

## Special Legal Issues Seminar

**“Notarisation, Apostille, Legalisation, and Digital Signatures of Documents for the purposes of filings in India (courts and IP Offices)”**

**Issue: Is it possible to notarise digitally signed documents in India?**

## Introduction

- Notarizing a document is the process of having a notary public verify the authenticity of the document and the signature(s) on it. A notary public is a person authorized by the government to serve as an impartial witness in various legal transactions. Only a notary public can notarize a document, either certifying a legal document as genuine or an original, authenticating a signature or certifying or witnessing a person's identity. In India, notarization is governed by the Notaries Act, 1952.
- An apostille is used specifically for authentication of public documents with the purpose of making them fully legally recognizable in a foreign country. Apostille is a certificate issued under Article 3(1) of the Hague Apostille Convention, an international treaty that enables a single certificate—an Apostille—to be issued to certify the authenticity of the origin of a 'public document'. In India, an apostille is issued by the Ministry of External Affairs (MEA) that authenticates the origin of a public document (e.g., a birth, marriage or death certificate, judgments, patents, notarial attestations, etc).
- 2 ■ Legalization is the process of authenticating documents for use in countries not signatories to the Hague Convention of 1961. A document will usually first have to be notarized and/or apostilled before it can be legalized.
- Digital Signatures are a form of electronic signatures that authenticate documents in the digital space, recognized under the Information Technology Act, 2000.

# Notarization of Documents

- **Definition and Purpose**

In India, notarization is governed by the Notaries Act, 1952. Notarization is a formal process where a notary public, an appointed legal professional under the Notaries Act, 1952, verifies the authenticity of a document and the identities of the individuals signing it. The purpose of notarisation is to ensure the credibility of the document and the integrity of the transaction it represents.

- **Qualifications for being appointed as a ‘notary’ under Rule 3 of Notaries Rules, 1956 –**

*“No person shall be eligible for appointment as a notary unless on the date of the application for such appointment*

*(a) a person had been practising at least for ten years, or*

*(aa) a person belonging to Scheduled Castes /Scheduled Tribes and other backward classes had been practising at least for seven years, or*

*(ab) a woman who had been practising at least for seven years, as a legal practitioner, or*

*(ac) a person with benchmark disability as defined in clause (r) of section 2 of the Rights of Persons with Disabilities Act, 2016 (49. of 2016), who has been practicing for at least seven years, as a legal practitioner;*

*(b) he had been a member of the Indian Legal Service under the Central Government, or*

*(c) he had been at least for ten years,-*

*(i) a member of Judicial Service; or*

*(ii) held an office under the Central Government or a State Government requiring special knowledge of. ;law after enrolment as an advocate; or*

*(iii) held an office in the department of Judge Advocate General or in the legal department of the armed forces.”*

## Relevant Legal Provision

### **Section 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;*

*(ha) act as a Commissioner to record evidence in any civil or criminal trial if so directed by any court or authority;*

*(hb) act as an arbitrator, mediator or conciliator, if so required;*

*(i) any other act which may be prescribed.*

## Notarization Procedure

- **Identity Verification:** The notary public verifies the identity of the person(s) signing the document using government-issued identification.
- **Document Signing:** The person(s) sign the document to be notarized in the presence of the notary.
- **Affixation of Notarial Stamp:** The notary public affixes their signature, official seal, and a notarial certificate, which acts as an official confirmation of the document's validity.
- **Registration (if required):** In some cases, notarized documents are registered with the Sub-Registrar under the **Registration Act, 1908**.
- **5** Further, documents to be notarized are generally required to be **physically signed before a qualified Notary Officer**. Documents requiring registration are also to be physically signed before the concerned registrar.

# Apostille

## Definition and Purpose

- An apostille is a form of authentication for documents that are intended to be used internationally, specifically in countries that are members of the Hague Convention of 1961. The apostille confirms that a document is genuine and eliminates the need for further verification by consular or embassy authorities in the foreign country.
- Apostille is a certificate issued under **Article 3(1) of the Hague Apostille Convention of 1961**, an international treaty that enables a single certificate to be issued to certify the authenticity of the origin of a ‘public document’.
- The Apostille Convention is intended to simplify the procedure through which a document, issued in one of the contracting states, can be certified for legal purposes in the other contracting states of the Convention.
- India, since 2005, is a member of the Hague Convention of October 5, 1961 that abolished the requirement of legalization of foreign public documents. Apostille is acceptable in all member-countries of the Convention. Apostille is done for personal documents like birth/death/marriage certificates, Affidavits, Power of Attorney, etc. and educational documents like degree, diploma, matriculation and secondary level certificates etc. As India is a member of the Hague Apostille Convention, 1961, no further attestation or legalization of a document apostilled by a member country, is required for using such apostilled document in India. An apostilled document is, therefore, be treated as legalized document for all purposes in India by all concerned authorities, in accordance with the international obligation under the Convention.

