



# Jus Corpus Law Journal

Open Access Law Journal – Copyright © 2022 – ISSN 2582-7820  
Editor-in-Chief – Prof. (Dr.) Rhishikesh Dave; Publisher – Ayush Pandey

This is an Open Access article distributed under the terms of the Creative Commons Attribution-Non-Commercial-Share Alike 4.0 International (CC-BY-NC-SA 4.0) License, which permits unrestricted non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

---

## Power of Attorney in India

Shruti Sinha<sup>a</sup>

<sup>a</sup>Government Law College, Mumbai, India

*Received 21 April 2022; Accepted 09 May 2022; Published 16 May 2022*

---

*The law is an intrinsic part of our lives and an indispensable need of society. It has rightfully been said that a life without the law is a life without freedom,<sup>1</sup> but what shall be done when one does not have the freedom of the law itself in one's life? It is, thus, an unfortunate affair that sometimes, a person may be incapable of making legal decisions, or at other times, may not be able to do it for some reason. In these cases, again the very law itself restores the freedom thereof as well. The Power of Attorney is one such provision that remedies the absence of law in times of its need.*

**Keywords:** *principal, agent, powers, authority.*

---

### INTRODUCTION

The Power of Attorney (hereinafter, the PoA) is a legal instrument of agency whereby one person, referred to as the Principal, bestows upon another person, referred to as the Attorney, the authority to act as the Principal's legal representative and make binding legal as well as financial decisions on their behalf.

In India, the PoA has a mentioned in the following statutes:

---

<sup>1</sup> Joseph Ratzinger, *Spirit of the Liturgy* (Ignatius Press 2000)

- The Power of Attorney Act, 1882
- The Indian Contract Act, 1872
- The Indian Stamp Act, 1899 (or the stamp Act applicable in the respective states)
- The Registration Act, 1908

Despite there being a whole separate statute, especially for the explanation of the PoA and the clarification of its provisions, it primarily derives its basic principles from the 'law of agency' as stated in the Indian Contract Act. The PoA has been defined by some of the enactments as:

**The Bombay Stamp Act, 1958-** As per Chapter I, 21 of 2000, sub-clause (r) therein, the PoA is "any instrument empowering a person to act for and in the name of the person executing it and includes an instrument by which a person a not being a legal practitioner is authorized to appear on behalf of any party in proceedings before any court tribunal or authority."

**The Indian Stamp Act, 1988-** Chapter I, (2)(21) therein defines it as "any instrument empowering any specified person to act for and in the name of the person executing it."

Under the aforementioned statutes, any person competent to contract i.e., above the age of 18 and having a sound mind, is eligible to get the Power of Attorney, and thus, shall be declared as the Attorney or Donee or Agent. The power donated to the Donee is done by the Donor or Principal when the Principal is unable to do certain acts or simply prefers to get it done by the Agent instead.

### **THE POWER OF ATTORNEY ACT, 1882**

The special law for the PoA is the Power of Attorney Act, 1882. It is comprised of the following Sections:

**Local extent-**The PoA shall apply to the whole of India (the latter part of "except Jammu and Kashmir" had been omitted by Act 34 of 2019, Section 95<sup>2</sup>, Schedule V w.e.f. 31.10.2019)

**Commencement-**from May 01, 1882

---

<sup>2</sup> Power of Attorney Act, 1882, s 95

**1(A)** states that the PoA “includes any instrument empowering a specified person to act for and in the name of the person executing it.”

**Execution under PoA**–The Signature and the Sealing, wherever required, of the Donee, shall have the same legal effect as that of the Donor. This Section shall be applied retrospectively.

**Payment by Attorney under power, without notice of death, etc., good**– The Donee shall not be liable for any payment or act done in good faith, if before such payment or act, the Donor had become insane, insolvent, had revoked the PoA, or had died, at the time of such payment or act. This Section shall be applied prospectively.

**1. Deposit of original instruments creating the PoA–**

- a) An instrument creating the PoA shall have to be verified by an affidavit, statutory declaration, or other sufficient evidence that shall be deposited at either the High or the District Court, whichever is at the nearest local jurisdiction.
- b) A separate file of the instruments so deposited shall be kept, which may be accessed or inspected, and a certified copy thereof shall be made.
- c) A copy of the instrument so deposited shall be stamped or marked to become such a certified copy.

