

treated as false evidence or fabricating evidence nor it could be treated as certificate nor a declaration under any of the provisions of this section.^{36.}

[s 191.13] Abetment.—

Where an accused asked a witness to suppress certain facts in giving his evidence against him (accused), it was held that he was guilty of abetment of giving false evidence in a stage of a judicial proceeding.^{37.} Where C falsely represented himself to be U, and the writer of a document signed by U, and T, knowing that C was not U and had not written such document, adduced C as U, the writer of that document, it was held that T was guilty of abetment of giving false evidence.^{38.}

[s 191.14] Bar under [section 195 Cr PC, 1973](#).—

Section 195 of the Code lays down the procedure for prosecution for contempt of lawful authority of public servants for offences against public justice and for offences against public documents given in the form of evidence. As per this provision, Court is debarred from taking cognizance of any of the offences punishable under sections 193–196, 199, 200, 205–211 and section 228, when such offence is alleged to have been committed in, or in relation to, any proceedings in any Court except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in that behalf or of some other Court to which that Court is subordinate. The term "Court" in the section means a Civil, Revenue or Criminal Court and includes a tribunal. Section 340 of the Code prescribes the procedure to be followed for offences mentioned in section 195 of the Code. Therefore, the summoning orders of the Magistrate against the petitioners under sections 193/191/209 [IPC, 1860](#) are hit by provisions of section 195 of the Code and the cognizance taken by the Magistrate of the offences is, therefore, without jurisdiction.^{39.} [Sections 191 and 192 of the IPC, 1860](#) are the sections that define offences for which punishment is provided for in sections 193 and 195 as mentioned in section 195(1)(b) (i), [Criminal Procedure Code](#). So the bar to initiate proceedings is applicable to sections 191 and 192 also.^{40.}

[s 191.15] Procedure.—

A combined reading of the aforequoted provisions of [Cr PC, 1973](#) and [IPC, 1860](#) as also sub-section (3) of [section 195, Cr PC, 1973](#) makes this legal position quite clear that they are applicable to any legal proceeding before a Civil Court or a Criminal Court, including a Tribunal constituted by Central, Provincial or State Acts, if declared by that particular Act to be a Court for the purpose of [section 195, Cr PC, 1973](#). Therefore, if the Family Court finds that any party to the proceeding or a witness therein has intentionally given false evidence at any stage of a judicial proceeding or fabricated false evidence for the purpose of being used in any stage of the proceeding, and the Family Court is of the opinion that it is expedient in the interest of justice that an enquiry should be made into any evidence referred to in clause (b) of sub-section (1) of [section 195, Cr PC, 1973](#) it may hold a preliminary enquiry and if it thinks necessary then it may record a finding to that effect and then proceed to make a complaint in respect of the particular offence/offences stipulated in clause (b) of [section 195, Cr PC, 1973](#) to the concerned Magistrate having jurisdiction against the said person.^{41.}

