

CHAPTER 12

Oaths, Affirmations and Affidavits

Part

A

OATHS AND AFFIRMATIONS

1. In the exercise of the power conferred by Section 7 of the Indian Oaths Act, 1873, the High Court hereby prescribes the following forms for oaths and affirmations, to be made by witnesses, who may be required to give evidence by or before any Court or duly authorised person, and by Interpreters and Jurors—

(1) *Appropriate Form*—The first column in each table indicates what is the appropriate form for the persons there described.

(2) *Suitable forms to meet different cases*—One or other of the forms prescribed is suitable for administration to any person who is competent to testify, or to interpret, or to act as a Juror. The forms have been adapted to meet all objections which can be raised by a Court or by a person required to give evidence, to interpret or to act as Juror, to administering or to making (as the case may be) an oath or a solemn affirmation on the ground of immature age, want of or defect in religious belief, or any similar ground, in respect of the person, to be affirmed or sworn.

(3) *Oaths under Section 8 of the Oaths Act not affected*—The oaths and solemn affirmations referred to in Section 8 of the Indian Oaths Act, 1873, are not in any way affected by these instructions.

(4) *Manner of administering oath*—Before a witness is called on to give evidence he should himself administer the oath or affirmation to him solemnly and impressively, making the witness repeat the words in a clear voice, phrase for phrase. While the oath or affirmation is thus being administered every one in Court shall be made to stand in complete silence.

2. Oaths taken on Guru Granth Sahib—If in case an oath is to be taken on Guru Granth Sahib, it should be taken in a Gurdwara with the permission and in the presence of the Granthi or an authorized representative of the Gurdwara Committee, as the case may be. Guru Granth Sahib should in no case be brought into Court for this purpose.

3. When oath or affirmation may be dispensed with—When a witness is under 12 years of age and the Court has reason to believe, that though he understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, he shall not be asked to make an oath or affirmation, but in any such case the absence of an oath or affirmation shall not render inadmissible any evidence given by such witness nor affect the obligation of the witness to state the truth. (Section 5 of the Indian Oaths Act, 1873, as amended by Act No. XXXIX of 1939).

I—Forms of Oaths and Affirmations to be Administered to Witnesses

Whether oath or affirmation	Form of oath or affirmation to be administered to <i>witness</i> in civil cases and in criminal cases (other than cases tried by a Jury) or in a proceedings before any other authority empow-ered to administer an oath or affirmation and to take evidence	Form of oath or affirmation to be administered to a <i>witness</i> in a criminal case tried by a Jury
<p>A—Simple Affirmation</p> <p><i>For a person who has an objection to making an oath or solemn affirmation, or who by reason of immature age, or of the want of or defect in religious belief, ought not, in the opinion of the Court or person authorised to administer an oath of affirmation, to be permitted to take an oath or solemn affirmation</i></p>	<p>I solemnly affirm that the evidence which I shall give to the Court (or as the case may be), in this case (or matter) shall be the truth, the whole truth, and nothing but the truth.</p>	<p>I solemnly affirm that the evidence which I shall give to the Court and Jury touching the matters in question between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth.</p>
<p>B—Solemn Affirmation</p>		
<p><i>For a person who is a Hindu or Muhammadan and who has an objection to making an oath.</i></p>	<p>I solemnly affirm, in the presence of Almighty God that the evidence which I shall give to the Court (or as the case may be) in this case (or matter) shall be the truth, the whole truth, and nothing but the truth.</p>	<p>I solemnly affirm, in the presence of Almighty God that the evidence which I shall give to the Court and Jury touching the matters in question between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth.</p>
<p>C—Oath</p>		
<p><i>For a person who is not a Hindu or Muhammadan, and who has no objection to making an oath.</i></p>	<p>I solemnly swear that the evidence which I shall give to the Court (or as the case may be) in this case (or matter) shall be</p>	<p>I solemnly swear that the evidence which I shall give to the Court and Jury touching the matters in question</p>

	the truth; the whole truth and nothing but the truth: so help me God!	between the State and the prisoner at the bar, shall be the truth, the whole truth, and nothing but the truth, so help me God.
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II—Form of Oaths and Affirmation to be Administered to Interpreters