Such certified copy shall be eligible to be admitted as sufficient evidence of the original instrument before the High or the District Court.

The High Court, with the concurrence of the State Government, may make rules regarding the fees to be taken for the above clauses of (a), (b), and (c).

This Section shall be of retrospective nature.

**2. PoA of married women**– By a non-testamentary instrument, a married woman may appoint a PoA and delegate her authority the same way as if she were unmarried. This Section shall be applied prospectively only.

## SCOPE OF THE POWER OF ATTORNEY

The PoA is activated upon the signing of the instrument by the Donor or upon the occurrence of the cause for the PoAs specified in the instrument, authorizing the Agent in the matters mentioned therein, which may include:

**Contract and Agreements**—The PoA may enter into a contract on the behalf of the Principal and may also make, sign, execute, deliver, and acknowledge any contract and agreement for them.

**Real Estate Field**— The PoA may sell, execute, lease, collect rents and grants, bargain, borrow, and mortgage any property on the behalf of the Principal. They may also execute deeds, bonds, contracts, mortgages, notes, drafts, and money orders for the Principal, and may also manage, compromise, settle, and adjust any matters related to such.

**Bank Accounts, Certificates of Deposits, and Money Market Accounts**—ThePoA may add as well as withdraw from accounts and certificates, and may also make, execute, endorse, accept, and deliver any cheques and drafts thereof. They may also execute and release deeds of trust and other security agreements as per the needs of the Principal.

**Tax Returns, Insurance, and Other similar documents**— The PoA may get the authority to file tax returns, sign insurance policies, etc., and may even represent the Principal in the matters regarding these.

**Stocks, Bonds, and Securities**—ThePoA may sell bonds, securities, and the like, and may also make, execute, and deliver the assignments pertaining to them.

## TYPES OF THE POWER OF ATTORNEY

The PoA is broadly classified into two categories:

**General Power of Attorney**—This provides a wider range of authority that empowers the Attorney to carry out virtually all the legal acts on the behalf of the Principal. Many a time in such cases, the Attorney is left at their own discretion to make the legal and financial decisions

for the Principal. Such broad powers are usually given in the cases where the Principal is incapable of considering and performing these actions on their own.

**Specific Power of Attorney**– This has a narrower range of powers as compared to the General PoA. The authority is restricted to specific matters and tasks only, like performing or facilitating some transactions, agreements, deals, etc. These powers may be delegated when the Principal is unavailable for these actions themselves or find it more appropriate to get it done by the Attorney. The specific PoA expires once its work has been completed. Aside from the above two, the PoA can further be classified into three more types, on the basis of their special purpose and features, which are as under:

**Durable Power of Attorney**–This type of authority is given when the Principal is incapable of making the decisions for themselves. The powers continue to be in effect as long as such inability remains.

**Medical Power of Attorney**–The PoA is granted the authority to make the medical decisions for the Principal and the term of powers shall last till the need for medical care.

**Springing Power of Attorney**–The authority activates at the advent of a particular event, e.g., the principal becomes incapacitated. Such powers only end when the situation has been restored or the problem ends.

#### **IMPORTANT POINTS ABOUT THE POWER OF ATTORNEY**

- The terms and conditions regulating the duties and the scope of powers shall be strictly interpreted unless any express authority has been conferred by the Principal.
- The Agent cannot bind the Principal to a liability larger than what they have been empowered to undertake.
- The Principal is not liable for any illegal act done by the Agent and they cannot be sued for it either.
- The Principal is also not liable for any act of the Agent they have not authorized for.

## **REGISTRATION OF THE POWER OF ATTORNEY**

- Registration is not compulsory.
- In India, the states where the Registration Act is followed, the PoA shall have to be mandated by a Sub-Registrar only. In other areas, a Notary or a diplomatic agent may also authenticate such.
- The PoA has the power to present and admit a document as if it has been attested by a Notary unless the Attorney has explicitly been excluded from such powers.
- Foreign PoA shall have to be stamped by a Collector in India within a period of 3 months.
- The PoA shall have to be attested by at least two independent witnesses, having their age above 18 and sound minds.
- If the PoA pertains to an immovable property above the value of Rs. 100, then it must be registered.

