may be given:

The facts for which the evidence may be given are:

- 1. Facts connected with the facts in issue
- 2. Statements about the facts in issue
- 3. Statements by persons who cannot be called as witnesses
- 4. Judgements of Courts
- 5. Opinions by persons/experts
- 6. Character of parties

Facts connected to the facts of issue or relevant facts:

There are some of the facts which in itself may be irrelevant, which can be made relevant to the facts of the issue. These facts will bring out the truth or the circumstances which can change the outcome of the issue which is shown by the complainant. This fact can form the part of same transaction which may be occurred at same or different places or times. The question arises how to find out that the facts belong to the same part of transaction. In marital disputes, there are good times and there are bad times. There are also many events which may have occurred over the period of time when the parties are staying together for considerable amount of time. In such cases, some of the events become the facts that are connected with the facts of issue. The following example will give some clarity on the facts of the issue.

The wife alleges that the husband and his family members have locked her up in the bedroom from the time of marriage, which the husband and his family members deny. The wife does not come up with any corroborative evidences to support her statement, but the husband and his family members comes out with the series of events to support their denial. The following are the series of events which brings out the truth:

- a. The couple went for Honeymoon at places X, Y and Z for 15 days
- b. After the honeymoon, the couple with family members went to village to take the blessings of their Goddess for happy married life.
- c. The wife was send to her parent's house for couple of days within 3 months of marriage as the part of custom within their caste.
- d. Wife went to the brother and cousins house for Raksha Bandhan
- e. The couple frequently visited the relatives from both sides as the part of introduction for the each other's family and relatives. The relevant ticket are been put in support.
- f. Husband has enrolled wife for computer classes for which she was attending the course and has completed the course. The husband puts the bills paid, certificate of completion and ID card.
- g. Couple were spending time with friends by going on picnics, resorts, movies, restaurant's etc. for which the photographs, bills and tickets were produced.

From the above it is seen that the facts in itself are not relevant with the facts of issue, but is connected with the relevant facts to show the denial of the allegation. The causes and effects are treated as relevant for these facts. The facts have been connected with the proximity of time and place. The facts are continuous in nature suggesting the different issue than alleged. These facts constitute the things under which they have happened, forms the part of same transaction. The interference drawn by this fact rebuts the relevant fact mentioned by the wife.

Motive:

The fact is relevant if it shows or constitutes the motive for any relevant fact. Motive means the person acts in the particular way. If the prosecution do not suggest the motive of the crime, then the question arises if

the accused is still guilty. Motive is psychological fact, and which has to be proved by circumstantial evidences. Motive is different from intention. The person may steal food, the act of stealing is the intention, but the motive may be feeding the starving children. The intention of doing or not doing the particular act (like stealing) is his decision, and his motive is his reason for forming the decision. The substantive law rarely concerns about the motive, but from the view of evidence, the existence of motive forms the relevant fact in each criminal case. The motive is one of the pieces of evidence which is the part of relevant fact.

If the evidence is purely circumstantial, i.e. the relevant facts from which the inference is drawn regarding the issue of fact, the guilt of the person in criminal case, then in absence of crucial circumstance of motive assumes importance. The accused may be acquitted. The decision of having the adequate motive is to show the court for the acquittal or conviction.

Preparation:

The facts that work towards the motive are preparation. The following example will show the clarity in the preparation.

Fact Alleged: *Wife complains that the husband have thrown out of the house. The husband denies this fact and states that the wife has already decided to go out of the house to be with her lover.*

Motive: *Wife to be stays her lover and not husband.*

Intention: *Wife runs away from Husbands house.*

Preparation: *The following preparation is done by the wife:*

- 1. Wife takes all the jewellery and valuables with her and hides at the lovers place without the knowledge of the husband*
- 2. Wife keeps all the documents ready for the disposal at any time*
- 3. Wife withdraws all the money from bank just before running away.*
- 4. On the D-Day, wife creates the issue with husband and fights with him without any reason on frivolous matter and walks out of the house.*

It would be clear that all the above points are the part of preparation for the motive to be achieved.

Conduct:

Conduct or the behaviour of the parties is relevant to the case. The conduct must be relevant to the suit, proceeding or the fact of the issue, which must assist the court in coming to the conclusion on the matter. It must influence the decision, and whatever the conduct of the fact before or after the happening is immaterial. Silence is also the part of conduct which is relevant to the case. It is said that the silence operates as consent. The acts of the person during the period of time establish the conduct of the person. Continuing with the above example, the following will clarify the conduct:

- 5. The wife then switches off her mobile phone and is not in touch with the husband*
- 6. The husband approaches the wife's parents and they are also not helpful in the matter.*
- 7. Then approaches the police for help. He gives the information that she may be with her lover.*
- 8. The police inquire the matter and goes to the place where the lover is normally residing, but finds that he has vanished from the same time as the wife has disappeared from the home.*

From the above, it is seen that the conduct of the wife and her parents are totally unacceptable to put other person in trouble, which is seen by the courts as an act of cruelty in divorce related cases.

Facts showing the state of mind:

The person can give the state of his own mind, but to establish the state of mind of another person, only circumstantial evidence is available. To show the existence of the state of mind, such as intention, knowledge, good faith, ill-will, good will etc. in the issue is relevant. In every criminal case, the state of mind of the person is in issue. To establish the state of mind, any fact that shows it even similar in other transactions would be relevant.

Conspiracy:

Conspiracy is defined as: When two or more persons agree to do or cause to be done an illegal act or an act which is not illegal be illegal means with the common intention. A mere agreement to commit the offence becomes criminal conspiracy, whereas the tort of conspiracy to be actionable must have shown the damage caused to other person. The rule for conspiracy states that: Everything said, done or written by one of them in the execution or furtherance in reference to their common purpose or intention.

There has to be the prima facie evidence for the reasonable ground for the court to believe that two or more persons are the members of conspiracy the above rule of everything said, done or written by one of them in reference to the common intention will be evidence against each other and was formed by one of them. The purpose is also important and can be used against the conspirator and not in favour of the conspirator.

Continuing the above example, the acts done by the wife and her parents in running away and protecting the wife is the act of conspiracy. Further, helping to abscond is also the act of conspiracy. They do have the common intention of grabbing the money from the husband and then settle with the lover.

Admissions:

Any statement, oral or documented, which suggests any interference with the relevant fact and which is made by the person under the following circumstances:

- a. Statements made by the parties to the proceedings in court
- b. Statements made by persons whose position or liability is necessary to prove the fact
- c. Statements made by the witnesses

Admissions may not be the conclusive proof of the matters, and they may have to be corroborated with evidences. Admissions have to be clear if they are to be used against the person making them. They themselves are the substantive evidence, but not the conclusive proofs. Admissions can be oral or written, and also the conducts of the parties are the admissions. The admission made by one party may not be proved by another party.

An admission made by the party in the matter is different from its use as admissible evidence. An admission can be relevant or irrelevant, depending on the facts of issue and use. An admission can be used as the corroborative or rebutting evidence.

