

THE NOTARIES ACT, 1952

INTRODUCTION

By virtue of an ancient English Statute, the Master of Faculties in England used to appoint notaries public in India for performing all recognised notarial functions. After India attained independence, it became necessary to empower the Central and State Governments to appoint notaries. A Bill on the subject was introduced in the Parliament on 19th April, 1951 which was referred to Select Committee on 18th August, 1951. The report of the Select Committee was presented on 4th October, 1951 but the Bill could not be proceeded with in the last session of Parliament for want of time and, therefore, it lapsed. After making certain changes as suggested by the Select Committee the Notaries Bill was again introduced in the Parliament.

STATEMENT OF OBJECTS AND REASONS

Under section 138 of the Negotiable Instruments Act, 1881, the Government of India have the power to appoint notaries public, but only for the limited purpose of performing functions under that Act. By virtue of an ancient English Statute, the Master of Faculties in England used to appoint notaries public in India for performing all recognised notarial functions, but it is not longer appropriate that persons in this country who wish to function as notaries should derive their authority from an institution in the United Kingdom.

The object of the present Bill is to empower the Central and State Governments to appoint notaries, not only for the limited purposes of the Negotiable Instruments Act, but generally for all recognised notarial purposes, and to regulate the profession of such notaries.

A Bill on the subject was accordingly introduced in the provisional Parliament on the 19th April, 1951 and referred to a Select Committee on the 18th August, 1951. The report of the Select Committee was presented on the 4th October, 1951, but the bill could not be proceeded with in the last Session of Parliament for want of time and, therefore, lapsed. Apart from one or two minor drafting changes, the present Bill follows closely the Notaries Bill, 1951, as amended by the Select Committee.

ACT 53 OF 1952

The Notaries Bill, having been passed by both the Houses of Parliament received the assent of the President on 11th August, 1952. It came on the Statute Book as THE NOTARIES ACT, 1952 (53 of 1952) (*Came into force on 14-2-1956*).

LIST OF ADAPTATION ORDER AND AMENDING ACTS

1. The Adaptation of Laws (No. 3) Order, 1956 (w.e.f. 1-11-1956).
2. The Repealing and Amending Act, 1957 (36 of 1957) (w.e.f. 17-9-1957).
3. The Central Laws (Extension to Jammu and Kashmir) Act, 1968 (25 of 1968) (w.e.f. 15-8-1968).
4. The Delegated Legislation Provisions (Amendment) Act, 1983 (20 of 1983) (w.e.f. 15-3-1984).
- *5. The Notaries (Amendment) Act, 1999 (36 of 1999) (w.e.f. 17-12-1999).

* This Act was repealed by the Repealing and Amending Act, 2015 (17 of 2015), sec. 2 and First Sch. (w.e.f. 13-5-2015). The Repeal of this Act shall not affect the validity, invalidity, effect or consequences of anything already done or suffered, or any right, title, obligation or liability already acquired, accrued or incurred, or any remedy or proceeding in respect thereof, or any release or discharge of or from any debt, penalty, obligation, liability, claim or demand, or any indemnity already granted, or the proof of any past act or thing.

THE NOTARIES ACT, 1952

(53 of 1952)¹

[9th August, 1952]

An Act to regulate the profession of notaries.

BE it enacted by Parliament as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Notaries Act, 1952.

(2) It extends to the whole of India ²[***].

(3) It shall come into force on such date³ as the Central Government may, by notification in the Official Gazette, appoint.

2. Definitions.—In this Act, unless the context otherwise requires,—

⁴[***]

(b) “instrument” includes every document by which any right or liability is, or purports to be, created, transferred, modified, limited, extended, suspended, extinguished or recorded;

⁵(c) “legal practitioner” means an advocate entered in any roll under the provisions of the Advocates Act, 1961 (25 1961);]

(d) “notary” means a person appointed as such under this Act:

Provided that for a period of two years from the commencement of this Act it shall include also a person who, before such commencement was appointed a notary public ⁶[under] the Negotiable Instruments Act, 1881 [XXVI of 1881], ⁷[***] and is, immediately before such commencement, in practice in ⁸[any part of India:

Provided further that in relation to the State of Jammu and Kashmir the said period of two years shall be computed from the date on which this Act comes into force in that State];

(e) “prescribed” means prescribed by rules made under this Act;

