

Presentation: Guide to Affidavits

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Irani in a Fix in Poll Affidavit Case

COURT SAYS CASE ADMISSIBLE Congress, AAP demand resignation; BJP backs HRD minister



Our Political Bureau

New Delhi: Union HRD minister Smriti Irani found herself in the eye of another storm on Wednesday as a Delhi court took cognizance of a complaint for giving false information about her educational qualifications in an election affidavit, prompting the Congress to demand that she should resign from her post.

Metropolitan Magistrate Alok Jain, who heard the complaint filed by freelance writer Ahmer Khan alleging that Irani had purportedly given different details about her educational qualification in three af-

fidavits filed by her for the Lok Sabha and Rajya Sabha elections, came to the conclusion that the case was admissible and fixed August 28 as the date for pre-summoning evidence in the matter.

The two questions before the court for adjudication were that given the "limitation of time" can the private complaint filed with the court in April this year be taken note of. Secondly, in absence of any complaint by the concerned returning officer, can the court look into the matter. This is not the first case where Irani's degrees have been a matter of debate. Earlier, there were allegations that she had

NO RESIGNATION



Resignations don't happen in our govt.

This is not their (UPA) govt. This is NDA govt

RAJNATH SINGH
HOME MINISTER

claimed to have a degree from Yale University, but this was found to be incorrect. The Congress was quick to latch on to the issue and demand

that Irani should quit.

Aam Aadmi Party also pressed for Irani's resignation. "It is clear that Irani spoke a lie on affidavit. AAP has constantly raised its voice against her documents. FIR should be registered, investigation should begin. Court also found discrepancy. Police should show same fast action like on Tomar. Arrest Smriti at the earliest," AAP spokesperson Ashutosh told reporters.

BJP mounted a defence for Irani and underlined that it was just an error and not a serious offence.

"Irani had stated in her 2004 election affidavit that she is doing a BA course. In her 2009 and 2014 poll af-

fidavits she has said she has done a B.Com," BJP spokesperson Sambit Patra said. BJP leaders said Sonia Gandhi had said in her poll affidavit that she had done a English course from Cambridge University but had only done the course from a "teaching shop" in UK. The NDA government ruled out the possibility of Irani stepping down. "Hamaare mantriyo ke tyag patra nahi hote. Urki government nahi hai yeh. Yeh NDA government hai. (Resignations do not happen in our government. This is not their (UPA) government. This is an NDA government)," Home minister Rajnath Singh said.

IN THE DOCK Demand for Swaraj. Raie head to divert focus

Source : The Economic Times, page 2; date 25th June 2015

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Scope of Presentation:

