

Immigration and Refugee Board of Canada

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> Responses to Information Requests

Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment please email Basesdedonnees.DatabaseUnit@irb-cisr.gc.ca.

4 May 2015

IND105139.E

India: Procedure to obtain an affidavit within India, including whether it needs to be certified by a notary (2012-April 2015)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1. Types of Affidavits

In correspondence with the Research Directorate, a representative from Allied Legal Attorneys at Law, an Indian law firm with several practice areas including corporate law and non-resident issues (Allied Legal n.d.a), stated that there are two types of affidavits: judicial affidavits used in court cases; and non-judicial affidavits used "for all other purposes" (ibid. 9 Apr. 2015). The firm's website states that judicial affidavits are "required to submit for many purposes including but not limited to evidence or as a support of an application," while non-judicial affidavits are "mainly for administrative or commercial purposes" (ibid. n.d.b).

According to the Allied Legal website, judicial affidavits are drafted on a "Judicial Paper along with proper court fee [and] stamps affixed" and non-judicial affidavits are drafted on "non-judicial stamp paper" (ibid.). A sample affidavit on India's Ministry of External Affairs website for a passport application states that the affidavit is to be executed on "appropriate non-judicial stamp paper of minimal value" (India n.d.a). The Allied Legal representative and the firm website explain that the value [cost] of stamp paper varies by state (Allied Legal 9 Apr. 2015; ibid. n.d.b).

2. Attesting Authority

According to the Allied Legal representative, all affidavits must be certified by a notary or other official, and the "attesting authority changes with the type of affidavit" (ibid. 9 Apr. 2015). According to the Allied Legal website, a valid judicial affidavit must be attested by an Oath Commissioner while a valid non-judicial affidavit must be attested by a Notary Public with a valid license (ibid. n.d.b).

A sample non-judicial affidavit on India's Ministry of External Affairs website for a passport application states that the affidavit is to be attested by an Executive Magistrate or Notary Public (India n.d.a).

For further information on the attesting authority of Notary Publics and Commissioners for Oaths in India, see Response to Information Request IND102462.

3. Obtaining an Affidavit

The Allied Legal representative stated that the process to obtain an affidavit is the "same all over India" and requires purchasing the stamp paper, writing the content, and then signing the document in front of a notary for attestation (9 Apr. 2015). Similarly, a report produced by the Government of India's Department of

Administrative Reforms & Public Grievances, which is under the Ministry of Personnel, Public Grievances & Pensions, states that in order to obtain an affidavit, an individual must buy stamp paper, locate a "deed writer" and pay a notary for attestation of the document (India n.d.b, 1).

According to the Allied Legal representative, the process to obtain an affidavit is a "simple three-step process" (Allied Legal 9 Apr. 2015). In contrast, a July 2014 article by Press Trust of India (PTI), an Indian news agency, states that obtaining an affidavit is a "very cumbersome process" and notes that "the situation is worse in villages and in remote areas" (15 July 2014). The Indo-Asian News Service (IANS), an English and Hindi-language news service (IANS n.d.), similarly reports that "the task of reaching a notary or an attesting authority is much more difficult in rural areas" (7 Oct. 2014). According to the 2014 PTI article, quoting an official at the Department of Administrative Reforms and Public Grievances, the cost of obtaining an affidavit from a notary is between 100-500 Indian rupees (INR) [C\$1.90-C\$9.50] (PTI 15 July 2014).

3.1 Self-attestation of Documents

The 2014 PTI article reports that the national government is promoting the "self-attestation of documents" and is removing the requirement of obtaining an affidavit or attested copy of a document from a gazetted officer [executive-level civil servant] or notary for some types of documents and applications filed with the government (ibid.). According to an official at the Department of Administrative Reforms and Public Grievances quoted in the article, some ministries and state governments have "adopted the provision of self-certification of documents," including marksheets and birth certificates (ibid). The official was also quoted as stating that the self-attestation would not be an option when there is a statutory requirement to file an affidavit by a notary or gazetted official (ibid.). An article published by *Business Standard*, an Indian financial daily published in 12 cities, including Mumbai and New Delhi (*Business Standard* n.d.), reports that Prime Minister Narendra Modi "suggested government departments should adopt the system of self-attestation of certificates, photographs and marksheets, instead of asking for attested documents or filing of affidavits" (ibid. 7 June 2014). Media sources report that original documents are required at the final stage of an application when the individual has self-attested a document (ibid.; PTI 1 Aug. 2014). Sources further indicate that an individual who provides a false self-attestation may be held criminally liable under the relevant sections of the Indian Penal Code (PTI 1 Aug. 2014; India 31 Jan. 2015, para. 4; *Hindustan Times* 4 Aug. 2014).