Confessions:

A confession may be defined as the admission of the offence by the person charged with the offence. A confession made by an accused must either admit in terms of offence or at any rate substantially all the facts which constitute the offence. The statement that contains self-exculpatory matter cannot amount to confession, if such exculpatory statement is of some fact, which if true, will negate the offence. The confession is different from admission. All confessions are received as evidence for the same reason as of admission, and are only valid in criminal cases. The admissions may not be voluntary, but the confessions have to be true and voluntary. The confession has to be made by accused himself and should be relevant to the issue of facts. The confession made under threat, promise, and inducement is not admissible in the court of law.

The law does not require that the evidence of an extra-judicial confession should, in all cases, be corroborated. When such confession is proved by an independent witness, who has no bias against the accused, then there is no justification in believing it. The extra-judicial confession should not be considered as the judicial confession, but it is admissible evidence, and the court can rely on it as substantive evidence, which could convict the accused.

A confession may consist of several parts, which may not only reveal the actual commission of the commission of crime, but also the motive, the preparation, the intention, the opportunity, the provocation,

the weapons used and concealment of the weapons, conduct of the accused etc. If the confession is tainted, then the taint is attached to each part of the confession. It is not permitted to separate one part and admit another part. A confession made to the police is not admissible under the court of law, unless it is supported by the corroborative evidence. Moreover, if the confession made to the police officer, who subsequently results in another discovery of the facts, then the confession is admissible in the court of law.

Cross Examination:

Cross examinations are the leading questions asked by the opposite party with the purpose to bring out the truth and unsaid facts in the case. The questions and answers are accepted as an admissions made by the person under the oath. The technique of cross examination is detailed in another document. Cross examination can also be used to bring out the motive, lies, truths and what is unsaid by the person that has happened or not happened related to fact. The cross examination is also to show the inconsistencies in the statements made by the person. If the admissions or confessions made by opposite party are not cross examined, then the same are accepted as the facts, which will not require any corroboration, which can go against you. The following example will show how the cross examination

Fact Alleged: *Husband has asked for Rs 50,000/- of 10 May 2000 as dowry. The money was paid to him on 11 May 2000 by cheque dated 11 May 2000 to his bank account.*

Cross Examination of wife:

Q: Is it true that your Father in Law was admitted to hospital on 08 May 2000 with heart attack?

A: Yes

Q: Is it true that on 10 May 2000, the doctors told that you father in law needs to undergo heart surgery and the cost of the operation would be around 4-5 Lakhs?

A: Yes

Q: Is it true that on 10 May 2000 the doctors have asked the husband to deposit 4 Lakhs in 2 days' time for the by-pass operation?

A: Yes

Q: Is it true that at that time the husband was following short of money and has asked you and your parents for help?

A: Yes

Q: Is it true that he has also approached his friends, relatives and office colleagues for some immediate help?

A: Yes

Q: Is it true that the money deposited in bank was given to the hospital by cheque on 12 May 2000?

A: Yes

Q: Is it true that your Father in Law has undergone by-pass operation on 13 May 2000?

A: Yes

Q: Is it true that your husband has returned the money to your parents in parts between August 2000 and April 2002?

A: Yes

The above is the true incident and the cross examination brings out the facts which are not been told. All the questions and answers are admitted in the court of law, and have been corroborated by the hospital bills, reports and the bank statements of the money received and paid. This changes the outlook of the crime, and the money taken for urgent medical expenses are not considered as dowry.

Statements by persons who cannot be called as witnesses:

Statements, oral or written, of the relevant facts made by the person who is dead, or who cannot be found, or who has become incapable of giving evidence or whose attendance cannot be procured without an amount of delay or expense under the circumstances of the case appears.

When judgements are relevant:

The judgements of one case for the parties are conclusive in another case as follows:

- a. The previous judgement which has final order can be relied.

- b. In civil suits between the same parties, principle of res judicata applies
- c. In criminal case, once the person is convicted or acquitted, he will not be tried again for the same offence if the conditions mentioned are satisfied.
- d. If the criminal case and civil proceedings are of same cause, judgement of civil court would be relevant in criminal case as conclusive proofs.

For the purpose of marital disputes, in DV and 498a cases, if the person is acquitted in DV case, then the judgement of the DV case is relevant in 498a case, provided both the allegations are same. Also, the decree of divorce taken from one court is admissible in another court if the opposite party files the case of same cause in that court. If the wife is alleging cruelty and the same has not been proved in divorce case, then the benefit of doubt directly impacts DV and 498a cases where the burden of proof is high.

When opinions are relevant:

The general rule is that the opinions of third parties are irrelevant. However, there are exceptions. When the court has to form the opinion upon the point on foreign law, or science, art, handwriting or fingerprint, computer related crimes, financial related crimes, medical related information etc. where the opinion of expert is required to establish the outcome of the case, then such opinions are taken into consideration as evidences.

When character of parties are important:

Character of the persons tells the how the person react in normal situations and in certain situations. It tells if s/he has done a particular act, what kind of the person is that and how likely he is to do such act. For the civil case, the characters of both the parties are important, while in criminal case, the character of the accused is important. The evidence of the character is limited. Reputation and character are different. Reputation means the estimation in which the public holds him, based on the position where he working and how effective is he doing in the society.

In criminal cases, the fact that the accused is of bad character is irrelevant, unless evidence has been given that he is of good character, in which case it becomes relevant. A previous conviction is relevant as evidence of bad character.

In the suit of the damages for the defamation, evidence of bad character of the plaintiff is relevant and such evidence can be given. Defamation means the person is exposed to hatred, ridicule and contempt as the result of the statement made about him.

Facts of which the evidence cannot be given:

ESTOPPELS:

The legal principle that bars the party from denying or alleging the fact owing to the party's previous conduct, allegation or denial. There are different types of estoppels but they are generally related to the property related matters or in civil suits.

Burden of Proof

The burden of the proof is the duty placed on the prosecution/petitioner to prove or disprove the disputed fact. We have the following burden of proofs:

1. Legal Burden
2. Evidential Burden
3. Burden on pleadings
4. Risk of Non-persuasions or Persuasive Burden
5. Presumptions

Burden of proof lies upon the person who affirms and not on the person who denies the allegations. When a person relies on the facts in the court, the opposite party may accept some facts and deny the existence of other facts. Now the question arises that the party who is asserting the fact has to prove the existence of

fact or the party who is denying has to prove the existence of the facts. In short, to whom the 'Burden of Proof' lies with? The law sees the burden of proof in 2 different senses, viz.

- a. The burden of proving all the facts or establishing one's case
- b. The burden of introducing evidence at the beginning or at later stage of case

When the person is bound to prove the existence of any fact, then the burden of proof lies with that person to prove the fact. In general, the burden of establishing the case and adducing the evidences lies with the party which files the case. In 498a/DV cases, if no proof has been given by the wife, then the husband and his family are acquitted since the presumption of innocence will be in favour of husband's family.

The burden in former sense is the existence of certain facts which one party asserts, and is constant throughout the trial, but the burden to prove by adducing the evidences shifts from time to time having regard to the evidence adducted by one party or other on the presumption of the fact or law raised in favour of one or other.