Whether oath or affirmation	Form of oath or affirmation to be administered to <i>Interpreter</i> in civil cases and in criminal cases (other than cases tried by a Jury) or in a proceedings before any person authorised to administer an oath or affirmation and to take evidence	Form of oath or affirmation to be administered to an <i>Interpreter</i> in a criminal case tried by a Jury
A—Simple Affirmation		
<i>For a person who has an objection to making an oath or affirmation, or who, by reason of the want of or defect in religious belief, ought not, in the opinion of the Court or person authorised to administer an oath or affirmation, to be permitted to make an oath or solemn affirmation.</i>	I solemnly affirm that I shall well and truly interpret what is deposed by the witness before the Court (or as the case may be) and as may be required by the Court.	I solemnly affirm that I shall well and truly interpret what is deposed by the witness as between the State and the prisoner at the bar.
B—Solemn Affirmation		
For a person is Hindu or Muham-madan and who has an objection to making an oath.	I solemnly affirm in the presence of Almighty God that I shall well and truly interpret what is deposed by the witness before the Court (or as the case may be) and as may be required by the Court.	I solemnly affirm, in the presence of Almighty God that I shall well and truly interpret what is deposed by the witness as between the State and the prisoner at the bar.
C—Oath		
<i>For a person who is not a</i>	I solemnly swear that I	I solemnly swear that

<i>Hindu or Muhammadan and who has no objection to making an oath.</i>	shall well and truly interpret what is deposed by the witness before the Court (or as the case may be) and as may be required by the Court; so help me God !	I shall well and truly interpret what is deposed by the witness as between the State and the prisoner at the bar; so help me God!
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Part
AFFIDAVITS

B

1. Relevant law—The provisions of the Code of Civil Procedure, 1908, on the subject of affidavits, are contained in Section 139 and Order XIX of the Code.

2. Superior Court may send affidavit for attestation to a lower Court—When an application for the attestation of an affidavit is presented to any Court superior to the Court of Sub-Judge, 4th Class, such Court may, if convenient, refer it for disposal to an inferior Court sitting at the same place.

3. Affidavit exempted from Court-fees—No Court-fee or other stamp is required upon an affidavit made for the immediate purpose of being filed and used in any Court or before and other of any Court [(Indian Stamp Act, 1899, Schedule I, Article 4, exemption (b)] and no fee has been prescribed as chargeable for the attestation of an affidavit except as laid down in paragraph 5 below.

4. Joint Affidavit—There is no legal objection to persons joining in a single affidavit in whole or in part; but Courts or Magistrates should, in such cases, be careful that each declarant deposes separately, and that the certificate is adapted to the actual circumstances of the particular case.

5. (i) Under Section 139 (b) of the Code of Civil Procedure approximately two to four legal practitioners at the Headquarters of each district and one at each station where there is a Subordinate Judge, are appointed as Commissioners for the purpose of administering oaths and affirmations with the previous approval of the High Court. *Oath Commissioners may also be appointed at Headquarters of Tahsils where there are no Subordinate Judges.* At each of the District Headquarters in Punjab and Delhi, one of the Oath Commissioners appointed should be a lady lawyer, if one is available for appointment.

(ii) Such Commissioners are ordinarily appointed from among legal practitioners but not men in large practice. They will ordinarily be appointed for a period of three years in the first instance, but if their work is satisfactory, their appointment may be renewed from time to time for further periods of three years each, or until the further orders of the High Court, whichever is earlier.

(iii) Commissioners may charge a remuneration of annas eight in cash for each affidavit and shall keep a register in the form prescribed in paragraph 7 *infra* in which all affidavits shall be entered. A written receipt for the amount paid shall be given by the Commissioner to the deponent. The receipt shall be in a printed form consisting of foil and counterfoil, the foil being handed over to the person paying the money and the counterfoil being kept by the Commissioner for purposes of inspection.

The above charge will be in addition to any stamp duty payable on the affidavit under the Indian Stamp Act, 1899, Schedule I, Article 4.

Note 1—The Commissioner will be entitled to an additional fee of [Rs. ten] from a deponent when he is required to attend the deponent's residence.

Note 2—With a view to ensure that all affidavits which are attested by an Oath Commissioner are entered in the register and receipts for the money received are given by him each District and Sessions Judge will obtain such certificate from Oath Commissioners under his control and make such periodical inspections of their registers and receipt books containing counterfoils, as may be considered necessary.

COMMENTS

The provisions of Section 139(b) of Civil Procedure Code, paragraph 5 of Chapter 12-B of High Court Rules and Orders Volume IV and the notification appointing oaths Commissioners issued, leave no doubt that the Oaths Commissioners are not authorised to administer oaths and affirmations other than those required under C.P.C. or to do any other judicial act. *Ahmad Din v. Abdul Salem*, AIR 1966 Punjab 528.

5A. All Official Receivers in the Punjab and Delhi have been appointed *ex-officio* Oath Commissioners in their respective districts. They will continue as such for the period they hold the office of Official Receiver or until the further orders of the High Court, whichever is earlier.