A 2015 article by PTI indicates that the state of Puducherry approved self-attestation of certificates from candidates applying to educational institutions or for government positions (9 Apr. 2015).

A memorandum produced by the state government of Himachal Pradesh states that they have decided to cease using affidavits "in government functioning and introduce self-certification of documents" and that this applies to governmental agencies, departments and organizations, except in cases in which Acts or Rules mandate the use of an affidavit (India 31 Jan. 2015). The same source further states that the directive does not apply to "Courts or to other bodies" that provide "functions of [a] judicial or quasi judicial nature" (ibid.).

Sources indicate that in 2010, the state of Punjab abolished the use of affidavits for some purposes (*Hindustan Times* 4 Aug. 2014; *The Indian Express* 17 Mar. 2010), including for utility services, "various certificates" and admission to educational institutions (ibid.). The Department of Administrative Reforms & Public Grievances document, in describing the current procedures in Punjab state, reports that "about 50 services, including 40 administrative services," including "Income, Scheduled caste, Residence [and] Ration card" as well as 10-20 utility services, including "water connection/ meter change" services are covered under the new self-attestation process (India n.d.b, 2). The same source further states that affidavits are required "only in a few matters," such as requesting arms licences, selling or purchasing vehicles, and obtaining birth, death, and marriage certificates (ibid., 3).

4. Security Features on Affidavits

According to the Allied Legal representative, most affidavit stamp papers have "unique security features" and the "genuineness of stamp paper" is used to authenticate an affidavit (Allied Legal 9 Apr. 2015).

Sources indicate that in 2004 the state of Maharashtra abolished the use of stamp paper for some affidavits and allowed the use of plain paper instead (*dna* 4 Feb. 2015; *The Times of India* 6 Aug. 2014; *Hindustan Times* 21 Jan. 2015). Sources report that the original 2004 state directive was not widely publicized or well-known and individuals continued to use stamp paper (ibid.; *dna* 4 Feb. 2015). *The Times of India*, an Indian English-language daily newspaper that is part of the media conglomerate the Times Group (The Times Group n.d.), similarly states that the 2004 directive "was not widely publicized and so stamp vendors continued to insist on its usage for obtaining caste, income, domicile and nationality certificates" (6 Aug. 2014).

In an article by *dna*, a Mumbai English daily (*dna* n.d.), the Inspector General of Registration and Controller of Stamps (Maharashtra) is quoted as stating that "[i]n a fresh initiative, the government has now

instructed all the stamp duty registration offices [to advise] individuals not to use stamp paper for the purpose of filing affidavit[s] anymore" (ibid. 4 Feb. 2015). *Hindustan Times*, an English-language daily newspaper in India, similarly indicates that in the state of Maharashtra, "stamp paper is not required for the affidavits filed by applicants for different certificates, such as caste and income certificates" and affidavits "declaring income, domicile [and] nationality among others" (*Hindustan Times* 21 Jan. 2015).

Further information on security features and other states that may have abolished the use of stamp paper for some affidavits could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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Additional Sources Consulted

Oral sources: The following were unable to provide information for this Response: Koura & Co. Law Firm; RSB League Law Firm.

Attempts to contact the following were unsuccessful within the time constraints of this Response: advocate on Record with the Supreme Court of India; Chitale & Chitale Partners; Chandra & Partners; Crawford & Bayley Law Firm; Desai & Chinoy Law Firm.

Internet sites, including: ASEAN Intergovernmental Commission on Human Rights; The Bar Council of India; Canada – High Commission of Canada in India; ecoi.net; Factiva; India – Consulate General of India in Toronto, Department of Justice, Embassy of India in Washington, DC, State of Chandigarh, State of Karnataka, State of Nagaland, State of Odisha, State of Tamil Nadu State of West Bengal; *The Statesman*; United Nations – Refworld; United States – Department of State, Embassy of the United States in New Delhi.

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