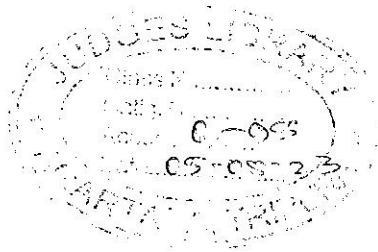


The Oaths Act, 1969

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The Oaths Act, 1969

List of Amending Acts

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THE
Oaths Act, 1969

[Act 44 of 1969]

[26th December, 1969]

An Act to consolidate and amend the law relating to judicial oaths and for certain other purposes

BE it enacted by Parliament in the Twentieth Year of the Republic of India as follows:—

Statement of Objects and Reasons.—The Law Commission, in its 28th Report on the Indian Oaths Act, 1873, has recommended the re-enactment of the Act with certain modifications. The main recommendations relate to Sections 6, 7 and 9 to 12 of the Act. Section 6 is proposed to be modified to the effect that a witness, interpreter or juror may, instead of making an oath make an affirmation, so as to give every such person the liberty of making affirmation irrespective of its religious persuasions or whether or not he raises any objection to make an oath. In order that there may be uniformity in the form to be adopted in the matter of any oath affirmation affidavit, etc. in the Courts throughout the country, the forms prescribed by the High Courts in this behalf are being adopted and are proposed to be set out in a Schedule to the Bill. Where a witness desires to make an oath or affirmation in any other form which is regarded as common amongst, or held binding by, persons of the class to which he belongs, he should, it is proposed, be allowed to do so. It is also considered necessary that oaths and affirmations should be administered by the presiding officer of the Court himself except in the case of the Supreme Court and the High Courts. Section 7 is proposed to be amended for these purposes.

2. The Commission has strongly opposed to retention of provisions, namely, Sections 9 to 12, relating to the conclusive or binding character of special oaths as in their opinion it is opposed to juristic principles and public policy. In support of their view they have relied upon certain judicial pronouncements including the decision of the Privy Council case; *Inder Persad v. Mohan Das*, (1927) 54 IA 301. These sections are, therefore, proposed to be omitted.

3. On the basis of the aforesaid recommendations it is also proposed to amend S. 4 of the Act to provide for the omission of the second condition to the exercise, by the Commanding Officer, of the power to administer oath or affirmation, namely, the condition that the oath or affirmation should be such as a Justice of the Peace is competent to administer; also to provide that the State Government or High Court may empower any Court, magistrate or other person to administer oaths or affirmations for the purpose of affidavits.

4. The Bill is intended to give effect to the aforesaid recommendations of the Law Commission. -Gazette of India, 27-11-1967, Pt. II Section 2, Extra p. 1161.

1. Short title and extent.—(1) This Act may be called the Oaths Act, 1969.

(2) It extends to the whole of India ¹[* * *].

2. Saving of certain oaths and affirmations.— Nothing in this Act shall apply to proceedings before courts martial or to oaths, affirmations or declarations prescribed by the Central Government with respect to members of the Armed Forces of the Union.

1. The words "except the State of Jammu and Kashmir" omitted by Act 34 of 2019, Ss. 95, 96 & Sch. V (w.e.f. 31-10-2019).

3. Power to administer oaths.—(1) The following courts and persons shall have power to administer, by themselves, or subject to the provisions of sub-section (2) of Section 6, by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties imposed or in exercise of the powers conferred upon them by law, namely:—

- (a) all courts and persons having by law or consent of parties authority to receive evidence;
- (b) the commanding officer of any military, naval, or air force station or ship occupied by the Armed Forces of the Union, provided that the oath or affirmation is administered within the limits of the station.

(2) Without prejudice to the powers conferred by sub-section (1) or by or under any other law for the time being in force, any court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits, if empowered in this behalf—

- (a) by the High Court, in respect of affidavits for the purpose of judicial proceedings; or
- (b) by the State Government, in respect of other affidavits.

CASE LAW ► Judicial proceedings.—Judicial proceedings are defined in Section 2(i) CrPC to include any proceedings in the course of which evidence is or may be legally taken on oath, *Asoke Kumar Chaudhuri v. Kunal Saha*, (2017) 11 SCC 561.

► False/misleading affidavit.—Global search of cases pertaining to filing of false affidavit indicates that number of such cases that are reported has shown alarming increase in last fifteen years as compared to number of such cases prior to that. It is illustrative of malaise that is slowly but surely creeping in. Such “trend” is certainly an unhealthy one that should be strongly discouraged, well before filing of false affidavits gets to be treated as a routine and normal affair. Sanctity of affidavits filed by parties has to be preserved and protected and at the same time filing of irresponsible statements without any regard to accuracy has to be discouraged. Filing of false affidavit should be effectively curbed with a strong hand to preserve purity of judicial proceedings, *Sciemed Overseas Inc. v. BOC India Ltd.*, (2016) 3 SCC 70 : (2016) 1 SCC (Cri) 718 : (2016) 2 SCC (Civ) 28.

