

Oath is a declaration about truthfulness of any written or oral statement whereas affidavit is a declaration about truthfulness of written down facts.

Meaning of oath

Oath is a solemn declaration, accompanied by a swearing to God or a revered person or thing, that one's statement is true or that one will be bound to a promise. The person making the oath implicitly invites punishment if the statement is untrue or the promises broken. The legal effect of an oath is to subject the person to penalties for perjury if the testimony is false.¹ A statement is false where the person making it either knows to be false or believes to be false or does not believe to be true.²

Knowledge and belief

Knowledge means a state of mind, entertained by a person, with regard to existing facts, which he has himself observed (cognition) or the existence of which has been communicated to him by another person (belief).³ In legal sense, however, knowledge is limited to cognition and is distinguished from belief. So, to know a thing is to have mental cognition of it, and to believe a thing is to assent to a proposition or to accept a fact without immediate personal knowledge.⁴ A belief can be used to construct knowledge, but not to demonstrate actual knowledge.⁵

Affirmation and declaration

¹ Black 2015 p 1101

² Huda 2011 p 196 and IPC Sec 191 (definition of perjury) IPC Sec 193 (punishment for perjury)

³ Woodroffe 2001 v 1 p 761

⁴ Huda 2011 p 195

⁵ Williams 2015 p 146

Oath includes affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.^{^6}

Affirmation is a pledge equivalent to an oath but without reference to a supreme being or to swearing.^{^7}

Declaration is a formal statement, proclamation, or announcement, especially one embodied in an instrument.^{^8}

Oaths Act 1969

Oath in India is governed by Oaths Act 1969 which extends to the whole of India. Oaths Act 1969, however, does not 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.^{^9}

Administration of oath and affirmation generally

Oath and affirmation is administered by the specified authority. All courts and persons having by law or consent of parties authority to receive evidence shall have power to administer, by themselves or by an officer appointed by them in behalf, oath and affirmation in discharge of the duties imposed upon them by law.^{^10}

Administration by Courts

The Supreme Court and the High Courts, however, may administer oaths and affirmations either by themselves or by an officer empowered by them in this behalf. But for other courts

⁶ General Clauses Act 1897 Sec 3(37)

⁷ Black 2015 p 64

⁸ Black 2015 p 436

⁹ Oaths Act 1969 Sec 2

¹⁰ Oaths Act 1969 Sec 3(1)

the presiding officer himself or any member of that bench are allowed to administer oaths and affirmations.^{^11}

Who shall be administered?^{^12}

Oaths or affirmations shall be made by the following persons, namely:—

- (1) 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;
- (2) interpreters of questions put to, and evidence given by, witnesses; and
- (3) jurors.

Witness

Witness is one who gives testimony under oath or affirmation in person by oral or written disposition or by affidavit. In its strict legal sense, witness is one who gives evidence in a cause before a court; and in its general sense includes all persons from whose lips testimony is extracted to be used in any judicial proceeding, and so includes deponents and affiants as well as persons delivering oral testimony before a court or jury.

Interpreter

Interpreter is a person who translates, especially orally, from one language to another; especially the person who is sworn at a trial to accurately translate the testimony of a witness who is deaf or speaks a foreign language. The official interpreter of any court

¹¹ Section 3(1) read with section 6(2)

¹² Oaths Act 1969 Sec 4(1)

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who has entered on the execution of the duties of his office an oath or affirmation that he will faithfully discharge those duties are also not required to be administered any oath or affirmation.<sup>^13</sup>

## **Juror**

Juror is a person serving on jury panel. Jury is a group of persons selected according to law and given the power to decide questions of fact and return a verdict in the case submitted to them.

## **Child under 12 years of age**

A child under 12 years of age need not be administered oath or affirmation. But, 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, then he need not be administered any oath or affirmation; and in such cases 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.<sup>^14</sup>

## **Accused**

In criminal proceedings an oath or affirmation to the accused person, unless he is examined as a witness for the defence, is not required.<sup>^15</sup>

## **Affirmations instead of oath**

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<sup>13</sup> Oaths Act 1969 Sec 4(2)

<sup>14</sup> Oaths Act 1969 Sec 4(1) Proviso

<sup>15</sup> Oaths Act 1969 Sec 4(2)

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Witnesses, interpreters, or jurors may make an affirmation instead of making an oath.¹⁶

Administration of oath and affirmation for affidavits

Any Court, Judge, Magistrate or person may administer oaths and affirmations for the purpose of affidavits¹⁷ if they have been 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.

