



## THE OATH ACT, 1873



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# THE OATHS ACT, 1873

## <sup>1</sup>ACT NO.X OF 1873

[8th April,1873]

### **An Act to consolidate the law relating to Judicial Oaths, and for other purposes.**

**Preamble.** WHEREAS it is expedient to consolidate the law relating to judicial oaths, affirmations and declarations, and to repeal the law relating to official oaths, affirmations and declarations; It is hereby enacted as follows:—

#### **I.—PRELIMINARY**

**1. Short title.** This Act may be called the <sup>2</sup>\* Oaths Act, 1873.

**Local extent.** <sup>3</sup>[It extends to the whole of Pakistan.]

4\* \* \* \* \*

**2.** [*Repeal of enactments.*] *Rep. by the Repealing Act, 1873 (XII of 1873).*

<sup>5</sup>**[3. Saving of certain oaths and affirmations.-** Nothing herein contained applies to proceedings before Courts Martial, or to oaths, affirmations or declarations prescribed by or under any law <sup>6</sup>[or] President's warrants <sup>7</sup>\* for the time being in force.]

#### **II.—AUTHORITY TO ADMINISTER OATHS AND AFFIRMATIONS**

**4. Authority to administer oaths and affirmations.-** The following Courts and persons are authorized to administer, by themselves or by an officer empowered by them in this behalf, oaths and affirmations in discharge of the duties or in exercise of the powers imposed or conferred upon them respectively by law:—

**(a)** all Courts and persons having by law or consent of parties authority to receive evidence;

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<sup>1</sup>For the Statement of Objects and Reasons, see Gazette of India, 1873, Pt' V, p. 17; for Proceedings in Council, see *ibid.*, 1872, Supplement, p. 889; *ibid.*, 1873, Supplement, pp. 3, 233, 235 to 246, 281,395, and 410; *ibid.*, 1873, Extra Supplement, pp. 1 to 8.

This Act has been declared to be in force in Balochistan by the British Balochistan Laws Regulation, 1913 (2 of 1913), s. 3.

This Act has been extended to the Leased Areas of Balochistan, see the Leased Areas (Laws) Order, 1950 (G.G.O. 3 of 1950); and applied in the Federated Areas of Balochistan, see Gazette of India, 1937, Part I, page 1499.

<sup>2</sup>The word "Indian" omitted by A. O., 1949, Sch.

<sup>3</sup>Para.2 of section 1, as amended by A. O., 1937, A. O.,1949 and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s. 4 and III Sch., has been subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th Oct, 1955).

<sup>4</sup>The commencement clause was rep. by the Repealing Act, 1876 (12 of 1876).

<sup>5</sup>The original section 3 has successively been amended by the Indian Oaths (Amdt.) Act, 1919 (6 of 1919), s. 2, A.O., 1937, A.O., 1949, Sch., and A.O., 1961, Art. 2 and Sch. (with effect from the 23rd March, 1956), to read as above.

<sup>6</sup>Ins. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s.3 and IInd Sch.

<sup>7</sup>The word "or" omitted *ibid.*

<sup>1</sup>[(b) the Commanding Officer of any military, naval or air force station or ship occupied by the Armed Forces of Pakistan, provided that the oath or affirmation is administered within the limits of the station or on the ship.]

Provided—

(1) that the oath or affirmation be administered within the limits of the station, and

(2) that the oath or affirmation be such as a Justice of the Peace is competent to administer in <sup>2</sup>[Pakistan].

### III.—PERSONS BY WHOM OATHS OR AFFIRMATIONS MUST BE MADE

**5. Oaths or affirmations to be made by.**— Oaths or affirmations shall be made by the following persons:—

(a) **witnesses** ; all witnesses, that is to say, all persons who may law fully 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; [and]<sup>3</sup>

(b) **interpreters** ; interpreters of questions put to, and evidence given by, witnesses [:]<sup>4</sup>

5\*            \*            \*            \*            \*            \*            \*

**Jurors.** <sup>6</sup>[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 he 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 6 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.]

Nothing herein contained shall render it lawful to administer, in a criminal proceeding, an oath or affirmation to the accused person, <sup>7</sup>[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.

<sup>8</sup>[**6. Oath by a Muslim or by a non-Muslim who has no objection.**— (1) Where the witness or interpreter is a Muslim, he shall make an oath.

(2) Where the witness or interpreter is not a Muslim, he shall make an oath or, if he has an objection to making an oath, an affirmation.]

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<sup>1</sup> Clause (b) as amended by Act 35 of 1934, s. 2 and Sch., Act 10 of 1927, s. 2 and Sch. I and A. O., 1961. Art. 2 (w.e.f. 14-10-1955), has been subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and IInd Sch.

<sup>2</sup> Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for “the Provinces and the Capital of the Federation” which had been subs. by A. O., 1949, Arts. 3(2) and 4, for “British India”.

<sup>3</sup> The word “and” added by Ordinance 27 of 1981 s. 3 and IInd Sch.

<sup>4</sup> Subs. *ibid.*, for “; and”

<sup>5</sup> Clause (c) omitted *ibid.*,

<sup>6</sup> Proviso ins. by the Indian Oaths (Amtd.) Act, 1939 (39 of 1939).

<sup>7</sup> Ins. by Ord. 27 of 1981, s. 3 and 2nd Sch.

<sup>8</sup> Subs. *ibid.*, for the original section 6.

#### IV.—FORMS OF OATHS AND AFFIRMATIONS

**7. Forms of oaths and affirmations.** All oaths and affirmations made under section 5 shall be administered according to such forms as the High Court may from time to time prescribe.

And until any such forms are prescribed by the High Court, such oaths and affirmations shall be administered according to the forms now in use.

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**8. Power of Court to tender certain oaths.** If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion 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 herein before contained, tender such oath or affirmation to him.

**9. Court may ask party or witness whether he will make oath proposed by opposite party.** If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question.

**10. Administration of oath if accepted.** If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or, if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to take the evidence of the person to be sworn or affirmed and return it to the Court.

**11. Evidence conclusive as against person offering to be bound.** The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

**12. Procedure in case of refusal to make oath.** If the party or witness refuses to make the oath or solemn affirmation referred to in section 8, he shall not be compelled to make it, but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it, and that he refused it, together with any reason which he may assign for his refusal.

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<sup>1</sup>The Explanation to section 7 was rep. by the Lower Burma Courts Act, 1900 (6 of 1900),s. 48 and IIInd Sch.

## V.—MISCELLANEOUS

**13. 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 form in which any one of them 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.

**14. Persons giving evidence bound to state the truth.** Every person giving evidence on any subject before any Court or person hereby authorized to administer oaths and affirmations shall be bound to state the truth on such subject<sup>1</sup>.

**15.** [*Amendment of Penal Code, ss. 178 and 181.*] *Rep. by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

**16. Official oaths abolished.** Subject to the provisions of sections 3 and 5, no person appointed to any office shall, before entering on the execution of the duties of his office, be required to make any oath, or to make or subscribe any affirmation or declaration whatever.

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**SCHEDULE.**—[*Rep. by the Repealing Act, 1873 (XII of 1873).*]

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<sup>1</sup>Cf. the Pakistan Penal Code (Act 45 of 1860), s. 191.

