

FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B./BBA.LLB/LL.B.

Semester - II

SUBJECT: ALWS II

SUBJECT CODE: BAL-208/BBL-208/LLB-206

NAME OF FACULTY: Dr. Arun Verma

Lecture-17



Commonly used affidavits in India

Name change affidavit

The first kind of affidavit is for a name change. It is a declaration made under oath by a person who swears to use their real name on any document, not a misspelling or a variation of it. This kind of affidavit may be introduced in front of a magistrate or a notary. Some affidavit instances are generic name changes or name changes following marriage. The following stage requires you to promptly publish the name change in two local newspapers after the affidavit has been notarized.

- One ad should appear in a daily news publication in the state's official local language.
- A local English newspaper should print the second classified.
- Identity theft affidavit
- An identity theft affidavit is a document used by a person to prove that their identity was misused by someone else by using their personal information to commit any fraudulent activity. It is common in cases of bank account fraud.

Affidavit of a lost document

An affidavit of a lost document is a declaration made when someone loses an important document of theirs or if, for whatever reason, it gets destroyed. To protect the holder or replace the certificate, the security issuer needs an affidavit. The lost document can be anything, such as a passport, a mark sheet, a government ID, etc.

Affidavit of power of attorney

A power of attorney is basically your attorney – in – fact, or in simpler words, your agent, who you entrust to act on your behalf on any legal matter for which you allow him to do so. When acting on your behalf with another party, your agent is frequently asked to provide proof of power of attorney. To accomplish this, it is typical to request an affidavit of power of attorney from the agent. The agent certifies in the affidavit that he is your agent and that you granted him power of attorney, which you have not revoked. Along with the affidavit, the agent often encloses a copy of the power of attorney.

Joint affidavit for registration of marriage

In India, a marriage cannot exist in law unless it is registered. The bride and groom receive a marriage certificate at the conclusion of the marriage registration process. This kind of affidavit is a declaration made by a husband and wife after their wedding that includes the date, place, and legal system in which the union was registered. The full names and addresses of both parties' parents should be listed in the joint affidavit.

Both individual and joint affidavits may be presented in accordance with the two primary marriage registration Acts in India, i.e., the Hindu Marriage Act, 1955 and the Special Marriage Act, 1954. The option you make would be governed by state law. You need a common set of documents to register for any type of event. It is as follows:

- The application form for registration,
- Address proof,
- Valid Identity proof,
- Proof of date of birth,
- Two passport-sized photos of the bride and the groom,
- The death certificate of a previous spouse if either party is widowed,
- Divorce decree if either party was married before.

First born child affidavit

The first born child affidavit is a document that parents are obliged to present to a school or nursery in which they are seeking admission for their child. It is frequently needed during school and nursery admissions. Like with other affidavits, the process is quite simple. The document calls for one or both parents to serve as 'deponent(s)' and declare that the ward at issue is in fact their firstborn child and that they are authoring it in order to get the ward into a specific educational facility. To complete this, one might go to any notary in their area. The document is deemed to be valid and enforceable once the notary seals it.

Affidavit of debt

An affidavit of debt is a declaration from an employee of the plaintiff (typically the collection agency) stating that they are aware of the methods of record keeping at the original creditor regarding debt. This also means whenever a certification is required regarding the truthfulness of the information, they can do so.

Affidavit for no criminal offense

When someone is awarded a responsible position in government authority or when they participate in elections, they must submit an affidavit stating that they have committed no criminal offence. Additionally, many reputable businesses need this affidavit as part of their hiring procedures when hiring new staff.

Who attests an affidavit

The Court, Magistrate, or other officer mentioned above before whom an affidavit is made must certify that the affidavit was made before him. After that, one of the above-mentioned people shall enter the date and sign the certificate, and lastly, mark each exhibit referred to in the affidavit for identification purposes. The verifying authority's name must be fully signed, and special attention must be given to ensuring that his correct identification as a Civil Court or Magistrate is appended.