The **legal standards** of burden of proofs are:

Reasonable Suspicion: This is the very low burden of proof, generally used in cases of probability of crime. The reasonable suspicion requires specific, articulate and individualised suspicion to foot the crime. There has to be some evidence that suggests suspicion on the person. The mere guess is not enough for the reasonable suspicion.

Probable cause: It is the formal accusation that the person has committed the offence. This is the stage where the police start investigation. In India criminal offenses are divided into two broad categories: Cognisable offenses and Non-cognisable offenses. The police are empowered to start investigating a cognisable offense. At that stage, the complaint is considered merely an accusation. However, in both cognisable and non-cognisable offenses, the trial starts only with the "Framing of Charges" which is similar to the concept of indictment. The trial court does not proceed with the trial if the evidence is insufficient to make out a charge.

In civil cases, the prima facie facts put on paper is enough to start the case and proceed further. This is low level of burden of proof which is required to get the interim remedy, if any.

The **evidential standards** burdens of proofs are:

Some Credible Evidence: This is the least reliable burden of proof which is used to set the motion for the trial. The standard does not require the fact finder to weigh conflicting evidence, and merely requires the investigator or prosecutor to present the bare minimum of material credible evidence to support the allegations against the subject, or in support of the allegation. The standard of this evidence is still lower for conviction or for giving any civil judgement, but it is required to set the motion of the trial to find the exact facts. In 498a cases, the charges are framed based on this type of evidence.

Substantial Evidence: It is the relevant evidence that might be accepted as an adequate proof to come to conclusion. As discussed earlier, this evidence is substantive evidence which may requires further corroboration or rebuttal. This is the normal level of burden of proof.

Preponderance of Evidence: This is also known as **Balance of Probabilities**, which is more used in civil matters rather than criminal matters. This means that the fact is more likely to be true than not true. This in some cases is required to be put to get any interim benefit, or set the motion of trial. This is also the normal level of burden of proof.

Clear and convincing evidence: Clear and convincing evidence means that the evidence presented by the party during the trial must be highly and substantially be more probable to be true rather than not to be true, and the tier of fact must have firm belief or conviction in its factuality. Here the greater degree of belief must be met in comparison to normal proofs, which is above the threshold for the facts/issues that has been asserted. This is high level of burden of proof.

Beyond Reasonable Doubt: This is the higher level of burden of proof usually required in the criminal cases. It has been described, in negative terms, as a proof having been met if there is no plausible reason to believe otherwise. If there is a real doubt, based upon reason and common sense after careful and impartial consideration of all the evidence, or lack of evidence, in a case, then the level of proof has not been met. Proof beyond a reasonable doubt, therefore, is proof of such a convincing character that one would be willing to rely and act upon it without hesitation in the most important of one's own affairs. However, it does not mean an absolute certainty. The standard that must be met by the prosecution's evidence in a criminal prosecution is that no other logical explanation can be derived from the facts except that the defendant committed the crime, thereby overcoming the presumption that a person is innocent unless and until proven guilty. If the trier of fact has no doubt as to the defendant's guilt, or if their only doubts are unreasonable doubts, then the prosecutor has proven the defendant's guilt beyond a reasonable doubt and the defendant should be pronounced guilty.

The main reason that this high level of proof is demanded in criminal trials is that such proceedings can result in the deprivation of a defendant's liberty or even in his or her death. These outcomes are far more severe than in civil trials, in which monetary damages are the common remedy.

Burden on Pleadings: It is the duty of the party to plead the matter in the lawsuit. The pleading party has to put the allegations necessary as per the law, supported by some evidence. This concept is also known as burden of allegations. The trial is then conducted on the pleadings or the allegations levied on the other party. It is often said that the party who has burden of pleading a fact must prove the fact. It may be the case that the defendant has the burden of proof for the pleadings done by other party, e.g. the wife pleads that the husband is not paying the maintenance regularly, and in this case, the burden of proof is on the husband to prove that he is paying the maintenance regularly and the wife's pleading is wrong.

Burden of Persuasion: This is also known as Risk of non-persuasion. The obligation of a party to introduce evidence that persuades the factfinder, to a requisite degree of belief, that a particular proposition of fact is true. The burden of persuasion is comprised of two elements: the facts a party must plead and prove in order to prevail on a particular issue; and how persuasively the party must prove those facts.

Burden of proof on Accused/Defence: Generally, the burden of proof is on prosecution to prove the case and not the accused, there are times when the accused has to prove the fact. In cases where the accused is pleading insanity, the burden of proof lies on the accused to prove insane rather than the prosecution to prove him insane. If the accused is guilty and is pleading for the circumstantial consequences like sudden provocation as well as other circumstances raised by the defence, then also the burden of proof of proving circumstances favourable to accused is on the accused. It is not possible for the prosecution to anticipate all possible defences by the accused based on general or special exceptions, and then prove the non-existence circumstances giving rise to such possible defence. The accused can do this when pleading the charge, cross examination or when the accused is given the chance to speak about the matter and the court puts the questions to him. The accused can call witness on his behalf and also give evidence on his behalf. If he proves the circumstances favourable to him by giving the evidences, then there is no doubt that the court will decide in his favour. However, if still he does not have the evidence then also he can put up the point and ask for the discharge. In such cases, the prosecution has to give the convincing evidence enough for the case to be turned into their favour, otherwise the case goes in favour of the accused.

Presumptions: Presumption happens mainly in the criminal cases. General rule for the presumption is that "***Accused is innocent until proven guilty***". This is true for all criminal cases where the trial takes place. However, when the accused relies on the general exception or special exception as per the provision of the law, it is for the accused to rebut the presumption. The court shall presume the absence of circumstances in bringing up this case. There are some presumptions made available in cases of rape, dowry death, homicide, suicide etc. which is discussed later in this area.

Special Knowledge: In some cases, the knowledge or the opinion of the third party is required to establish the fact. The said knowledge can be from any experts from various fields like medical, forensic, etc. to get

the exact details of the crime. In exceptional cases, the burden of the proof shifts from the pleading or defence party to the party having the special knowledge to establish the fact. If the person with the special knowledge is the only person who can give such evidence, then that evidence cannot be taken as no other person has the knowledge, which may result in miscarriage of justice.

Burden in cases of some relationship: In some matters, the evidences given by the relations are not taken into account as this are totally in favour of the party and not the independent evidence. It is also the cases, where the spouses or family will not give the evidence against each other, except in the cases of marital or family dispute. If the person has been acting in good faith, then in cases of dispute, it is up to the person that he was acting in good faith with the pleading party, and in such cases the relationship between the parties has to be established, and also show that the relationship still existed at that particular time. If the relationship has ceased, then also it has to be shown that the relationship has been ceased. The relationship between parent and child will not ceased at any time, while the relationship between the spouses will be ceased by the decree of divorce.

Burden in cases of dowry death: If the wife dies of un-natural death within 7 years of marriage, then there is the presumption that the death is to be taken as dowry death. In such cases, the prosecution has to show that the death was in relation to the dowry, and the presumption of dowry death is not automatically rebutted. The defence also has to show the cause of death is not related to dowry. In such cases, the court has to be satisfied that there was the cruelty just before the death.