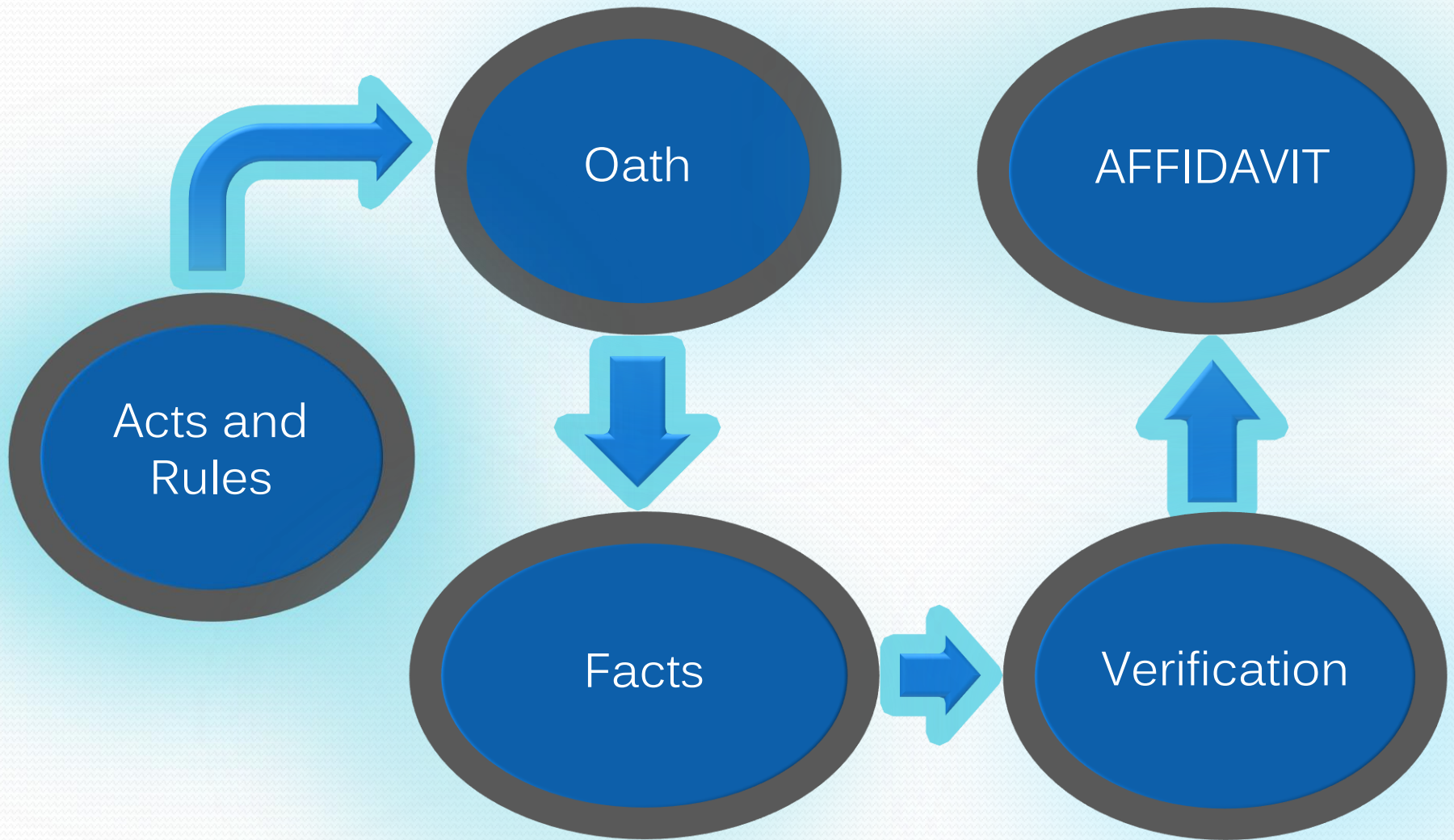
- Meaning of “Affidavit”.
- Types and necessity of the Affidavits
- Affidavit as a substantial evidence.
- Law governing Affidavits in India.
- Penal actions for issuing false Affidavit.
- Drafting and content of Affidavit.
- Special Points to be noted.

What is Affidavit?

A Document which:

- Is rendered on **Oath**.
- Has non-argumentative admission of **facts**.
- An individual **affirms** before the authorities vested with powers as per law.
- Is produced before courts as required by Judicial Proceedings in conduct of fair business practices.

The Process



What are the types and necessity of Affidavit?

Types

Affidavit of Plaintiff, Petition, Counter.

Affidavit in support

Affidavit of service.

Affidavit of Witness

Necessity

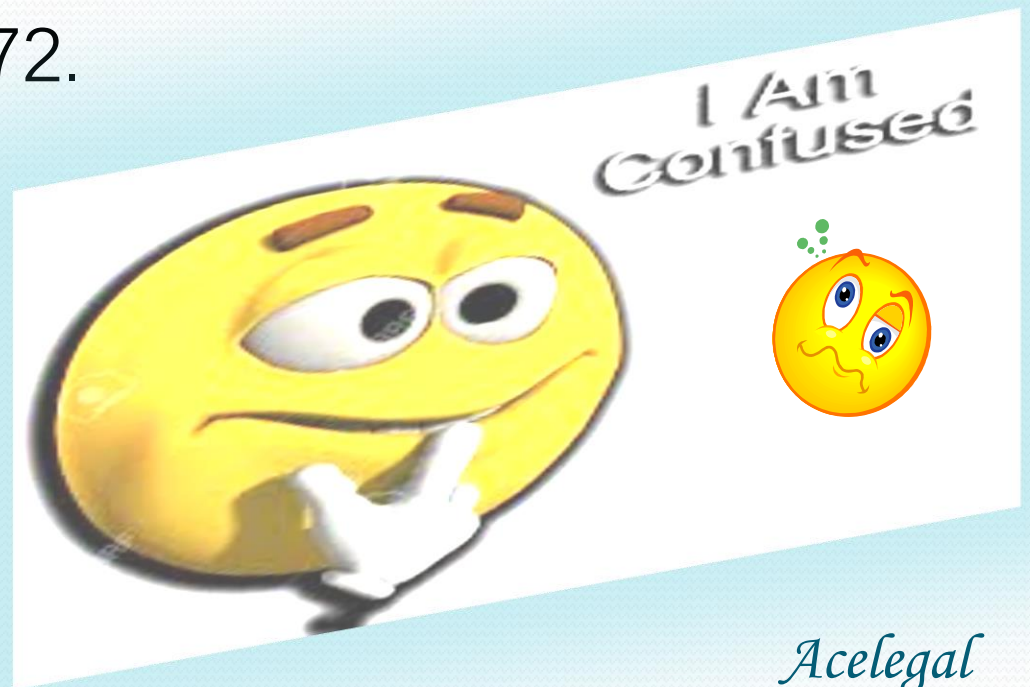
Law Rules Procedure.