## **REVOCAION OF THE POWER OF ATTORNEY**

The PoA is an important subject of trust and responsibility. Often time's cases occur where such powers have not been used up to the satisfaction of the Principal or have even been misused by the Agent. Aside from these, the revocation of the PoA may take place, following these conditions:

- The PoA is revoked by the Principal–The Donor may take their donated power back if the Donee is not fit for the role or is not available or the Donor just wants to change them.
- The PoA is renounced by the Agent itself.
- The revocation has been mutually decided upon by the Principal and the Attorney.
- The business for which the Agent had been appointed is done or has ended.
- The Principal has become insane, bankrupt, or has died.

Furthering the above points, the revocation of the General PoA has some additional provisions:

- If the power is given to the Attorneys accompanied by interest, then it shall be irrevocable.
- The existence of such interest shall be determined by the examination of the facts and the perusal of the instrument governing them.
- If the power is irrevocable according to the test laid down, the parties still can end it via an express clause citing such.
- The instrument cannot be declared irrevocable simply by writing such in its clauses, as had been previously mentioned that the question thereof shall be answered by evaluating the facts of the case.
- A PoA is automatically terminated, by the virtue of Section 201<sup>3</sup> of the Indian Contract Act, if:
  - One of the parties to the agreement dies or becomes insane.
  - The Principal has become insolvent or bankrupt.
  - Any terms or conditions of the instrument have been breached.
  - The business that had been the basis of such an agreement has come to an end.

### CASE JUDGEMENTS ON THE POWER OF ATTORNEY

Below are some of the cases that have clarified the subject of PoA through its judgements:

No.	Case Name	Judgements
01.	<i>Seth Loon Karan Sethiya v Ivan E. John, 1968<sup>[4]</sup></i>	<b>Supreme Court:</b> Agency cannot be revoked where it has been given in

<sup>3</sup> Indian Contract Act, 1872, s 201

		exchange for some valuable consideration and the authority granted therefrom is to secure the interests of the Agent. Therefore, in a case where the Agent itself has an interest in the property, the agency can not be terminated unless there is an express contract for such termination.
02.	<i>Vishnucharya v Ramachandra, 1881</i> <sup>[5]</sup>	<b>Bombay High Court:</b> The Agent used to get his salary from the rent collected by him on behalf of the Principal. However, such arrangement had been declared not to be an interest, but rather just remuneration or commission which shall not protect the agency from its due revocation.
03.	<i>Avm .K. Shanmugam v V. Shanthi, 2008</i> <sup>[6]</sup>	<b>Madras High Court:</b> Accused 1 and 2 had been alleged to have misrepresented themselves as the PoA, even after the revocation of such, to execute a sale deed in the favour of Accused 3 to 7; Accused 8, the Sub-Registrar, had been alleged to conspire in this fraud against the Complainant. The reason for revocation had been that

<sup>4</sup> *Seth Loon Karan Sethiya v Ivan E. John* AIR 1969, SC 73

<sup>5</sup> *Vishnucharya v Ramachandra* (1881) 5 Bom 253

<sup>6</sup> *Avm .K. Shanmugam v V. Shanthi* (2008) CRL.O.P No.16367/2007



		<p>the PoA did not adhere to the terms and conditions of the instrument. The Court, upon considering all the facts, held that since Accused 1 and 2 had not received any communication about their revocation, they cannot be held liable for misrepresentation.</p>
04.	<p><i>T. Vengama Naidu v T. Dora Swamy Naidu &amp;Ors., 2007</i><sup>[7]</sup></p>	<p><b>Supreme Court:</b> The Respondent had been alleged to have been misusing his general PoA by executing a registered sales deed in the favour of his daughter despite being aware of the revocation of his PoA. Hence, the appeal has been allowed.</p>
05.	<p><i>Kartar Singh (Dead) Through Lrs. v Jaswant Singh (Dead) Through Lrs., 2004</i><sup>[8]</sup></p>	<p><b>Punjab-Haryana High Court:</b> The Defendant’s appeal had been filed under Section 100<sup>9</sup> of the Code of Civil Procedure against the District Court’s judgement in the favour of the Plaintiff-Respondent, regarding the dispute in the property of their father-in-law. Defendant-appellant had the general PoA which had been withdrawn by the father-in-law before his death. After the death, the Appellant had produced a</p>