Non-judicial affidavit

A non-judicial affidavit can be attested by the following persons:

- Commissioner for Oaths by the State or the High Court according to Section 3(2)(b) of the Oaths Act, 1969;
- Notary appointed under the Notaries Act, 1952 for a respective area or the whole of India Notary;
- Magistrate for a respective area.

Attestation of affidavits by process servers and other officials

The State Government has authorised 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 Order V, Rule 19, or Order XVI, Rule 10 of the Code of Civil Procedure in order to facilitate the verification of affidavits of serving officers.

Identification of the deponent

If the court, magistrate, or other officer appointed to administer the oath or affirmation is not personally acquainted with the person making the affidavit, the person must be identified to the court, magistrate, or officer by a person who is acquainted with him. The court, magistrate, or officer shall specify the name and description of the person by whom the identification is made, as well as the time and location of the identification and the making of the affidavit at the foot of the affidavit.

Attesting officer's duty

There are instances where a person who submits an affidavit appears to the court, magistrate, or other official administering the oath or affirmation to be illiterate, unaware of the language used to write it, or unable to fully comprehend its contents. In this case, the court, magistrate, or officer must have the affidavit read to him and explained to him in a language that they all understand, either by doing it themselves or by having someone else do it for them while they are both present. When an affidavit is read and explained in accordance with the provisions of this clause, the court, magistrate, or another officer as applicable, shall certify in writing at the foot of the affidavit that this has occurred and that the declarant appeared to understand it completely at the time it was made.

Attestation and verification of affidavits

Every affidavit must have the deponent's signature, marked, and verified at foot, as well as the attestation of the court, magistrate, or other official delivering the oath or affirmation. The deponent must sign and the attesting officer must initial each page of the affidavit. The deponent must sign or annotate the verification on one of the forms that are attached to this document.

Contents of an affidavit

Every affidavit comprising a statement of facts must be broken up into paragraphs, each of which must be numbered sequentially and, to the greatest extent possible, must be limited to a single area of the subject.

- Any individual who submits an affidavit must be identified clearly by giving their full name, the name of their father, their profession or trade, and their place of residence unless they are a plaintiff or defendant in the lawsuit in which the affidavit is submitted.
- The declarant must state immediately and positively, using the phrases “I affirm” or “I swear and say,” whenever he refers to facts that are in his knowledge.
- When the specific fact is not known to the declarant but is stated based on information obtained from others, the declarant must use the phrase “I am informed” and, if applicable, should add “and verily believe it to be true.” Alternatively, he may specify the source from which he obtained the information. When the declaration is supported by documents or copies of documents obtained from a court of justice or another source, the declarant must identify the source and express his knowledge or belief regarding the accuracy of the facts contained in those documents.
- Punishment for filing a false affidavit
- Anyone who knowingly provides false testimony in any stage of a legal proceeding, or who creates false testimony with the intent to use it at any stage of a legal proceeding, shall be punished by imprisonment of either kind for a time that may not exceed seven years, as well as by a fine.
- Anyone who knowingly provides or fabricates false evidence in any other circumstance faces a fine as well as a term of imprisonment of either kind that may last up to three years. Making a false affidavit in one’s pleadings or submitting a fake affidavit or false document in evidence before a court of law is a crime under sections 191, 193, 195, and 199 of the Indian Penal Code, 1860.
- A criminal proceeding against the offending party may be started by filing an application under Section 340 read with Section 195 of the Code of Criminal Procedure 1973 before a criminal or civil court for providing false testimony.
- A private complaint may be brought under Section 200 of the IPC before the appropriate magistrate when fraudulent affidavits or other false documentation are presented in any quasi-judicial or administrative action.

- An application must be made in accordance with Section 340 read with Section 195 of the CrPC 1973, if any tribunal is designated as a court in the statute.
- In the case of Ranjeet Singh v. State of Punjab (1959), the police officer defendant was required to respond to a writ of habeas corpus motion made under Article 226 of the Constitution, alleging that the defendant had wrongfully held a man in police custody. The accused made a fake affidavit in his written statement, claiming that the individual was never taken into custody or apprehended by the police.