Burden in cases of rape: In such cases, generally the women have to prove that this act of intercourse was not consent. In cases where the plead for the marriage is taken as the pretext of rape, then women has to show credible evidence that the man is wanted to marry the women and under that pretext he has taken the consent. If the girl is minor, i.e. less than 16 years of age, then her consent will not matter in the cases of rape, but her testimony will definitely matter for the suspect.

Burden in cases of legitimacy of child: If the parties are in the marital relationship, then the access of the spouses is generally taken into account for the period of gestation, i.e. 280 days prior to the birth of the child. If the marriage has not happened within 280 days, then the legitimacy can be questioned. On other hand, there are DNA tests available for the parents, which are only done if it is in the best interest of the child, otherwise the DNA tests to confirm the paternity is not done. The legitimacy will not be allowed to be rebutted by the proof that the wife has connection with some other person unless it is proved of adultery.

Burden in case of impotency: This is generally for male in divorce matters. When the spouse put the petition for annulment or divorce on the grounds of impotency, the first thing the wife has to prove that she is still virgin. If the male denies that he is not impotent, then he has to prove that he is not impotent with the medical evidence. It may be possible that the person is impotent with one girl and may not be impotent with another girl. This is ***virtual impotency***, in which the impotency is with some physical aspects of the girl like small breasts, very hairy private parts, unclean or unhygienic maintenance of body, bad body odour, nagging nature, fighting with husband before act, bad environment or surroundings, both the aura's are not compatible etc.

Burden in case of frigidity / Medical condition of women: This is generally for women in divorce matters. Frigidity is a condition in which a woman is unable to achieve or sustain sexual arousal. She may not be able to exhibit adequate sexual desire, arousal, orgasm or desire for intercourse. Women on medication due to chronic depression also fail to get sexually aroused even if there is enough stimulation. In absence of proper education about the different birth control methods, a woman may not feel like having sex due to fear of getting pregnant. Some women, due to strict religious backgrounds or orthodox orientation take sex as something to be refrained from. Obviously they don't then get aroused by their partner and have limited to no sexual desire. Deep-seated psychological problems in a women including some bad past experiences like rape during childhood, physical abuse by a family member etc. also prevents women from enjoying their sexual lives. The burden is shared by the women and the medical doctor who can identify the cause of

frigidity. If the woman is found healthy and no complications medically, then the burden is entirely on women.

In some cases, the menstrual periods are not regular or are coming at very long intervals of 3-6 months. In such cases the chances of having the child decrease. If this condition or any such condition which can affect the family life is kept secret from the husband then the burden of the proof lies with the wife to show that there was no secret kept and she is capable of bearing the children.

Burden in case of breach of trust of Stridhan: In the dispute of stridhan, the list is given by the wife to the husband and his family, which is generally a long list with most of them, are either with the girl or faked. In such cases, take the list and identify **which things are with you, which things have been taken by the girl and which things are not known to you**. This will show that you know some things which she has got to along with her, things which she has taken with her and things which are not known to you. This shifts the burden to the wife for the disputed items where the things are with her and not known. The entrustment has to be established by the wife to show the stridhan was asked and you have not given. For the disputed stridhan, she has to provide all the credible evidences to show that the stridhan exists and also has been with you.

Burden in case of Defamation: The burden of proving the defamation lies on the complainant, where the defamatory article, words or any such acts have been published, spoken, told or written. The accused has the **right for defence by raising one or more exceptions**, and the burden of proving the exceptions lies with the accused. If no exception is raised, then the chances are high for conviction if proved.

Witnesses

A witness is someone who has, who claims to have, or is thought, by someone with authority to compel testimony, to have knowledge relevant to an event or other matter of interest. In law a witness is someone who, either voluntarily or under compulsion, provides testimonial evidence, either oral or written, of what he or she knows or claims to know about the matter before some official authorized to take such testimony. Once the relevant facts are proved, and to whom the burden of the proof lies, the next question is how the evidence is placed in the court. This is through the witnesses and documents. So the law related to the witness are of important and the questions arise are:

1. Who are the competent witnesses?
2. How many witnesses are required to prove the fact?
3. Can the witness be compelled to answer each and every question?
4. How many witnesses are required to unfold their knowledge in the court?
5. How the credibility of the witnesses tested?
6. What is the procedure when the witness lets the party down?
7. Can the witness refresh the memory by referring to the notes?
8. What are the Judge's powers in relation to the witnesses?

Competent Witnesses: Every witness is competent in the court unless he is prevented from understanding the questions put to him or from giving rational answers by the reason of tender years, extreme old age, disease whether of body or mind, or any other similar cause. However, there can be some exceptions. The child of the tender age can be allowed to testify if he has intellectual capacity to understand the questions and give rational answers. The decision of the witness having the sufficient intelligence primarily rests on the judge.

Child Witness: When the child witnesses goes to the witness box, the practice of the judge is to ask some few preliminary questions of general nature to see if the child is capable of understanding the questions, give rational answers and knows the difference between the true and false. The evidence of the child, if found competent to depose and reliable, could be the basis of conviction / acquittal even if this is in absence of oath.

Dumb Witness: A dumb witness can be the competent witness if the witness is capable to give the evidence in any other manner, as by writings or by signs, as far as such evidence is taken in open court. If required, the special interpreter can be called to understand the signs

Independent Witness: Independent witness means that the witness is independent of sources which are likely to be tainted. The witness should not have any enmity against the opposite person there has to be no reason why that person should implicate him falsely.

Parties and their spouses as witnesses: In civil proceedings, the husband or wife of any party to the suit shall be the competent witness, while in cases of criminal proceedings; husband or wife of such person shall be the competent witness. It is held that as husband and wife are one, they are the best witness because they are fully concerned with all the events which they speak, by the cross examination, corroboration, interested witnesses, the court has got the chance of arriving at the truth rather than terming them as incompetent.

Accused as Witness: The accused is the competent witness, who can give the evidence on his behalf, but if he does not give any evidence, no comment can be made against the accused or adverse inference can be drawn against him.

Accomplice as Witness: An accomplice is a person who along with another or others has taken some part in the commission of crime. This accomplice can be the Witness for the Prosecution to derive the truth. If that accomplice has been inducted by the police to take part in the crime for the purpose of collecting evidence, then he is called as trap-witness.

Number of witness is required to prove the fact: The rule for the evidences is that it should be weighted and not counted. Even if there is only one witness, and the court is satisfied that he is speaking the truth, it is sufficient evidence. There is no rule in evidence that says that no conviction or acquittal can happen if the certain numbers of witnesses are present. Convictions or acquittals can be based on the evidence of single eye witness if his credibility is not shaken in any manner. It's the quality and not the quantity which is counted. Evidence is weighted and not counted.

Can the witness be compelled to answer each and every question: In some cases, the witness has the privilege for not answering the questions, if he does not want to answer the questions? In some cases, the witness may be prohibited from some other law or matter which prevents him from answering those questions since the questions can affect in other areas. The communication between the spouses is not to be answered in any court, if such suit or case is not against the spouses. If the person is bound by secrecy and do not have an authority to answer the question, he can refuse to answer the question by citing such reasons.