## Process for issuing Apostille in India

- 1. Document Notarization:** The concerned public document must be first notarized by a notary public.
- 2. Verification by State Authorities:** For certain documents, such as educational or personal certificates, the state-level Home Department or Human Resource Department must verify them.
- 3. Apostille by MEA:** Once the document has been verified, the Ministry of External Affairs (MEA) affixes the apostille, which includes a certificate confirming that the document is valid under international law.

### **Relevance for Filings in India:**

For foreign documents presented in Indian courts or IP offices, an apostille from the originating country's competent authority is required to ensure the document's legitimacy without the need for additional embassy-level authentication.

### **Documents Commonly Apostilled include:**

Educational Certificates, Birth and Marriage Certificates, Court Orders, etc.

## Relevant Judicial Decisions

- In the landmark case of *Re K.K. Ray (Private) Pvt. Ltd. [AIR 1967 Calcutta 636]*, the Calcutta High Court considered the crucial question of whether the affidavits affirmed before a Notary Public of a foreign country can be accepted within the Indian Courts. In light of Section 14 of the Notaries Act, the court referred to the reciprocity provision and held that where such provision is applicable, the affidavits are permissible in India, provided they must be duly apostilled in India. In other words, affidavit drawn on foreign soil must be apostilled for it to be considered as validly notarised in India. Moreover, the court also laid down that the document cannot be thrown out of the court just because it was not apostilled- this was considered to be a procedural irregularity which can be cured upon acknowledgement.
- In *Crocodile Int. Pte Ltd. And Anr. v. Lacoste S.A. and Anr. [FAO (OS) 110/2007]*, the parties were engaged in a trademark and copyright infringement dispute over the Crocodile (device) mark. One of the objections before the court was- that the affidavit which had been executed on foreign soil and had not been legalized or apostilled was no affidavit in the eyes of law. The Delhi High Court dealt with this issue stating that Diplomatic or Consular Officers were empowered to administer oath and to take any affidavit, and also to do the notarial act which a Notary public may do in the State where the Diplomatic or Consular service is functioning. The documents notarized by these officers were therefore deemed to be validly notarized in India.



# Legalization of Documents

- **Definition and Purpose**

For educational documents issued in India, such as school reports, university degree certificates, transcripts of records, enrollment certificates, and other school or university certificates, to be recognized and valid abroad, they must undergo an authentication process through legalization. Legalization is a process similar to apostille, used for countries that are **not signatories to the Hague Convention of 1961** and is required when the destination country does not recognize or accept the apostille certification. It involves certifying the authenticity of a document for use in foreign countries through a series of certifications by multiple authorities, culminating with the embassy or consulate of the country where the document is to be used. One needs to submit the original document, along with any required copies or supporting materials, to the respective consular office. The consular officials review the document, verify its authenticity, and affix their seal or stamp to certify its validity. The consular legalization process may require additional steps like obtaining translations of the document into the language of the destination country or providing additional supporting documentation as requested by the consular office.

- **Legal Framework**

The legalization process is governed by bilateral treaties or specific requirements of non-Hague Convention countries. In India, this process is typically handled by the Ministry of External Affairs and relevant foreign consulates.

## Legalization Process in India

- 1. Document Notarization:** The concerned public document must be first notarized by a notary public.
- 2. State Government Authentication:** For personal or educational documents, the relevant state authority (e.g., Home Department) provides verification.
- 3. MEA Authentication:** The Ministry of External Affairs certifies the document.
- 4. Consulate/Embassy Legalization:** The document is then legalized by the consulate or embassy of the country where the document will be used (destination country).

### Relevance for Filings in Indian Courts and IP Offices:

Legalization is essential for submitting documents originating from non-Hague Convention countries in Indian courts or IP offices. Without proper legalization, such documents may be rejected on grounds of authenticity.

# Digital Signatures

- A digital signature is a cryptographic technique used to validate the authenticity and integrity of digital messages, documents, or software. It provides a way for the recipient to verify that the sender is who they claim to be and that the content has not been altered/tampered with since it was signed.
- In India, digital signatures are governed by the **Information Technology Act, 2000**, and their use is regulated by the **Controller of Certifying Authorities (CCA)**. Digital signatures are legally recognized for electronic filings with government authorities, including courts and IP offices.
- **Section 2(1)(p) of the Information Technology Act, 2000** defines "Digital Signature" as authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3(1).
- **Section 5 of the Information Technology Act, 2000** gives legal recognition to digital signatures based on asymmetric cryptosystems.
- Certification Agencies are appointed by the office of the Controller of Certifying Authority (CCA) to issue Digital Signature Certificate (DSC) as per Section 35 of IT Act, 2000.