Upon Direction of Court.

Suo Moto by Party.

Whether Affidavit has evidentiary Value?

- Affidavits are not covered under the definition of “**Evidence**”, under section 3 of the Indian Evidence Act, 1872.



An Affidavit is a very strong “EVIDENCE”

If it is filed with the proper consent of party.

Where it is specially authorised by provision of various laws governing affidavits Eg. O19 R1 of CPC.

Where court asks the deponents to file such affidavit.

Can be admitted as evidence of admission u/s. 18 to 21 of Evidence Act against the deponent.

- Which Law governs Affidavits in India?



Oaths
Act,1973

Notaries Act,
1952 (notary
affidavits)

Section 297
of cr. pc
(criminal
matter)

Article 4 of
schedule I of
the Indian
Stamp Act,
1899

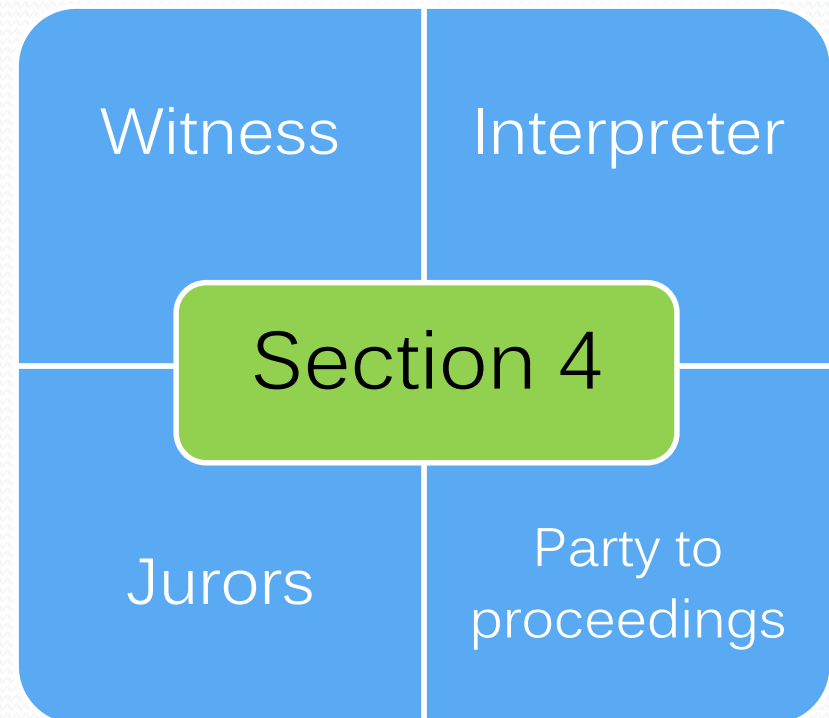
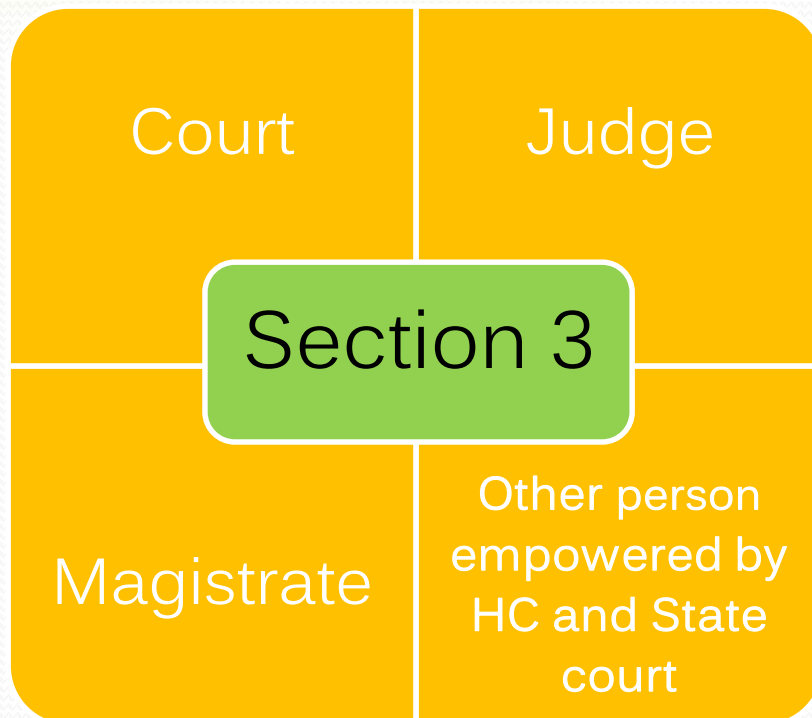
Order XIX of
CPC in (civil
matters)