Credibility of witnesses and unfolding knowledge of witness: The process of unfolding the knowledge in the court is through Chief Examination, Cross Examination and Re-examination. The parties or their advocates question their witnesses and eliciting the answers from them which build up the story set forth in the plaint or written statement or by prosecution or by defence is called Chief Examination or Examination-in-chief. The truth of the story is tested by the opposite side by asking the questions to the witnesses, which is cross examination. If in the cross examination, the witness does not give satisfactory answers and afterwards the clarification is required, then the witness can be called again for examination is called re-examination.

Witnesses will be first examined by the examination-in chief, then by opposite party for cross examination and re-examination. The examination and cross examination must relate to the relevant facts, but the cross examination need not be confined to the facts to which the witness testifies on the examination-in-chief. The re-examination shall be directed to the explanation of the matters referred to in the cross examination and if new matter is, by the permission of the court, introduce in re-examination the adverse party can call for further cross examination upon the matter.

Cross examination means the minute examination of the story with the view of the check it or to elicit any suppressed facts. It is also used to impeach the credit of the witness. The veracity of the witness may be tested by asking him what his sources of knowledge are; finding if he was attentive to the matters about giving the evidence, what capacity he has observe the facts and what opportunity he had to observe, or is this invented etc. The credit of the witness may also be impeached by the proof of former statements, omissions, inconsistently with any part of his evidence.

If the witness denies the suggestion, the evidence to contradict him can be called. But suppose the questions are not relevant to the matters in issue, but are only asked to shake the credit of the witnesses.

Persons producing documents when a witness: A person summoned to produce the document does not become the witness unless he has been called as the witness and cannot be cross examined him unless he is called as the witness.

Procedure when the witness lets the party down: This is known as **Hostile Witness**. When the witness is cross examined and contradicted with the leave of the court by the party calling him, his evidence cannot, as the matter of law, be treated to be wiped off the record altogether. It is for the court to consider each case, whether as the result of cross examination and contradiction, the witness stands thoroughly discredited or still can believe in regard to a part of his testimony.

Refreshing memory of Witness by referring to the notes: Yes, the witness can refresh his memory by referring to the notes, with the permission of the court provided that the court is satisfied that there has been considerable delay in the matter and requires refreshing his memory?

Power with Judges with respect to witnesses: The judge has to see that the parties / witnesses are not harassed during the cross examination. There shall not be any insult to the witnesses. The judge also has the power to call the witness in the order as per the law, and if no law prevails, then as per his own discretion. The judge also has the discretion to allow or disallow the questions raised to the witness in cross examination. The question that reflects the bad character of the person is objected, except without the basis. The judge can also forbid any questions that are indecent or scandalous, except it is related to the relevant facts. The judge can also forbid any questions that appear to be intended to insult or annoy the witness. The exposure of formal faults of any person without the knowledge of his present feelings is unjustifiable and so the judge has to decision for allowing or not allowing the questions that appears to insult or annoy the witnesses.

e.g. **“Have you stopped beating your wife?”** is insulting, annoying and pointing to the bad character of the husband. If he answers **YES**, then it is implicitly applied that he was previously beating his wife and the character of the person is in question. If he answers **NO**, then it implies that he is still beating his wife and the character of the person is in question.

Weight of Evidence

This is one of the important areas of the evidence to see the facts and decide as per the law. While there may not be enough evidence to know the whole fact, some presumptions are used in law for getting the course of natural events, human conduct, and other activities surrounding the facts. The weight of the evidence is also to be considered with the law and the cause of action. There may be some evidences that are corroborated and unrebutted, but those evidences may not be useful for the law for the cases filed.

General rules about accessing evidences:

Few guidelines for testing an **observed fact** and the evidence are:

1. The subject matter
2. Circumstances of the time of observation
3. Weather the observation was casual or deliberate
4. Weather the observer was of observing type

5. The state of mind of the observer at that time
6. Whether the observer was fully aware of the dangers that lies ahead
7. The length of the time that has been elapsed between the observation and being recorded

There are also **legal maxims** which are distilled wisdom, but on the account of their brevity and terseness, require great care in their application. Care should be taken since there are possibilities of conflicting areas.

Some of the maxims in general terms are:

1. Liberal construction should be placed in the documents or instruments in order to uphold them and carry out the effect of the intentions of the parties to the document.
2. The words of the document shall be taken strongly against the party and checks to be done for any ambiguities.
3. To accept the interpretation of the weaker, when there are 2 interpretations possible.
4. Ambiguities may be supplied by the evidence.
5. The credit has to be given to the particular profession, for receiving the expert evidence, but the court has to eliminate the possibility of bias.
6. Every presumption is made against the wrong doers
7. The transaction between 2 parties shall not operate to the prejudice to third party
8. No person can be compelled to incriminate himself.
9. Discovery of the fact is treated only when the accused makes Voluntary statement.
10. The courts may act on the testimony of the single witness, though uncorroborated. One credible witness overweighs the testimony of a number of witnesses of indifferent characters.
11. As a rule, corroboration should be insisted.

How to make or break the case

Shift of the burden of proofs: When the cases are fought, the court sees the evidences and on the basis of that evidence the interference is drawn by the court on the probability of the things that could have happened, the motive, preparation and other aspects discussed earlier. One side the wife talks about the harassment happened, while on other side she asks for the maintenance. This example will show how the burden of the proof shifts and how to break the other side.

A qualified wife sends the marriage biodata to the prospect groom in response to his marriage profile in newspaper as well as on marriage website mentioning her qualification, job and other details. The groom also exchanges the same and they meet up and finalise the marriage. After the marriage, they start living the marital life in another city where the husband was residing for job. The wife also tries to take the job, but their temperaments were different and wife leaves the house to go to her parent's home. She then files various cases against the husband and his family. One of the cases is the maintenance case. In this typical case of maintenance, where the wife states that she is unemployed and does not have means of living. The scenarios and the typical shifts in the burden of proof are:

1. *Wife files maintenance case stating unemployed and do not have sufficient means to sustain herself. She produces her bank passbook stating that she has very less money. Here the wife has very well executed the burden of proof from her side. Now the husband has to reply, where the burden of proof is shifted from wife to husband that she has means to sustain herself.*
2. *Husband on other side states that she is well educated and capable of earning, but has not been earning intentionally or is hiding her employment details. The husband produces the biodata and the educational certificates which she has prepared for the job interview. Here the husband has rebutted the evidence that she is capable of earning and has produced his part of burden of proof. The burden of proof now shifts to wife again.*
3. *The wife states that this job biodata is been made by the husband without any basis and this is false. She has never made the biodata and has not qualified enough to take the job. The wife produces the last leaving certificate where she states that she is 12th pass. The burden again shifts to the husband.*
4. *The husband produces the marriage biodata of the girl and her profile where she states that the bride is well qualified, educated till MBA and was working in well-known company. He produce his profile where he is seeking the well-educated lady, and in response he was been approached by the wife's*

parents for alliance. The husband produces this statement under affidavit, and also files the application to the College where the wife has been educated and given the certificate, also files the application to the company where she was employed earlier asking for the truth. He also files an application for the criminal enquiry to get the authenticity of the certificates. He has discharged the burden of proof.