1. The Act has been extended to Goa, Daman and Diu by Reg. 12 of 1962, sec. 3 and Sch., Dadra and Nagar Haveli to by Reg. 6 of 1963, sec. 2 and Sch I, and to Pondicherry by Act 26 of 1968, sec. 3 and Sch., and the State of Sikkim by S.O. 213(E), dated 16th May, 1975, published in the Gazette of India, Extra., 1975, Pt. II, Sec. 3(ii) (w.e.f 16-5-1975).
2. The words “except the State of Jammu and Kashmir” omitted by Act 25 of 1968, sec.2 and Sch. (w.e.f. 15-8-1968).
3. Came into force on 14-2-1956, *vide* S.R.O. 317, dated 10th February, 1956, published in the Gazette of India, Extra., Pt. II, Sec. 3, p.179.
4. Clause (a) omitted by Act 25 of 1968, sec. 2 and Sch. (w.e.f. 15-8-1968).
5. Subs. by Act 36 of 1999, sec. 2, for clause (c) (w.e.f. 17-12-1999).
6. Subs. by Act 25 of 1968 sec. 2 and Sch., for “either under” (w.e.f. 15-8-1968).
7. The words “or by the Master of Faculties in England,” omitted by Act 25 of 1968, sec. 2 and Sch. (w.e.f.15-8-1968).
8. Subs. by Act 25 of 1968, sec. 2 and Sch., for “any part of India” (w.e.f. 15-8-1968).

(f) "Register" means a Register of Notaries maintained by the Government under section 4;

¹[(g) "State Government", in relation to a Union territory means the administrator thereof.]

3. Power to appoint notaries.—The Central Government, for the whole or any part of India, and any State Government, for the whole or any part of the State, may appoint as notaries any legal practitioners or other persons who possess such qualifications as may be prescribed.

COMMENTS

A notary appointed by Government gets no salary, as the work does not keep him fully occupied; *Phagu Ram v. State of Punjab*, AIR 1965 Punj 220.

4. Registers.—(1) The Central Government and every State Government shall maintain, in such form as may be prescribed, a Register of the notaries appointed by that Government and entitled to practise as such under this Act.

(2) Every such Register shall include the following particulars about the notary whose name is entered therein, namely:—

- (a) his full name, date of birth, residential and professional address;
- (b) the date on which his name is entered in the Register;
- (c) his qualifications; and
- (d) any other particulars which may be prescribed.

STATE AMENDMENT

Gujarat.—After section 4 insert the following new section, namely:—

"4A.—Special provision regarding registered Notaries of Gujarat.—(1) Notwithstanding anything contained in this Act, the State Government of Gujarat shall prepare in the form prescribed for a Register required to be maintained under section 4, a Register of Notaries for the State of Gujarat as hereinafter provided.

(2) The State Government of Gujarat shall, by an order published in the Official Gazette, enter in the Register the names of notaries and all particulars relating thereto appearing in the Register maintained immediately before the 1st May, 1960 by the State Government of Bombay (hereinafter referred to as 'the Bombay Register') after excluding from such names, the name of any notary whose professional address as recorded in the Bombay Register falls outside the State of Gujarat.

(3) Before making any Order under sub-section (2), the State government of Gujarat shall make such inquiry as it deems necessary, and give an opportunity to the person whose name is proposed to be excluded from the Register, to make his representation, if any.

(4) On preparation of the Register as aforesaid,—

- (a) the Register as so prepared shall, for all purposes of this Act, be deemed to be the Register maintained for the State of Gujarat;
- (b) all persons whose names have been entered in the Register shall, for the residue of the period for which they were appointed by the State Government of Bombay, be deemed to have been appointed by the State Government of Gujarat, and accordingly, the certificate of practice issued to them under section 5 shall be deemed to have been amended so as to restrict their area of practice to the State of Gujarat."

[*Vide* Notaries Act (Gujarat Adaptation) Order, 1961, published in the Gujarat Government Gazette, Pt. IVA, p. 3, dated 27th April, 1961.]

1. Subs. by the A.L. (No. 3) O. 1956, for clause (g) (w.e.f. 1-11-1956).

5. Entry of names in the Register and issue or renewal of certificates of practice.—(1) Every notary who intends to practise as such ¹[may], on payment to the Government appointing him of the prescribed fee, if any, be entitled—

- (a) to have his name entered in the Register maintained by that Government under section 4; and
- (b) to a certificate authorising him to practise for a period of ²[five years] from the date on which the certificate is issued to him.

³[(2) The Government appointing the notary, may, on receipt of an application and the prescribed fee, renew the certificate of practice of any notary for a period of five years at a time.]