► Attestation of affidavit.—If an advocate who is authorised to administer oath for the purpose of an affidavit and attest the same, admits to have attested an affidavit, it can be inferred that the deponent appeared before the advocate with his affidavit, the advocate administered oath to him and on the deponent taking the oath and affirming the truth of the statement made in the affidavit put his signature on the affidavit in the presence of the advocate and then the advocate subscribed his signature to the affidavit in token of his having administered the oath and the deponent having affixed signature in his presence, *M. Veerabhadra Rao v. Tek Chand*, 1984 Supp SCC 571.

4. Oaths or affirmations to be made by witnesses, interpreters and jurors.—(1) Oaths or affirmations shall be made by the following persons, namely:—

- (a) all witnesses, that is to say, all persons who may lawfully be examined or give, or be required to give, evidence by or before any court or person

having by law or consent of parties authority to examine such persons or to receive evidence;

- (b) interpreters of questions put to, and evidence given by, witnesses; and
- (c) jurors:

Provided that where the witness is a child under twelve years of age, and the court or person having authority to examine such witness is of opinion that, though the witness understands the duty of speaking the truth, he does not understand the nature of an oath or affirmation, the foregoing provisions of this section and the provisions of Section 5 shall not apply to such witness; 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.

(2) Nothing in this section shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, unless he is examined as a witness for the defence, or necessary to administer to the official interpreter of any court, after he has entered on the execution of the duties of his office, an oath or affirmation that he will faithfully discharge those duties.

5. Affirmation by persons desiring to affirm.—A witness, interpreter or juror may, instead of making an oath, make an affirmation.

6. Forms of oaths and affirmations.—(1) All oaths and affirmations made under Section 4 shall be administered according to such one of the forms given in the Schedule as may be appropriate to the circumstances of the case:

Provided that if a witness in any judicial proceeding desires to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the class to which he belongs, and not repugnant to justice or decency, and not purporting to affect any third person, the court may, if it thinks fit, notwithstanding anything hereinbefore contained, allow him to give evidence on such oath or affirmation.

(2) All such oaths and affirmations shall, in the case of all courts other than the Supreme Court and the High Courts, be administered by the presiding officer of the court himself, or, in the case of a bench of Judges or Magistrates, by any one of the Judges or Magistrates, as the case may be.

CASE LAW ▶ Affidavit - Essential requirements.—Duty to state on oath on the part of deponent is sacrosanct is "Undated affidavit" though attested is filed by Chief Secretary to State Government such an affidavit, being in utter disregard to provisions of Section 139 CPC, held, cannot be taken on record. Act of officer concerned stringently deprecated, *Umesh Kumar v. State of A.P.*, (2013) 10 SCC 591 : (2014) 2 SCC (L&S) 237 : (2014) 1 SCC (Cri) 338.

7. Proceedings and evidence not invalidated by omission of oath or irregularity.—No omission to take any oath or make any affirmation, no substitution of any one for any other of them, and no irregularity whatever in the administration of any oath or affirmation or in the form in which it is administered, shall invalidate any proceeding or render inadmissible any evidence whatever, in or

in respect of which such omission, substitution or irregularity took place, or shall affect the obligation of a witness to state the truth.

8. Persons giving evidence bound to state the truth.—Every person giving evidence on any subject before any court or person hereby authorised to administer oaths and affirmations shall be bound to state the truth on such subject.

9. Repeal and saving.—(1) The Indian Oaths Act, 1873, is hereby repealed.

(2) Where, in any proceeding pending at the commencement of this Act, the parties have agreed to be bound by any such oath or affirmation as is specified in Section 8 of the said Act, then, notwithstanding the repeal of the said Act, the provisions of Sections 9 to 12 of the said Act shall continue to apply in relation to such agreement as if this Act had not been passed.

SCHEDULE

(See Section 6)

FORMS OF OATHS OR AFFIRMATIONS

Form No. 1 (Witnesses):—

swear in the name of God

I do that what I shall state shall be the truth, the
solemnly affirm

whole truth and nothing but the truth.

Form No. 2 (Jurors):—

swear in the name of God

I do that I will well and truly try and true
deliverance

solemnly affirm

make between the State and the prisoner(s) at the bar, whom I shall have in charge, and a true verdict give according to the evidence.

Form No. 3 (Interpreters):—

swear in the name of God

I do that I will well and truly interpret and
explain

solemnly affirm

all questions put to and evidence given by witnesses and translate correctly and accurately all documents given to me for translation.

Form No. 4 (Affidavits):—

swear in the name of God

I do that this is my name and signature (or mark)
solemnly affirm

and that the contents of this my affidavit are true.