Affidavits

Affidavit is a voluntary declaration of facts written down and sworn to by the declarant before any officer authorized to administer oaths such as notary public or magistrate.¹⁸ It is a written statement in the name of person, called the deponent, by whom it is voluntarily signed and sworn to or affirmed.¹⁹ The statements of the affidavit shall be confined to that which the deponent is able to prove by his knowledge, though in certain cases the affidavit may contain statements of information and belief with source of ground thereof.²⁰

Affidavit as evidence

Under Civil Procedure, the court may allow, for sufficient reason, submission of affidavit for proving any particular fact.²¹

¹⁶ Oaths Act 1969 Sec 5

¹⁷ Oaths Act 1969 Sec 3(2)

¹⁸ Black 2015 p 62 and M. Veerabhadra Rao v Tek Chand AIR 1985 SC 28 quoted in Aiyar 2013 v 1 p162

¹⁹ General Clause Act 1897 Sec 3(3) and Oaths Act 1969 Sec 3(3) [Aiyar 2013 v 1 p162]

²⁰ Parmeswaran 2016 p 120

²¹ Code of Civil Procedure 1908 O 19 R 1 [Sudha Devi v M.P. Narayanan (1988) 3 SCC 366]

Under Criminal Procedure, a living person must be called to witness stand to tender evidence in judicial proceedings and cannot be substituted by an affidavit unless the law permits it and Court allows it.²² Being a convenient mode, a great deal of evidence is submitted by affidavit in summary cases, though it is expressly excluded from the definition of 'evidence'.²³

Role of person administering oath of affidavit

The part or the role assigned to the person entitled to administer oath is no less sacrosanct; for at the foot of the affidavit the signature of the deponent must be countersigned by the officer entitled to administer oath in token of both, that he administered the oath and that the deponent has signed in his presence.²⁴

Verification

Verification is a formal declaration made in the presence of an authorised officer whereby one swears to the truth of the statements in the document.²⁵ The authorised officer may be a notary public. Traditionally, a verification is used as a conclusion for all pleadings that are required to be sworn.

Acknowledgement

Acknowledgment is a formal declaration made in the presence of an authorised officer by someone who signs a document and confirms that the signature is authentic.²⁶ The authorised officer may be a notary public who certifies that:

²² Sections 295 and 407(3) of Code of Criminal Procedure 1973 [Munir Ahmad v State of Rajasthan 1989 Supp (1) SCC 377]

²³ Evidence Act 1872 Sec 3

²⁴ Parmeswaran 2016 p 121

²⁵ Black 2015 p 1593

²⁶ Black 2015 p 24

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- a) he or she personally knows the document signer or has established the signer's identity through satisfactory evidence;
- b) the signer appeared before the officer on the date and in place indicated; and
- c) the signer acknowledge signing the document freely.

### **Acknowledgment distinguished from verification**

An acknowledgment is a verification of the fact of execution, but is not a verification of the contents of the instrument executed. In other words, an acknowledgment is a method of authenticating an instrument by showing it was the act of the person executing it, while a verification is a sworn statement as to the truths of the facts stated within an instrument.

### **Forms of oaths or affirmations**

All oaths and affirmations shall be administered according to such one of the forms given below as may be appropriate to the circumstances of the case.<sup>27</sup>

- a) Form No. 1 (Witnesses): I do swear in the name of God / solemnly affirm that what I shall state shall be the truth, the whole truth and nothing but the truth.
- b) Form No. 2 (Jurors): I do swear in the name of God / solemnly affirm that I will well and truly try and true deliverance 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.
- c) Form No. 3 (Interpreters): I do swear in the name of God / solemnly affirm that I will well and truly interpret and explain all questions put to and evidence given by witnesses and translate

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<sup>27</sup> Oaths Act 1969 Sec 6(1) and the Schedule

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correctly and accurately all documents given to me for translation.

d) Form No. 4 (Affidavits): I do swear in the name of God / solemnly affirm that this is my name and signature (or mark) and that the contents of this my affidavit are true.

### **Flexibility of form for witness**

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.<sup>^28</sup>

### **Effect of omission 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.<sup>^29</sup>

### **Every person to state the truth**

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<sup>28</sup> Oaths Act 1969 Sec 6(1) Proviso

<sup>29</sup> Oaths Act 1969 Sec 7

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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.<sup>30</sup>

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<sup>30</sup> Oaths Act 1969 Sec 8

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