STATE AMENDMENT

Section 5A

Maharashtra.—After section 5, insert the following section, namely:—

"5A. Special provision regarding Register of Notaries for the State of Maharashtra.—(1) Notwithstanding anything contained in this Act, the State Government of Maharashtra may, by order published in the Official Gazette, amend the Register, maintained before the 1st day of May 1960 by the State Government of Bombay, by deleting therefrom the name of any notary whose professional address as recorded in the Register, falls outside the State of Maharashtra:

Provided that, before passing any order as aforesaid, the State Government of Maharashtra shall make such inquiry as it deems necessary, and give an opportunity to the person concerned to make his representation, if any.

(2) After the amendment of the Register as aforesaid,—

- (a) the Register as so amended shall, for all purposes of this Act, be deemed to be the Register for the State of Maharashtra; and
- (b) all persons whose names remain thereon shall (for the residue of the period for which they were appointed by the State Government of Bombay) be deemed to have been appointed by the State Government of Maharashtra and accordingly, the certificates of practice issued to them under section 5 shall be amended so as to restrict their area of practice to the State of Maharashtra."

[Vide The Central Acts on State and Concurrent Subjects (Maharashtra Adaptation) Order, 1960 (w.r.e.f. 1-5-1960).]

COMMENTS

(i) Every notary has to pay the fee, if he wishes to practise. If he wants to get his certificate renewed, then also he will have to pay the fee; *Kashi Prasad v. State*, AIR 1967 All 173.

(ii) The licence of a notary can be renewed even if he has attained the age of 70, this renewal cannot be withheld; *Jagat Jiban Lahiri v. State of Bengal*, AIR 1985 Cal 140.

6. Annual publication of lists of notaries.—The Central Government and every State Government shall, during the month of January each year, publish in the Official Gazette a list of notaries appointed by that Government and in practice at the beginning of that year together with such details pertaining to them as may be prescribed.

7. Seal of notaries.—Every notary shall have and use, as occasion may arise, a seal of such form and design as may be prescribed.

1. Subs. by Act 36 of 1999, sec. 3, for "shall" (w.e.f. 17-12-1999).

2. Subs. by Act 36 of 1999, sec. 3, for "three years" (w.e.f. 17-12-1999).

3. Subs. by Act 36 of 1999, sec. 3, for sub-section (2) (w.e.f. 17-12-1999).

8. Functions of notaries.—(1) A notary may do all or any of the following acts by virtue of his office, namely:—

- (a) verify, authenticate, certify or attest the execution of any instrument;
- (b) present any promissory note, *hundi* or bill of exchange for acceptance or payment or demand better security;
- (c) note or protest the dishonour by non-acceptance or non-payment of any promissory note, *hundi* or bill of exchange or protest for better security or prepare acts of honour under the Negotiable Instruments Act, 1881 (XXVI of 1881), or serve notice of such note or protest;
- (d) note and draw up ship's protest, boat's protest or protest relating to demurrage and other commercial matters;
- (e) administer oath to, or take affidavit from, any person;
- (f) prepare bottomry and respondentia bonds, charter parties and other mercantile documents;
- (g) prepare, attest or authenticate any instrument intended to take effect in any country or place outside India in such form and language as may conform to the law of the place where such deed is entitled to operate;
- (h) translate, and verify the translation of, any document, from one language into another;
- ¹[(ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;]
- ¹[(hb) act as an arbitrator, mediator or conciliator, if so required;]
- (i) any other act which may be prescribed.

(2) No act specified in sub-section (1) shall be deemed to be a notarial act except when it is done by a notary under his signature and official seal.

COMMENTS

(i) Attestation of affidavit by Notary without deponent being present before him amounts to misconduct; *State of Kerala v. G. Sreedharan*, AIR 2013 Ker 1.

(ii) The burden to prove that the duties of the notaries have not been performed properly, is on the plaintiff; *Pandurangan v. Sarangapani*, AIR 1982 Mad 372.

(iii) When a certified copy of a document (which is a true copy of the original) is executed, a notary has to make, its entry in the register and put his signatures and seal on the copy of the document. As far as the identity of the executant is concerned, a notary is bound to take care about it; *Prataprai Trumbaklal Mehta v. Jayant Nemchand Shah*, AIR 1992 Bom 149.

9. Bar of practice without certificate.—(1) Subject to the provisions of this section, no person shall practise as a notary or do any notarial act under the official seal of a notary unless he holds a certificate of practice in force issued to him under section 5:

Provided that nothing in this sub-section shall apply to the presentation of any promissory note, *hundi* or bill of exchange for acceptance or payment by the clerk of a notary acting on behalf of such notary.