From the above scenario, the husband has not only proved that the wife has come with unclean hands, but has also committed fraud in marriage and in obtaining the degree certificates. Such evidences are useful to nail down the opposite side. If you are true to yourself, then you will be able to sustain any lies that come along your way. In some cases, the wife is working and not disclosed that she is working. Here also the burden of the proof lies on the wife that she is not working. If the husband finds out that she is working and files an application in the court to bring the wife's employers then the wife is in real trouble and can be tied for perjury in maintenance case. The above example also shows the weight of the evidences where the wife is being caught in her own web of lies. Similarly, in other cases also the burden of the proof shifts from time to time. This is not constant and has to be either corroborated or rebutted. There may be some cases where the partner will not have the burden of proof to sustain his allegation, and so the simple method of it is to give in a statement followed by the cross examination where the lies will come out.

Linking of 2 or more pieces of evidences: As the title suggest, we can link 2 or more evidences to show the truth and the lies told by the wife. These pieces of evidences can be from same case, or from different cases. It does not matter as far as the lies are out in open. In the above example of shift of burden of proofs, we have shown that there are 2 or more evidences that are placed in the court to break the truth. The evidences are the marriage biodata and the degree certificate, along with the notice to the previous employer. This will bring the truth out of the lies told in the court.

Suppose that you don't have any evidence at all to support your case. Then also you can play smartly to bring out the truth and the evidences in favour of yours. This can be done by the admissions of the wife and the witnesses, the cross examination technique as well as the facts and other applications. This example will show how to link the different evidences.

Fact: *Boy and girl were studying in same school and were in love for 13 years. After graduation, both got married secretly before pursued for post-graduation. Neither parents nor family members were present in the court marriage. Moreover, they were staying at their respective home after marriage. The marriage came into light when the girl's parents responded to the alliance from third party after nearly 10 months of marriage. This prompted the parents of both the parties to hold the reception which was after 11 months of marriage and then the couple started living together. The post-graduation was still underway and they decided not to have any physical relationships before completion of studies. They stayed for 18 days and then the wife left for parental home. They file Mutual Consent Divorce after some time and meanwhile the boy got the offer from Singapore and went abroad. The girl withdrew MCD and filed 498a, 406 etc. against the boy and his family.*

Allegations (part): *Husband was going to college, FIL / MIL & SIL had imprisoned/ confined me in the room without basic necessities. I was there for 3 months from August till Diwali in November. When my parents came to meet me, they saw my state and had taken me away.*

Counter Evidences: *Wife admitted that she has completed the post-graduation in time. The husband's family filed the RTI asking the mark sheet and attendance records of all the students from the institution and University. Mark sheet of that semester when the wife has attended the college exams. The attendance records of the college that has shown more than 95% attendance record during that period.*

Allegation (part) in FIR: *Husband uses to speak to his parents and then uses to beat me to get more dowry. His parents use to instigate my husband to beat me for more dowries. This uses to happen every time when he uses to speak to his family.*

Allegation (part) in her Statement: Husband and his parent's uses to speak secretly and preparing the conspiracy against me for more dowries.

Counter: First the complainant has to prove that the dowry was given, and then speak for more dowries. This itself is one counter. On other hand, if the husband was speaking to his parents secretly, then how come did the complainant know about the allegation in FIR that there is the conspiracy against her for dowry? This questioned is unanswered.

From the allegations it is much more convincing that the in-laws are guilty, but such evidences are used to break the case. This clearly shows that the wife has told lies in the court. Moreover, documentary evidence has the weight over circumstantial evidence.

Documentary Evidences by wife: In many cases the documentary evidences are been submitted to the court to show their burden of proofs. Now such documentary evidences needs to be challenged, whenever you feel that this is fabricated.

Bills: One of the most common documentary evidences is the bills for jewellery. In such cases, bills of jewellery alone do not constitute the proof, but it requires the corroboration to help to prove properly. Just check the bill and see if there are any VAT / CST numbers. If yes, verify those numbers with the proper government authority. Secondly, ask the government to provide the sales tax records of that establishment that has been filed and if this bill has been included in those transactions or not. Get the audit done for the bills and compare it with the original audit. This can be done by Tax Department, both Income Tax as well as Sales Tax/VAT department. The jeweller will be in trouble. On other hand, the wife and her parents have to shell out how the money was paid. If this was paid in cash, then the source of money needs to be asked. The source of money is also asked from persons who gave the loans. If the amount is withdrawn in the form of cash, then the bank transaction need to be shown by the person who claims. The TEP can also be filed against that person. If the person has not provided concrete proof of the transaction, then this evidence can be dropped. The other aspect is the design that the jeweller has and from the records, you need to show some of the photographs to the jeweller if this was your design. You can call the shop owner or jeweller for the cross examination. Gather some of the designs from internet or from other sources or from some other photographs of relative's ornaments design and show to the jeweller in cross examination. The truth will be out.

The other bills like hotel bills, medical bills or any such bills which show the transaction needs to be corroborated. In one case, the wife has put the bill for the washing machine stating that she has purchased. On the bill, all the details were given like the model of the machine, serial number, costs etc. The bill was backdated which the husband knew was false. He filed the RTI information to the washing machine company stating that when this machine was produced, delivered to the store and to whom it was sold. The details were shocking. The machine has been manufactured much after the date of the bill and was sold to someone else, not to the wife as mentioned. The wife and the store owner were in trouble for fraud (making false bill) and perjury.

Letters: The other documentary evidence that the wife can submit is the letter. This is the burden of proof which may or may not require corroborations. There are 2 forms of letters that are been submitted to the court. It can be postcard/Inland Letter or Envelope. The letters send by courier are not counted towards the evidence. When such letters are submitted in the court, ask for the original to be submitted in the court. One need to see 2 parts when such forged document is put in court, First part is content part and other is the non-content part.

Content Part: In the content part, just check what is written in the letter and compare with the period of the letter date on post office stamp. While comparing the content part, recall the incidences which have been happened during that period. This would be enough to nail her down. If some of those incidences are not mentioned in the letter or some of the incidences that has happened after that date, then those incidences points out the fabrication. If there is more than 1 letter that is submitted in the court, then compare all those letters and their dates. Check for common elements between the letters. You need to

keep emotions aside and think rationally. It would be wise if you ask some of the SIF commando to help you in these cases. In the content part, you need to separate the allegation as well as non-allegation part. The style of writing also important to show if that evidences is written by wife only. It would be better to give more emphasis on the non-allegation part, rather than allegation part. The allegation parts are fabricated, but the non-allegation parts can sometimes be used against them, if we are able to show that the event mentioned in the non-allegation part has happened after the letter is written. The omissions can also be counted towards the non-allegation parts, like if some relative has visited the house and she has not mentioned in the letter or has wrongly mentioned the date, then those becomes your evidence that the letter is fabricated. Generally, the human mind does not give more stress on non-content and other part as their focus is more towards the allegation content part. This is where the opposite side will make mistake which is to be taken into consideration. In case of more than 1 letter, the continuity of sequence is required with the facts of the case.