<sup>7</sup> *T. Vengama Naidu v T. Dora Swamy Naidu* (2007) Appeal (Criminal) No. 274/2007

<sup>8</sup> *Kartar Singh v Jaswant Singh* (2005) 141 PLR 78

<sup>9</sup> Code of Civil Procedure, 1908, s 100

		<p>false will, claiming to be the heir. The High Court had upheld the decision of the District Court and had appropriately dismissed the appeal.</p>
<p>06.</p>	<p><i>Nagaraj v Mohan, 1985<sup>[10]</sup></i></p>	<p><b>Karnataka High Court:</b> This revision appeal had been filed against the order passed by the Sessions Judge where the interim order of the Magistrate had been set aside. The Petitioner had filed a complaint under Section 200<sup>11</sup> of the Code of Criminal Procedure for the offences of forgery (IPC 465)<sup>12</sup> and criminal breach of trust (IPC 406)<sup>13</sup>, alleging the accused of forcibly obtaining the possession of his property (Matador Van) and also, the general PoA on the behalf of the Petitioner. The Magistrate had allowed the interim custody of the Van to the Petitioner, which had been later revised at the Session's Court at the accused's appeal. This revision had been challenged, but the High Court had agreed with the Session's Court and had held that the general PoA had been valid and its</p>

<sup>10</sup> *Nagaraj v Mohan* (1985) ILR 1986 KAR 236

<sup>11</sup> Code of Criminal Procedure, 1973, s 200

<sup>12</sup> Indian Penal Code, 1860, s 465

<sup>13</sup> Indian Penal Code, 1860, s 406

		existence “speaks against the serious allegations made in the complaint about the sale deed.”
07.	<i>Pritpal Singh Kohli v Surjit Kaur and Anr., 2001</i> <sup>[14]</sup>	<b>Delhi High Court:</b> had set aside this application filed by Plaintiff under Order X Rule 2 <sup>15</sup> with Section 15 <sup>16</sup> of the CPC as Plaintiff had not been able to produce relevant documents to prove the specific facts under which she had revoked the general PoA of the Defendant. The High Court held that it is irrelevant whether the sale of the property had been done in the favour of the Principal because as long as it is done exercising the general PoA, it shall be legally valid.
08.	<i>Shikha Properties (P) Limited v S. Bhagwant Singh and Ors., 1998</i> <sup>[17]</sup>	<b>Delhi High Court:</b> The application had been made against the interim order of staying the cancellation of the general PoA. The reason for this cancellation had been that Plaintiff had failed to discharge its obligations. However, the High Court had dismissed this application, noting that these powers

<sup>14</sup> *Pritpal Singh Kohli v Surjit Kaur* AIR 2001, Delhi 363

<sup>15</sup> Code of Civil Procedure, 1908, r 2, ord. 10

<sup>16</sup> Code of Civil Procedure, 1908, s 15

<sup>17</sup> *Shikha Properties (P) Ltd. v S. Bhagwant Singh* (1998) VAD Delhi 28

		shall be irrevocable as the Plaintiff/Attorney had held a vital 'interest' in the deed as per Section 202 <sup>18</sup> of the Indian Contract Act, 1872, thus, revising the interim order shall harm the interests of the Plaintiff.
--	--	---

## CONCLUSION

The provision of the Power of Attorney is not as commonly seen in India due to its characteristics and purpose not quite aligning with the social and legal structure of our country, hence the awareness thereof is lacking as well. However, it is hardly arguable that the knowledge of the law is essential in making us realize our rights and expected demeanour, like here, this provision avails our right to legal accessibility. In that view, the PoA may prove to be a convenient tool that may facilitate a number of important actions that have been hindered otherwise and need to be more known.

---

<sup>18</sup> Indian Contract Act, 1872, s 201