[*High Court Notification No. 205-R/X-B.9(b), dated the 16th July, 1943*].

6. Attestation of affidavits by process serving and other officials—In order to facilitate the verification of affidavits of serving officers made under Order V, Rule 19, or Order XVI, Rule 10, of the Code of Civil Procedure, the State Government has empowered the Court of the Subordinate Judge of the First Class in charge of the Nazarat to appoint an officer subordinate to itself to administer oaths to process-servers, bailiffs, naib-nazirs and nazirs making affidavits of service of summons, notices and other processes under the Code of Civil Procedure. (*Punjab Government Notification No. 216—19, dated the 20th June, 1931*). In the case of such affidavits and of all other affidavits made by officers of the Courts in their official capacity, no application, such as is referred to in paragraph 2 is necessary.

7. Register of affidavits—A register of affidavits, in the following form, should be maintained at the head quarters of every district and at each Court at a distance from headquarters in which every application to have an affidavit attested and every affidavit verified, should be entered:

Form of Register

Register of Affidavit Attested in theCourt of thein theDistrict

Serial No.	Date of application or of tendering affidavit	Name and address of the person tendering an application (if any) or affidavit	Nature of affidavit briefly stated: if the affidavit relate	Details of exhibits if any attached to affidavit	Civil Court, Magistrate or other officer empowered in that behalf administering the oath or affirmati	Date of administering oath or affirmati	Name and address of witness identifying the Deponen: if he is not known to Officer	Signature or thumb-impression of the Deponent	Name of the Court or office, in which the affidavit is inten	Signature and designation of Civil Court, Magistrate or other officer
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			s to a cause in Court , the cause shoul d be specif ied		on		administe ring oath and his signature of thumb- impressio n		ded to be filed	
1	2	3	4	5	6	7	8	9	10	11

8. Title of affidavits—(i) Every affidavit to be used in a Civil Court shall be entitled:

“In the Court of at (*naming the Court and place of sitting*).

(ii) If there be a cause in Court, the affidavit in support of or in opposition to an application respecting it shall also be entitled in the cause, thus :—

..... Plaintiff

against

..... Defendant

Claim: (*naming the parties and stating the nature of the claim*).

(iii) If there be no cause in Court, the affidavit shall be entitled :— “In the matter of the petition of (name) paying

(brief statement of subject)

(iv) Every affidavit shall be further entitled :—

“Affidavit of (name) made on this day of 19 (date) before (name of attesting officer), at (place).”

9. Contents of affidavits—(i) Every affidavit containing any statement of facts shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and, as nearly as may be, shall be confined to a distinct portion of the subject.

(ii) Every person, other than a plaintiff or defendant in a suit in which the application is made, making any affidavit, shall be described in such manner as will serve to identify him clearly : that is to say, by the statement of his full name, the name of his father, his profession or trade, and the place of his residence.

(iii) When the declarant in any affidavit speaks to any facts within his own knowledge, he must do so directly and positively, using the words ‘I affirm’ or ‘I make oath any say’.

(iv) When the particular fact is not within the declarant’s own knowledge, but is stated from information obtained from others, the declarant must use the expression ‘*I am informed*’,—and, if such be the case, should add ‘*and verily believe it to be true*’—or he may state the source from which he received such information. When the statement rests on facts disclosed in documents, or copies of documents procured from any Court of Justice or other source, the declarant shall specify the source from which they were procured, and state his information or belief as to the truth of the facts disclosed in such documents.

10. Affidavits generally to be confined to facts which are within defendant’s knowledge—(i) Attention is drawn to Order XIX, Rule 3, which lays down that affidavits shall be confined to such facts, as the deponent is able of his own knowledge to prove, except interlocutory applications (*See* Order XXXIX, Rules 6 to 10), on which statements of his belief may be admitted : provided that the grounds thereof are stated.

(ii) All interlineations, alterations or erasures in an affidavit shall be initialled by the person swearing it and the person before whom it is sworn. Such interlineations, alterations or erasures shall be made in such manner as not to obliterate or render it impossible or difficult to read the original matter. In case such matter has been obliterated so as to make it impossible or difficult to read it, it shall be re-written on the margin and initialled by the person before whom the affidavit is sworn.

11. Identification of deponent—Every person making an affidavit shall, if not personally known to the Court, Magistrate or other officer appointed to administer the oath or affirmation, be identified to such Court, Magistrate or officer by some person known to him; and such Court, Magistrate or officer shall specify, at the foot at the affidavit, the name and description of the person by whom the identification is made, as well as the time and place of the identification and of the making of the affidavit.