Non-Content Part: This is also another part to show the fabrication of the letter. These are the following:

1. Post Office Mark/Stamp: This stamp is the mark/stamp for the post office. In India, the post office which sends the letter marks the impression on the stamp area or on the stamp. If the stamp area is not of the post office of your area, then this is to be taken into consideration. In cases where there are more than 1 letter submitted, just check the angle of the marks on the stamp. This also has the impact.
2. Actual Stamp: The actual stamp also plays important role in deciding the fabrication of the letter. For postcard/inland letter, the value of the stamp with design is printed on the letter itself, which is useful in getting the evidence. If it's envelop, then also the stamp put on envelop along with the weight is to be taken into consideration. RTI to post office will show the value of the inland letter or postcard at that time along with the design of the stamps on those letters. In one case, the wife produced 3 inland letters for year 2007, 2008 and 2009 as the evidence in 498a case. The husband filed the RTI for the value of the stamps for last 10 years along with the different design of the stamps used on inland letter and postcards. The results were shocking as in 2007 & 2008, the value of inland letter was less, in 2009 it was increased and the letters produced in the court had also increased value of stamp. All 3 letters had same stamp value. If there are postal stamps, then also you can get the information through RTI. Sometimes the stamp needs to be checked for the year. In one case, the stamp on the envelope had the picture with the year 2011 printed on it, and the letter was posted in 2007. This clearly shows the fabrication.
3. Physical aspects of letter: The paper of the letter is also to be seen, the older the paper, the yellow tan colour it gets. When the letter is through the envelope, then the letter needs to be checked with physical aspects like colour, weight, gsm etc. Also the paper that has been submitted has to be folded properly and put in the envelope provided to show that the letter was the part of envelope. If not, or there are no folds in the letter, or the letter folded does not fit in envelope, then this is fabrication.
4. Handwriting: This is one of the other areas of non-content part which requires to be looked into with the other documents of your wife. Handwriting evidence can also be taken into court and asked in forensic for evaluation. The handwriting also needs to be checked if there are 2 different handwritings that are been in the letter. This will be an added advantage. The handwriting also shows if the letter was writing in angry mood or in leisure time which would be seen from the characters of the letter and the impression that the pen has put on the letter. This can be done in forensic examination.
5. Writing style, language and grammar: This is another aspect which needs to be looked with the wife who has written the letter. Sometimes the signature can be different in the cases which used can be questioned. The language if not the plain one, and if any of the parts of the law is in the letter, then that is also told to be fabricated with the help of lawyer or could have been written after the cases are filed, with the little knowledge of law. This can be in your favour.
6. Ink used: If there are different letters used, then the ink needs to be compared. Over the period of time, the ink used for writing changes and can also be brighter. Moreover, this can also be compared with other documents or writings during the same period. For more than 1 letter, the ink of all the letters should be compared.
7. Dates: The dates on letter written by wife and the dates stamped should be different. No one writes the post-dated letter, and if the letter is written on the same day, then the posting time of the letter is important. The collection of letter from post box is generally 2 times in a day, one in early morning and other in late afternoon. Generally, if the letter is posted to the post box, the letters are collected and

taken to the post office, where after all the letters come; they are stamped and send to the main post office. This generally happens on next day. There is the day difference between the posting of the letter and the stamp by post office on the letter. The week day is also important. Checks to be made if it happens to be weekend, or holiday, in this case, the collection of letter will be later.

8. **Seal of letter:** The letter seal should be check and also how the seal is broken. In one case the letter itself was not sealed, which was pointed out in the court, which marked as the fabricated letter.

Medical Evidences: This is also the type of documentary evidences, but requires more special knowledge rather than just simple piece of paper. Some of the important facts while presenting the evidences are:

1. Medical evidence has to be in respect with the fact of issue.
2. Medical Evidence should be clear and convincing.
3. Treatment given to the patient should be in line with the symptoms or injuries.
4. Doctor's Prescriptions, bills etc. should be produced in original
5. All records produced in the court should be certified by the doctor of that authority. The general physician will not certify the treatment of specialised doctor.
6. The doctor has to testify in the court.

In some cases, the register should be given to the court for verification. If required, the doctors should be called as witnesses for the verification.

The medical documents can be filed by anyone, the prosecution or the defence. In cases where the wife says that she has been physically assaulted by husband and in-laws, some of the medical evidences like any of the family members having hand fracture, or osteoporosis, bone density or any such disease which makes the counter. Such evidences will be helpful. The medical evidences that have been detailed earlier will be useful for you to know and rely. Others can be found on Internet or you can ask any commando's or me for countering the evidences.

Different Interpretation of Evidences: If the evidence has 2 different meaning, then the weaker or positive interpretation is taken into consideration. This of course will be corroborated. Sometimes the rational view of the evidence is taken into account. Whenever, the opposite side has strong evidence, then you can show something which can weaken their evidence, by giving different interpretation.

Ambiguities: This must be addressed before final judgements. This is likely happen if there are no chains of events that possible fit with the facts of the case.

Common allegations and Counters

Allegation: She was not given food to eat and she was treated like maid.

Counter: If she is preparing the food, then she can eat anytime. For maid, what is the work that has to be done; clothes are washed and rinsed in washing machine, utensils were washed by the maid, rooms were dusted and cleaned by maid. Question on her weight at the time of marriage and when she left home. If the weight is same or more, then this is in your favour. Photographs can also be the evidences. If the wife is working and going out, then this adds that why she has not told to anyone before in office or went to police at that time.

Allegation: During pregnancy the husband / inlaws kicked me in the stomach. (This can be used with girl child too if delivered after pregnancy)

Counter: Any medical has been done for kicking in stomach. Any police complaint? Any witnesses. Any adverse reactions that has happened to baby due to kicking? Why so long to tell the complainant. Moreover, kicking is something which can lead to miscarriage. Medical experts can be called and throw some light in this manner.

Allegation: Husband/Inlaws forced me to terminate pregnancy Number of times having girl child

Counter: How were the abortion done? Through tablets or through clinic? Did the doctor consult you in private about the consent of the abortion? Did the doctor noted down the reasons for abortion. Was this

abortion been asked by the doctor seeing your health or the health of baby? How much weeks pregnant were you when you have aborted. Proof of pregnancy and abortion both is required. Sonography report is also required to get the age of foetus.

Information: Abortion done before 12 weeks can be done by the tablet, from 12-20 weeks it is through clinic surgery. Abortion after 20 weeks is illegal. The doctor records the reason for the abortion and has to take the free will consent from the girl.

Allegation: Husband/in-laws did not want girl child.

Counters: You need to show that you are liberal and do not distinguish any difference between boy and girl. If you have your sisters, then it is very easy to tell that this is complete family, if there are 2 brothers only, and then you can say that they wanted sister. Another aspect for liberal family includes supporting your relatives who have girl child or helping the girl child etc. If some of the girl child is been supported, then also you can tell that the support was given for them.