1. *S Palani Velayutham v District Collector Tirunvelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .
2. *Chandra Shashi v Anil Kumar Verma*, 1995 (1) SCC 421 [LNIND 1994 SC 1604] .
3. *Mishrilal v State of MP*, (2005)10 SCC 701 [LNIND 2005 SC 1165] : 2005 SCC (Cr) 1712.
4. *Abdul Majid v Krishna Lal Nag*, (1893) 20 Cal 724 ; *Niaz Ali*, (1882) 5 All 17 ; *Mata Dayal* (1897) 24 Cal 755 ; *Subba*, (1883) 6 Mad 252; *Fatteh Ali*, (1894) PR No. 15 of 1894.
5. *Chait Ram*, (1883) 6 All 103 ; *Bharma*, (1886) 11 Bom 702 (FB).
6. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
7. (1865) 2 WR (CrL) 9.
8. *Gobind Chandra Seal*, (1892) 19 Cal 355 ; *Shava v State*, (1891) 16 Bom 359; contra, *Maru*, (1888) 10 All 207 .
9. *Ranjit Singh*, 1959 Cr LJ 1124 : AIR 1959 SC 843 [LNIND 1959 SC 63] .
10. *Hari Charan Singh*, (1900) 27 Cal 455 .
11. *Parbutty Churn Sircar*, (1866) 6 WR (Cr) 84; *Damodhar P Kulkarni*, (1868) 5 BHC (CrC) 68.
12. *Mohammad Khudabux*, (1949) Nag 355.
13. *Echan Meeah*, (1865) 2 WR (Cr) 47. *Mohammad Hussein v State of Maharashtra*, 1995 Cr LJ 2364 (Bom).
14. *Mawbey*, (1796) 6 TR 619, 637; *Schlesinger*, (1847) 10 QB 670 .
15. *Muhammad Ishaq*, (1914) 36 All 362 .
16. Cross & Jones: *Introduction to Criminal Law*, 9th Edn, p 275.
17. *Ramcharan*, 1968 Cr LJ 1473 : AIR 1968 SC 1267 [LNIND 1968 SC 29] ; *Balak Ram*, 1974 Cr LJ 1486 : AIR 1974 SC 2165 [LNIND 1974 SC 236] .
18. *Ibid. Kuriakose v State of Kerala*, 1995 Cr LJ 2687 : 1994 Supp (1) SCC 602 , contradictory statements as to contents of panchanama by an attesting witness does not make him liable to be prosecuted under the section, gravity of the false statement has also to be taken into account.
19. *Prem Sagar Manocha v State (NCT of Delhi)*, 2016 Cr LJ 1090 : (2016) 4 SCC 571 [LNIND 2016 SC 9] .
20. *Mehrban Singh*, (1884) 6 All 626 ; *Padam Singh*, (1930) 52 All 856 .
21. *Ratanchand v State*, (1904) 6 Bom LR 886 .
22. *Kasi Chunder Mozumdar*, (1880) 6 Cal 440 .
23. (1867) 3 MHC (Appx.) XXXIX.
24. *Virasami v State*, (1896) 19 Mad 375; *Batesar Mandal*, (1884) 10 Cal 604 .
25. *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, AIR 2018 SC 5412 [LNIND 2018 SC 565] .
26. Note G, p 131.
27. *Criminal Procedure Code*, section 313 (3).
28. *Buddhi Kota Subbarao v K Parasaran*, AIR 1996 SC 2687 [LNIND 1996 SC 1254] : (1996) 5 SCC 530 [LNIND 1996 SC 1254] .
29. *Indian Structural Engineering Company Pvt Ltd v Pradip Kumar Saha*, 2009 Cr LJ 4229 (Cal).
30. *Prema Bhika* (1863) 1 BHC 89.
31. *Luxumandas*, (1869) Unrep CrC 25.
32. *Shama Churn Roy*, (1867) 8 WR (Cr) 27.

33. *Baban Singh v Jagdish Singh*, AIR 1967 SC 68 [LNIND 1966 SC 47] : 1967 Cr LJ 6 ; MP Paul, 1973 Cr LJ 1284 (Ker).
34. *State v Manohar Yeshwant Paul*, 1997 Cr LJ 3114 (Bom).
35. *Delhi Lotteries v Rajesh Agarwal*, AIR 1998 : 1332 (Del).
36. *D Jothi v K P Kandasamy*, 2000 Cr LJ 292 (Mad).
37. *Andy Chetty*, (1865) 2 MHC 438 .
38. *Chundi Churn, Nauth*, (1867) 8 WR (Cr) 5.
39. *Kusum Sandhu v Sh Ved Prakash Narang*, 2009 Cr LJ 1078 (Del).
40. *Premjit Kaur v Harsinder Singh*, (1982) 2 SCC 167 : (1982) 1 SCC (Cr) 379 : 1982 CrLR 318.
41. *Arun Kumar Agarwal v Mrs. Radha Arun*, 2001 Cr LJ 3561 (KAR).