## Authentication using Digital Signature

- The authentication of the electronic record is done by creating a digital signature which is a mathematical function of the message content. Such signatures are created and verified by Cryptography, which is a branch of applied mathematics. It is used to secure the confidentiality and authentication of the data by replacing it with a transformed version that can be reconverted to reveal the original data only to someone who has the proper key.
- A key is a sequence of symbols that controls the operation of a cryptographic transformation.
- **It involves two processes which are as follows.**
  - a) **Encryption:** The process of transforming the plain message into a cipher text.
  - b) **Decryption:** The reversal of Cipher text into the original message.
- Digital signatures are typically issued by a trusted third-party organization known as a Certifying Authority (CA). These entities verify the identity of individuals or organizations applying for digital signatures and issue digital certificates, which contain the public key and other identifying information. **Section 24(1) of the Information Technology (Certifying Authorities) Rules, 2000** states that- *“no person shall issue a Digital Signature Certificate unless he has been granted a license to do so by the Controller.”*

## Relevant Legal Provision

- **Section 3 of the Information Technology Act, 2000** states that a subscriber (a person in whose name an electronic signature Certificate is issued) may authenticate an electronic record by affixing their digital signature using the *asymmetric crypto system* and hash function.
- As per **Section 2(1)(f) of the Information Technology Act, 2000**, "asymmetric crypto system" means a system of a secure key pair consisting of a private key for creating a digital signature and a public key to verify the digital signature.
- Under this system, there is a pair of keys, a private key known only to the sender and a public key known only to the receivers. The private key is kept secret and known only to the signer, while the public key is shared with others. The digital signature is created by applying a mathematical algorithm to the content being signed and the signer's private key.
- When a digital signature is created, it is attached to the digital document or message. To verify the signature, the recipient uses the signer's public key to decrypt the signature and compare it to a computed value based on the original content. If the two values matches, the signature is considered valid, indicating that the document has not been altered and was indeed signed by the holder of the private key.
- Since the pandemic, when the movement of people got limited to a large extent, several Indian companies had to adapt to changing circumstances which inter-alia included execution of documents such as employment contracts, non-disclosure agreements, licensing agreements, etc., electronically either by way of e-signatures, scanned signatures or signatures availed through web-based service providers such as **DocuSign, Adobe sign** etc.

## Relevant Judicial Decision

- The Delhi High Court recently validated the execution of electronic documents in *Singh And Singh Law Firm LLP & Anr v. Singh And Singh Attorneys & Ors. [CS(COMM) 466/2024]*, wherein while hearing a suit seeking protection of mark “Singh & Singh” used in relation to legal services, the Court dealt with the validity of electronic documents whilst deciding an application seeking permission to file electronically signed & Notarised Affidavit and Vakalatnama.
- The counsel for Plaintiffs had filed an interlocutory application seeking permission from the court to file electronically signed and Notarised Affidavits and Vakalatnama. The Plaintiffs submitted that because of pressing commitments, the Plaintiffs’ constituted attorney could not visit the office of the Notary Public. Therefore, the constituted attorney utilized the online notary platform “**NotarEase**,” through which, she appeared virtually before a qualified Notary Officer in Delhi and digitally signed the Affidavits and Vakalatnama in support of the suit and accompanying applications, before the Officer. The screenshots of the video call, completion certificate issued by eMudhra, and document log details, explaining the procedure adopted were reproduced in the application.
- After considering the afore-noted submissions, the single judge bench of the Delhi High Court observed that Plaintiffs’ constituted attorney had electronically signed the Notarised Affidavits filed along with the petition and accompanying applications as well as the Vakalatnama. Accordingly, the application was allowed by the Court and the electronically signed and notarised affidavits were taken on record.

## Conclusion

- With the rise of electronic signatures, there is a pressing need for electronic notarization, which can validate the authenticity and integrity of documents. As the issue of notarising electronically signed documents in India has remained somewhat unclear due to the lack of extensive judicial testing and precedents, it is needed that more orders/judgments are passed by Courts in India confirming the validity of such executed electronic documents thereby restoring the confidence of business owners and stakeholders in such electronic transactions.
- The processes of notarization, apostille, legalization, and digital signatures are essential to ensure the authenticity, integrity, and legal acceptance of documents filed in Indian courts and IP offices. Each process has distinct legal importance depending on the document's origin, destination, and purpose.
- Digital platforms (like NotarEase) have evolved to overcome the traditional challenges of notarisation, such as the challenge of being physically present at the time of notarization and the time it takes to get documents notarized.

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**THANK YOU!**  
**Questions?**

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