Allegation: Husband/in-laws put something in my food/drink to have my miscarriage.

Counters: Firstly, the pregnancy needs to be confirmed to support this claim. Without the confirmation of pregnancy, this allegation or any other allegation related to pregnancy or miscarriage is irrelevant. Secondly, how did she know that they have put something in the food drink that you have consumed? If you knew that they have put something in the eatables, then why did you eat? Thirdly, how can you surely say that "something" who is put in the eatables lead to the miscarriage? Fourthly, has any medical test done to get the reasons known for the miscarriage? Are there any other evidences to support your claims?

Allegation: Husband has kept all my salary and jewellery/valuables/gifts

Counters (If the jewellery is with you or salary in joint account): For jewellery, you can say that this was kept with the family jewellery as she is the part of the family. If the jewellery is kept in locker, then you have the valid reason that you have kept there for safekeeping and is always accessible when required. You can always say that one has to be careful with the valuables, don't know if some maid takes away, then it would be bad omen for us. For salary, you can say that it was going into bank account and not to you.

Counters (If the jewellery is not with you or salary in joint account): If you don't have the jewellery, then you can simply deny any existence with them, and if you have kept previously, then you can say as above.

Allegations: Husband/in-laws accusing the gifts is sub-standard

Counters: This is just the perception of mind that one is good and other is not good. It does not mean that the other thing is bad. If they say about the clothes or other unbranded valuable, then your defence should be that the things are not sub-standard; you only mean that this is not available in market easily. On other hand if the standard things are bought or the gold jewellery is of 21-23 carats, then this is the standard. Her own statement will be contradicted with the material evidences put in the court.

Allegations: Husband forced to leave the job

Counter: If the husband/in-laws is after money, then what would be the reason for not sending you to work? Was this agreed before marriage that you will not work after marriage? Is the decision for you to leave the job to help you in concentrating more time at home?

Allegation: In-laws forcing the husband on telephone to ask money from me and my parents

Counter: In such cases, the line of defence would be how many times she would listen on the conversation between husband and in-laws. Was the phone on speaker mode or he uses to speak secretly. If he uses to speak secretly, then how come did she know that the in-laws are asking over the phone?

Allegation: Husband/in-laws kicked her out of house in the middle of night.

Counter: What actions did she take when she was been kicked out of the night? Did you shout and gather the neighbours at the middle of night? Where did she spend the night after being kicked out of house?

PS: Some may have some better counters than suggested. This is based on my personal experience. Other is based on the case and evidences produced by other side. On one side, you only have to deny the allegation.

Concluding Points

1. Statements as admissibility of evidence
2. Burden of proof lies with the person who affirms and not on the person who denies.
3. Material part is necessary for the burden of proof.
4. Principle of Balance of Convenience in proving burden of proof.
5. Burden of proof lies primarily with the complainant, but sometimes it is for the defence to prove the facts.
6. Prosecution has to prove all elements of offence and allegations levied on accused.
7. Defence will also have to bear the evidence on the balance of probability.
8. It is impossible for the defendant to prove all the allegations levied on him.
9. The more serious allegation, the higher is the probability that is required to prove the allegations beyond reasonable doubt.
10. The weight or the credibility of the evidence is needed to tip the balance of probabilities.
11. Evidence should be clear for more serious allegations.
12. Contempt of court for civil proceedings should be proved beyond reasonable doubt.
13. The prosecution should see if there is enough cause of action to prove the case.
14. Witness can see his or her statement before s/he wishes to testify.
15. Testifying is not the test of memory, but to present the truth in the court if admissible.
16. If the witness gives its services exclusively to the party, then it is not forceable
17. If the witness wilfully tells lies in the court under the oath or solemn affirmation, then s/he may face perjury charges.
18. Solemn affirmation is alternative to oath, which has the same effect of oath.
19. Not remembering is not the useful evidence in the trial
20. In trial, witness should be able to give the coherent account of the facts.
21. Defendant / Accused can be the competent witness only for the defence.
22. The court has to be sure that the testimony is not tailored
23. There is the privilege against self-incrimination
24. Court has to examine all the circumstances of the case in order to ascertain for real and appreciable danger that the prosecution may follow.
25. Danger should be real and appreciable danger, not imaginary or substantial character having reference to extraordinarily or barely possible contingency.
26. In marital disputes, the parties are encouraged for fully and frankly put the cards on the table.
27. When the accusation is made in presence of accused, his silence may be constructed as an adoption of accusation or charge provided that the circumstances are such that an unequivocal denial or reasonable explanation could be expected from him.
28. Silence: Lack of response may amount as acceptance of guilt
29. Silence can lead to the court that the fact is true and can draw adverse inferences
30. Silence is relied on the facts established, and not on facts relied.
31. Silence alone cannot be enough interfering guilt. No one can be solely convicted solely on the basis of silence.
32. Silence of the accused will only be relevant after the prosecution has established a prima facie case up to legal satisfaction to be convicted.
33. The court can exclude the evidences that are obtained improperly or through breaches
34. Evidences given by the defence cannot be used against themselves.
35. Complaint must be made at the earliest opportunity in reasonable enough time.
36. More the time in filing the complaint, more is the fabrication.
37. The spontaneity of the statement means unreliability and fabrication are mitigated and the risk of same occurring are reduced.
38. Statements made by the bystander, observer or participant to the event forms almost important to access the fact of case.
39. Lawyers can give wrong advice, beware of such lawyers and know what is to be done

40. Hearsay evidence from any witness stated on prior occasion is inadmissible if its only relevant purpose is to prove the fact stated by the person on prior occasion is true. This statement is only admissible if the relevant purpose other than proving the truth of the facts.
41. Hearsay evidence is considered unreliable and susceptible to the risk of being fabricated or severely distorted.
42. Circumstantial evidences can prove the events, which can turn the tables
43. False alibi / statements are the original evidence of her guilty state of mind.
44. Conversation between the accused and complainant should be admissible to show the innocent state on mind.
45. Circumstantial evidence can show the exact state of mind by either parties
46. The statement of alibi shows that they are acting in concert with common guilt.
47. Words spoken may be relevant for various purposes, but most commonly they reveal the state of mind of the person, either the speaker or the person to whom the words are spoken.
48. Electronic information having the element of human involvement is hearsay evidence, and that does not have the human involvement is original evidence
49. Emails are original evidence if they still exist on the server.
50. Voice and video recordings are admissible evidence if you are able to show the original recording equipment, recording device etc., even if they are faulty.
51. If the wife alleges emails to be hacked, then she has to show the court that the email was hacked with clear and convincing evidence. In good times if the password of email is shared, then the she same has to be told to the court.

In 498a / DV or any marital cases, when you are against your wife, you need to decode the lies in the allegations with the relevant evidences. One of the simple methods is to prepare the table for the allegations and then you need to have is what are the evidences given by her and what evidences you have in opposition of her evidence. If you do not have any evidences, then also do not worry, the same can be taken from the facts or events in life and then decoded in cross examination. The hidden truth comes out during the cross examination.

| Allegations in FIR/Statements or in Petitions | Evidences by Wife | Evidences from Husband |
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