Civil and
high court
rules

Oaths Act ,1973 (applicable to all Oaths and Affidavits):-

Who has power to administer Oath

Who may take Oath



Section 297 of cr. pc in (criminal matter)

- Authorities before whom affidavits may be sworn;
 - a. Any judge or any judicial or Executive magistrate, or
 - b. Any commissioner of oaths appointed by the High court or court of session, or
 - c. Any Notary appointed under Notary Act



The court may order any scandalous and irrelevant matter in the affidavit to be struck out or amended.

Order XIX of CPC in (civil matters):

- Courts has powers to order on its discretion to prove particular fact by submitting Affidavit;
- Power of cross examination of either party.



Abdul Rasheed Vs. Calcutta Municipal corporation AIR 1990 cal. 37

- Observation: Affidavit was signed in Hindi by the deponent. Language of Affidavit was in English.
- Cross examination: Read the affidavit signed by you?
- Held: Deponent has no knowledge about what he has signed; Affidavit rejected.

Notaries Act, 1952 (notary affidavits)

- Responsibility of Notary to ensure that deponent has absolute clarity about facts written in Affidavit and consequential effects.



*Central Bureau of investigation,
Bank Securities and fraud Cell
Vs. Mulangi Krishnaswamy
Ashok Kumar, 1993 (3) Bom CR 189*

Relevance of Affidavits for Income Tax Act, 1961:

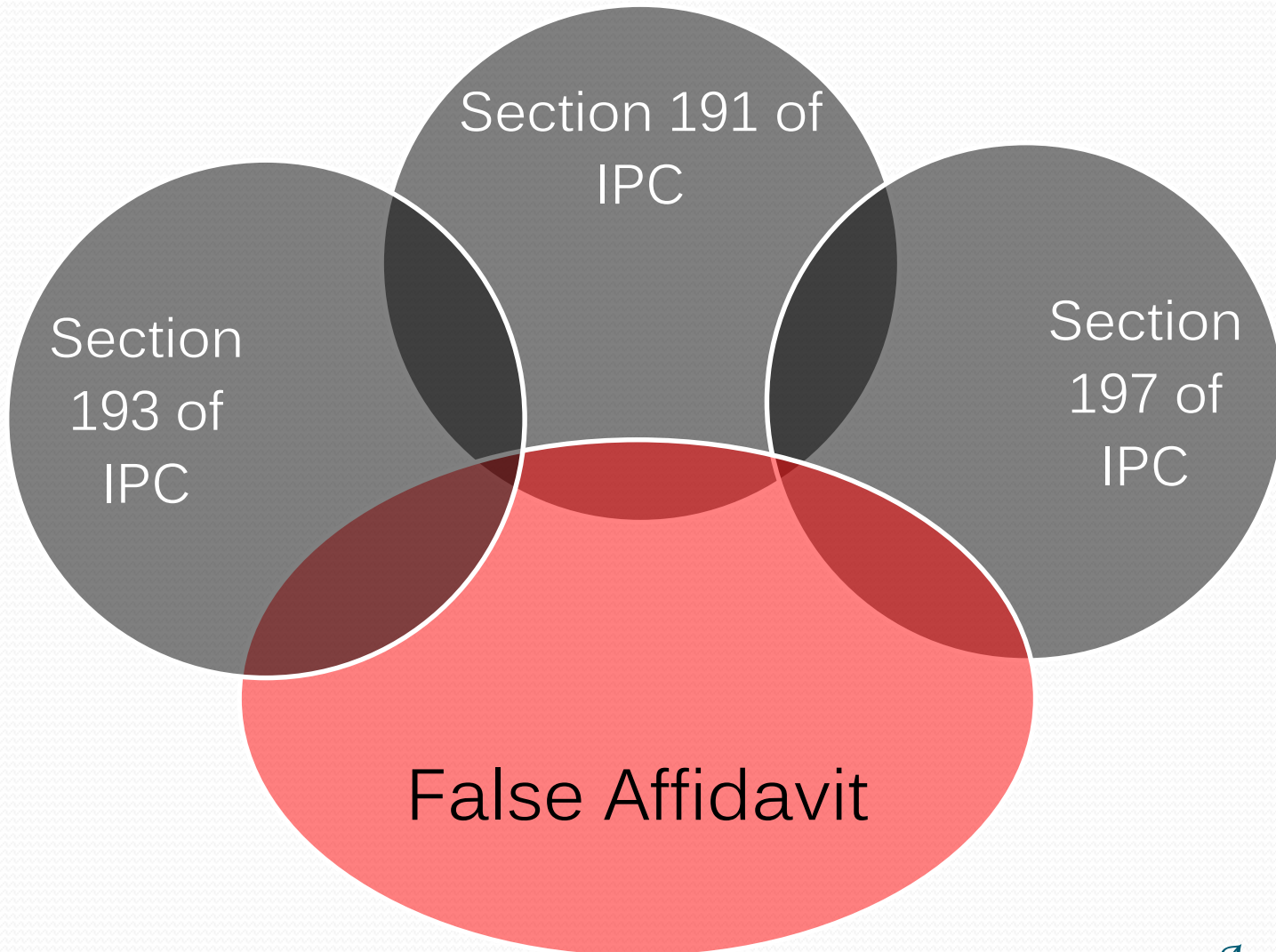
- Averments through affidavits if unrebutted have to be taken as factual:-

--Mehta Parikh and Co.
[1956] 30 ITR 181 (SC)

Relevance of Affidavits for Income Tax Act, 1961(Continue):

- Retraction of any statements made during the course of search/survey proceedings, assessment proceedings.
- Explaining facts in stay petition and condonation of delay.
- Affidavit from Lenders, suppliers other business constituents.
- Affidavits under Rule 10 of ITAT Rules for facts contrary Record.

Penal actions for issuing false Affidavit



Section 191 of Indian Penal Code

- Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement
 - A. which is false, **and**
 - B. which he either knows or believes to be false or does not believe to be true, is said to give false evidence.

Section 193 of Indian Penal Code.

- Intentionally gives false Affidavit:
 - Judicial Proceedings:
 - Seven years Imprisonment and fine.
 - Any other case:
 - Three years Imprisonment and fine.



Section 197 of Indian Penal Code

- Whoever signs Affidavits relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point, shall be punished in the same manner as if he gave false evidence.



AIR 1927 Sind 128

- A Person renders himself liable to prosecution for false statements in evidence.