COMMENTS

Where the affidavit shows that the deponent had been identified before the learned Magistrate by the Sub Inspector and the Magistrate had attested the affidavit. The requirement of Rule 11 appears to be well met. The word "attest" according to Concise Oxford Dictionary means "testify, certify, put (person) on oath or solemn declaration, administer oath or solemn declaration, administer oath of allegiance to, bear witness to". The word "attestation" means "act of testifying, testimony, evidence, formal confirmation by signature, oath, etc, administration of an oath". The word "testify" means "bear witness to fact, give evidence". So, the word "attested" written by the Magistrate would mean that the deponent had been identified before him and he had administered oath to him and testimony of deponent had been incorporated in the affidavit. It was not necessary for the Magistrate to have appended any certificate that he had read over and explained the contents of the affidavit to the deponent who admitted the same as correct. The moment the Magistrate attested the affidavit the legal inference is that he administered the oath to the deponent and also got affirmed from the deponent that whatever is stated by him in the affidavit is known to the deponent and the deponent was identified by a person known to the Magistrate. *Waisuddin vs. State (Delhi Admn.)* 1990 (19) DRJ 85 : 1990 (42) DLT 176 : 1991 CrLJ 134.

12. Mode of attestation—The Court, Magistrate, or other officer as aforesaid, before whom an affidavit is made, shall certify at the foot of the affidavit the fact of the making of such affidavit before him, and shall enter the date and subscribe his signature to such certificate, and shall, for the purpose of identification, mark, date, and initial every exhibit referred to in the affidavit. The name of the verifying authority must be signed in full, and care must be taken that his proper designation as a Civil Court or Magistrate is added.

13. Female deponents—An affidavit purporting to have been made by a female declarant, who has not appeared unveiled before the Court, Magistrate, or other officer as aforesaid, before whom the affidavit is made, shall not be certified, unless and until she has been duly identified before, and an affidavit of her identity by the person identifying her has been made before, and certified by such Court, Magistrate, or officer.

14. Attesting officer's duty—If any person making an affidavit appears to the Court, Magistrate, or other officer administering the oath or affirmation, to be ignorant of the language in which it is written, or to be illiterate, or not fully to understand the contents of the affidavit, such Court, Magistrate, or officer shall cause the affidavit to be read and explained to him in a language which both he and such Court, Magistrate or officer understand; either doing so himself, or causing another person to do so in his presence. When an affidavit is read and explained as herein provided, such Court, Magistrate or other officer as aforesaid shall certify in writing at the foot of the affidavit that it has been so read and explained, and that the declarant seemed perfectly to understand the same at the time of making it.

15. Attesting signing and verification of affidavits—Every affidavit shall be signed or marked and verified at foot by the deponent and attested by the Court, Magistrate or other officer administering the oath or affirmation. Every page of the affidavit shall be signed by the deponent and initialled by the attesting Officer. The verification by the deponent shall be in one of the forms attached hereto, and shall be signed or marked by the deponent. The attestation of the Court, Magistrate or other officer administering the oath or affirmation shall also be in the form prescribed below.

16. Manner of administering oath to deponent—In administering an oath or affirmation to the declarant in the case of any affidavit under the Code of Civil Procedure, the Court, Magistrate or other officer appointed in that behalf shall be guided by the rules under the Indian Oaths Act, 1873, printed in Part A of this Chapter and shall follow the form of verification by oath or affirmation hereto appended.

I—Form of Verification of Oath or Affirmation

(Vide Paragraph 15 Above)

Oath

I solemnly swear that this my declaration is true, that it conceals nothing, and that no part of it is false—so help me God !

Affirmation

I solemnly affirm that this my declaration is true, that it conceals nothing, and that no part of it is false.

II—Form of Certificate

(Vide Paragraph 12, 14 and 15 above)

Certified that the above was declared on (a) before me this (b) day of (c)
19 at (d) in the district of (e) by (f) who is (g)

(Full signature) A.B.

(Office) District Judge (or as the case may be) of

(a) here enter as the case may be,

(b) date,

(c) month,

(d) place,

(e) name of district,

(f) full name and description of declarant.

(g) here enter “personally known to me” or “identified at (time and place of identification) by (full name and description of person making the identification who is personally known to me).”

II-A

The exhibits marked A, B, C (as the case may be) above referred to are annexed hereto under this date and my initials.

II-B

Certified further that this affidavit has been read and explained to (name) the declarant who seemed perfectly to understand the same at the time of making thereof.

1. Substituted for the words “Rupees five” vide Notification No. 203/Rules/DHC dated 14.12.2001.