(2) Nothing contained in sub-section (1) shall, until the expiry of two years from the commencement of this Act, apply to any such person as is referred to in the proviso to clause (d) of section 2:

1. Ins. by Act 36 of 1999, sec. 4 (w.e.f. 17-12-1999).

¹[Provided that in relation to the State of Jammu and Kashmir the said period of two years shall be computed from the date on which this Act comes into force in that State.]

10. Removal of names from Register.—The Government appointing any notary may, by order, remove from the Register maintained by it under section 4 the name of the notary if he—

- (a) makes a request to that effect; or
- (b) has not paid any prescribed fee required to be paid by him; or
- (c) is an undischarged insolvent; or
- (d) has been found, upon inquiry in the prescribed manner, to be guilty of such professional or other misconduct as, in the opinion of the Government, renders him unfit to practise as a notary; ²[or]
- ²(e) is convicted by any court for an offence involving moral turpitude; or]
- ²(f) does not get his certificate of practice renewed.]

COMMENTS

Where the certificate of a notary is cancelled, the Government if satisfied can re-issue the certificate and allow him to practise as a notary; *Kashi Prasad v. Government of Uttar Pradesh*, AIR 1969 All 195.

11. Construction of references to notaries public in other laws.—Any reference to a notary public in any other law shall be construed as a reference to a notary entitled to practise under this Act.

12. Penalty for falsely representing to be a notary, etc.—Any person who—

- (a) falsely represents that he is a notary without being appointed as such, or
- (b) practises as a notary or does any notarial act in contravention of section 9,

shall be punishable with imprisonment for a term which may extend to ³[one year], or with fine, or with both.

13. Cognizance of offence.—(1) No court shall take cognizance of any offence committed by a notary in the exercise or purported exercise of his functions under this Act save upon complaint in writing made by an officer authorised by the Central Government or a State Government by general or special order in this behalf.

(2) No magistrate other than a presidency magistrate or a magistrate of the first class shall try an offence punishable under this Act.

14. Reciprocal arrangements for recognition of notarial acts done by foreign notaries.—If the Central Government is satisfied that by the law or practice of any country or place outside India, the notarial acts done by notaries within India are recognized for all or any limited purposes in that country or place, the Central Government may, by notification in the Official Gazette, declare that the notarial acts lawfully done by notaries within such country or place shall be recognised within India for all purposes or, as the case may be, for such limited purposes as may be specified in the notification.

COMMENTS

(i) Foreign litigants can seek justice in India only if the Notaries Act of our country is recognized in that foreign country and Notaries Act of such country is recognised in our country; *In re : K.K. Ray Pvt. Ltd.*, AIR 1967 Cal 636.

1. Ins. by Act 25 of 1968, sec. 2 and Sch. (w.e.f.15-8-1968).

2. Ins. by Act 36 of 1999, sec. 5 (w.e.f 17-12-1999).

3. Subs. by Act 36 of 1999, sec. 6, for "three months" (w.e.f. 17-12-1999).

(ii) A notary public of U.S.A. is also recognised in India. There is no need for the Central Government to issue notice under section 14 before such acts are legally recognized by the courts; *Rajesh Wadhwa v. Dr. (Mrs.) Sushma Govil*, 37 (1989) DLT 88.

(iii) Section 85 of the Evidence Act is applicable to both the Notaries Act, as well as, notaries functioning in other countries; *Abdul Jabbar v. 2nd Additional District Judge Orai*, AIR 1980 All 369.

15. Power to make rules.—(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the qualifications of a notary, the form and manner in which applications for appointment as a notary may be made and the disposal of such applications;
- (b) the certificates, testimonials or proofs as to character, integrity, ability and competence which any person applying for appointment as a notary may be required to furnish;
- ¹[(c) the fees payable for appointment as a notary and for the issue and renewal of a certificate of practice, area of practice or enlargement of area of practice and exemption whether wholly or in part, from such fees in specified classes of cases;]
- (d) the fees payable to a notary for doing any notarial act;
- (e) the form of Registers and the particulars to be entered therein;
- (f) the form and design of the seal of a notary;
- (g) the manner in which inquiries into allegations of professional or other misconduct of notaries may be made;
- (h) the acts which a notary may do in addition to those specified in section 8 and the manner in which a notary may perform his functions;
- (i) any other matter which has to be, or may be, prescribed.

²[(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.]

16. Amendment of Act XXVI of 1881.—[*Rep. by the Repealing and Amending Act, 1957 (36 of 1957), sec. 2 and Sch. I (w.e.f. 17-9-1957).*]

1. Subs. by Act 36 of 1999, sec. 7, for clause (c) (w.e.f. 17-12-1999).

2. Ins. by Act 20 of 1983, sec. 3 and Sch. (w.e.f. 15-3-1984).