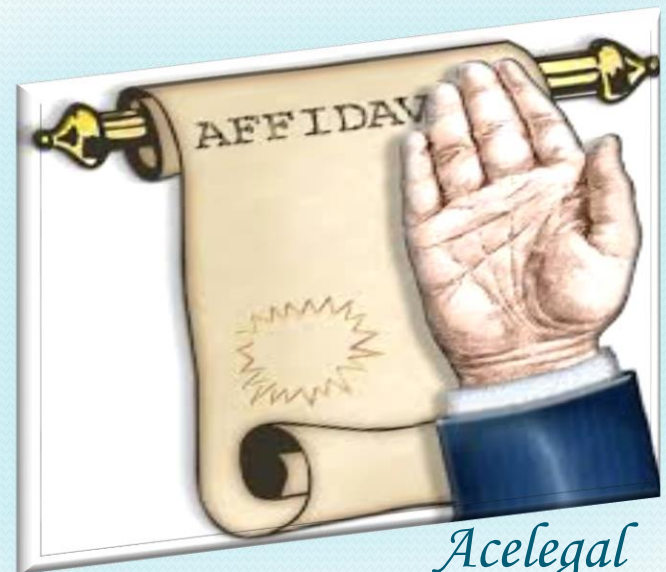


Drafting and content



Krishna Chandra Nayar v. The Chairman, central Tractor Organisation (1962) 3 SCR 187

- The court has power to reject your Affidavit drafted in a careless and irresponsible manner and on facts which are without any basis.



Parts of Affidavits

Specimen Blank Form of an Affidavit

In the court of _____,

No. ____20____,

A.B.____ Plaintiff,

Vs.

C.D. _____ Defendant

Suit for _____

Fixed for _____

I _____, aged __ years, son of _____ resident of _____ do hereby solemnly **affirm**
and declare on **oath** as under:

1. That

2. That ...



Facts

Dated _____

Place: _____

sd
(Deponent)

VERIFICATION

I, the deponent, do hereby verify that the contents of this affidavit in paragraph No.s
____ are true to my **personal knowledge** and those paragraph No.s ____ are
believed by me to be true on information received from ____ and nothing has
been concealed.

Signed and verified this _____ day of _____ 20__ at _____. SD _____

(Deponent)

Introductory Paragraph

- Name
- Age
- Full address of deponent/s
- Father's name(Must).
- PAN no. (Recommended).
- Averments of Oath/Solemn affirmation.

Affirmation and Oath

- “**Affirmation**” is a solemn and formal declaration of the truth of a statements, such as an affidavit or the actual testimony of a witness or a party in place of an oath.
- “**Oath**” is any type of attestation by which an individual signifies that he or she is conscientiously bound to perform a particulars act truthfully and faithfully without any prejudice.

Body of Affidavits

Narrations of facts.

Each facts separate para in brief.

Paras must be numbered.

Simple English- layman language not legal.

VERIFICATION

Facts that deponent is able to prove based on the Personal Knowledge.



Facts that deponent has reason or grounds to believe to be true.

VERIFICATION (Continue)

- An affidavit must contain the statement of fact and not of law. The facts may be:-
 - Facts in personal knowledge of the deponent.
 - Facts based on information received; and
 - Facts found from perusal of the record.
- Where the facts stated in the affidavit are based on information it must be clearly stated. Similarly, the particulars of record must also be stated where the facts are founded on the basis of documents.

VERIFICATION (Continue)

- Where verification said “Everything was true to best of information and belief” court treated as slipshod, verification and liable to be rejected.

---AIR 1952 SC 317



Date and Place.

- Verification should be signed by the person making it and state the **date** on which and **place** at which it was signed.
- Omission to put date and place is an irregularity and not fatal to affidavit.

AIR 1987 Del. 300

Following point should be kept in mind while drafting Affidavits:

- Mention complete facts. Nothing material be hidden.
- No amendment is permissible.
- Each fact must be properly stated in separate para.
- Must be properly verified in the manner prescribed.
- An Affidavit unless it is related to immovable property does not come under the Indian Registration Act, 1908 and hence it is not necessary to register.

Following point should be kept in mind while drafting Affidavits: **(Continue)**

- Avoid Arguments.
- Must be related to your case.
- Two and more deponents can join in an affidavits and in such case each deponent should depose separately to those facts which are within their own knowledge, and such facts should be stated in separate paragraphs.

Live example:

- Instead of: Why should I have to be the one to always pick up the children?
- Write: I pick up the children every day after school and from their music lessons.



- *Krinshna Chander V. Chairman* (1962) 2 SCR 187, 192

