

शपथ पत्र (AFFIDAVIT) UNDER LAW

Meaning of Affidavit

Affidavit is defined under Section 3(3) of the General Clauses Act, 1897 as follows:-

“affidavit” shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing”

The Black’s Law Dictionary defines affidavit as:-

“A written or printed declaration or statement of facts, made voluntarily, and confirmed by the oath or affirmation of the party making it, taken before a person having authority to administer such oath or affirmation.”

The Hon’ble Supreme Court in **Smt. Savithramma v. Cecil Naronha**¹ has explained the meaning of affidavit as:-

“Affidavit is a mode of placing evidence before the Court.”

In **State of Bombay v. Purushottam Jog Naik**² has held that

“We wish, however, to observe that the verification of the affidavits produced here is defective. The body of the affidavit discloses that certain matters were known to the Secretary who made the affidavit personally. The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verification of this type might in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order XIX, Rule 3, of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the sources of information should be clearly disclosed.”

Essentials of an Affidavit

The affidavit should essentially contain the details of the deponent for identification such as name, address as held by the Hon’ble Allahabad High Court in **Harkrishan Khosla v. Alembic Chemical Works Co. Ltd.**³

¹ 1988 SCC Supl. 655 ; 1988 SCALE (2) 406

² AIR 1952 SC 317

³ AIR 1986 All 87

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Section 139 of the Code of Civil Procedure, 1908 (hereinafter referred as **CPC**) prescribes rules regarding attestation of the affidavit. Under the aforesaid provision, the Court or Magistrate, notary or any officer or other person appointed by the High Court or any other officer appointed by any other Court or State Government has power to administer oath of the deponent.

The Hon'ble Supreme Court in **Umesh Kumar v. State of Andhra Pradesh**¹ has inter alia held that:-

“Attestation of the undated affidavit is in utter disregard to the provisions of Section 139 of the Code of Civil Procedure, 1908. (hereinafter referred to as the ‘CPC’). The Supreme Court Rules 1966 under Order XI, Rule 7 also require adherence to the provisions of Section 139 CPC. Hence, his reply is not worth taking on record and being undated, renders the same to be a piece of waste paper.

The definition of ‘affidavit’ in Section 3(3) of the General Clauses Act 1897 provides that it “shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing”. Thus, it is an essential characteristic of an affidavit that it should be made on oath or affirmation before a person having authority to administer the oath or affirmation, and thus, duty to state on oath on the part of the deponent is sacrosanct. Same remains the position in respect of administration of oath as required under the Oaths Act 1873.”

The Hon'ble Supreme Court in **A.K.K. Nambiar v. Union of India**² has said that:-

“The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence.”

¹ Criminal Appeal No. 1305/2013

² AIR 1970 SC 652

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The Code of Criminal Procedure, 1973 (hereinafter referred as **CrPC**) under Section 297 is *pari materia* to Section 139 of CPC. Thereby, both the provisions prescribe the list of authorities before whom an affidavit may be sworn-in by the deponent.

Rules pertaining to affidavit under CPC

The Code of Civil Procedure, 1908 (hereinafter referred as **CPC**) under Section 30(c) provides that the Court has power to direct any party to prove any fact by an affidavit, either *suo motto* or on application of the other party.

Under Order XIX of the CPC, the rules pertaining to affidavit has been prescribed. Under Rule 3 of Order XIX prescribes that the contents of an affidavit should essentially not pass beyond the scope of personal knowledge. The Hon'ble Supreme Court in ***Purushottam Jog Naik*** (supra) has inter alia held that if the contents are beyond the scope of personal knowledge then the deponent shall be required to disclose the source of information. Similar opinions were provided by the Hon'ble Supreme Court in ***M/s. Sukhwinder Pal Bipan Kumar v. State of Punjab***¹.

Rules pertaining to affidavit under Indian Evidence Act, 1872

The Indian Evidence Act, 1872 (hereinafter referred as **IEA 1872**) under Section 1 explicitly states that the provisions of the legislation shall not be applicable on the affidavits presented to any Court or Officer. The Hon'ble Supreme Court in catena of judgments including ***Smt. Sudha Devi v. M.P. Narayanan***² has clearly held that an affidavit is not an "evidence" as defined under Section 3 of the IEA 1872.

The Hon'ble Rajasthan High Court placing reliance on ***Sudha Devi*** (supra) in ***Jagdish v. Premrata Rai***³, has held that if the decree is solely and wholly based on the affidavits, then such decree is not based on evidence, resultantly such a decree shall be null.

¹ (1982) 1 SCC 31

² AIR 1988 SC 1381

³ AIR 1990 Raj 87

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In *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra*¹, the Hon'ble Supreme Court inter alia held that:-

“31. It is a settled legal proposition that an affidavit is not “evidence” within the meaning of Section 3 of the Evidence Act, 1872 (hereinafter referred to as “the Evidence Act”). Affidavits are, therefore, not included within the purview of the definition of “evidence” as has been given in Section 3 of the Evidence Act, and the same can be used as “evidence” only if, for sufficient reasons, the court passes an order under Order 19 of the Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”). Thus, the filing of an affidavit of one's own statement, in one's own favour, cannot be regarded as sufficient evidence for any court or tribunal, on the basis of which it can come to a conclusion as regards a particular fact situation. (Vide *Sudha Devi v. M.P. Narayanan* [(1988) 3 SCC 366 : AIR 1988 SC 1381] and *Range Forest Officer v. S.T. Hadimani* [(2002) 3 SCC 25 : 2002 SCC (L&S) 367 : AIR 2002 SC 1147])

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36. Therefore, affidavits in the light of the aforesaid discussion are not considered to be evidence, within the meaning of Section 3 of the Evidence Act. However, in a case where the deponent is available for cross-examination, and opportunity is given to the other side to cross-examine him, the same can be relied upon. Such view, stands fully affirmed particularly, in view of the amended provisions of Order 18 Rules 4 and 5 CPC. In certain other circumstances, in order to avoid technicalities of procedure, the legislature, or a court/tribunal, can even lay down a procedure to meet the requirement of compliance with the principles of natural justice, and thus, the case will be examined in the light of those statutory rules, etc. as framed by the aforementioned authorities.”

Repercussions on filing False Affidavit

The Indian Penal Code, 1860 (hereinafter referred as **IPC**) under Section 191 read with Section 193 provides the punishment to the person who intentionally files a false affidavit.

¹ (2013) 4 SCC 465

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Conclusion

In light of the above discussion, it is abundantly clear that an affidavit is a document which may be produced before the Court in terms of Order XIX of CPC. Further, the affidavit shall not be an evidence as per the IEA 1872, however, the affidavit may be considered as an evidence, if cross-examination has been conducted of such deponent.

Additionally, it is essential to state true facts in the affidavit as false statement may result in initiation of criminal proceedings against the deponent for filing a false affidavit.

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¹ Majesty legal is law firm, established in 2013 and aim of the present article is to provide legal knowledge. The opinions presented in the article are personal in nature and not to be deemed as legal advice.