THE INDIAN PENAL CODE

CHAPTER XI OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE

Under the [Indian Penal Code, 1860](#) offences relating to false evidence and offences against public justice are contained in Chapter XI. In relation to proceeding in any Court, the offences enumerated are: giving false evidence or fabricating false evidence (sections 191–193); giving or fabricating false evidence with intent to procure conviction (sections 194 and 195); threatening any person to give false evidence (section 195A); using evidence known to be false (section 196); using as true a certificate known to be false (section 198); making a false statement in a declaration which is by law receivable as evidence (section 199); using as true any declaration receivable as evidence, knowing it to be false (section 200); causing disappearance of evidence of offence, or giving false information to screen offender (section 201); intentional omission to give information of offence by person bound to inform (section 202); giving false information in respect of an offence (section 203); destruction of document or electronic record to prevent its production as evidence (section 204); false personation (section 205); fraudulent removal/concealment of property (section 206); fraudulent claim to property (section 207); fraudulently suffering or obtaining decree for sum not due (section 208 and section 210); dishonestly making a false claim in Court (section 209); and intentional insult or interruption to public servant sitting in judicial proceedings (section 228). [Section 195 of Code of Criminal Procedure](#) provides that no Court shall take cognizance of any offence punishable under section 172–188 (dealing with the contempt of the lawful authority of public servants) or section 193–196, 199, 200, 205–211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of that Court by such officer of the Court as that Court may authorise in writing in this behalf, or of some other Court to which that Court is subordinate.^{1.}

[s 192] Fabricating false evidence.

Whoever causes any circumstance to exist or ^{42.} [makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement], intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding,¹ or in a proceeding taken by law before a public servant² as such, or before an arbitrator, and that such circumstance, false entry or false statement so appearing in evidence, may cause any person who in such proceeding is to form an opinion upon the evidence, to entertain an erroneous opinion touching any point material³ to the result of such proceeding, is said "to fabricate⁴ false evidence".

ILLUSTRATIONS

- (a) A, puts jewels into a box belonging to Z, with the intention that they may be found in that box, and that this circumstance may cause Z to be convicted of theft. A has fabricated false evidence.
- (b) A makes a false entry in his shop-book for the purpose of using it as corroborative evidence in a Court of Justice. A has fabricated false evidence.

- (c) A, with the intention of causing Z to be convicted of a criminal conspiracy, writes a letter in imitation of Z's handwriting, purporting to be addressed to an accomplice in such criminal conspiracy, and puts the letter in a place which he knows that the officers of the Police are likely to search. A has fabricated false evidence.

COMMENT.—

The wording of this section is so general as to cover any species of crime, which consists in the endeavour to injure another by supplying false data upon which to rest a judicial decision.

[s 192.1] Ingredients.—

The offence defined in this section has three ingredients:—

- (1) Causing any circumstance to exist, or making any false entry in any book or record, or making any document containing a false statement.
- (2) Doing one of the above acts with the intention that it may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant or an arbitrator.
- (3) Doing such act with the intention that it may cause any person, who in such proceeding, is to form an opinion upon the evidence to entertain an erroneous opinion touching any point material to the result of such proceeding.⁴³ From a careful reading of [section 192, IPC, 1860](#), what transpires is that whoever forges a document, containing false statement or false entry, intending that such false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, so appearing in evidence, may cause any person, who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion in such proceeding, he is said to fabricate false evidence.⁴⁴

1. 'Judicial proceeding'.—The [Code of Criminal Procedure](#) says that 'judicial proceeding' includes any proceeding in the course of which evidence is or may be legally taken on oath [section 2(i)]. The power to take evidence on oath, which includes affirmation as well,⁴⁵ is the characteristic test of 'judicial proceeding'. 'Judicial proceeding' means nothing more or less than a step taken by a Court in the course of administration of justice in connection with a case.⁴⁶ Execution proceedings are judicial proceedings.⁴⁷

It is not essential that there should be any judicial proceeding pending at the time of fabrication. It is enough that there is a reasonable prospect of such a proceeding having regard to the circumstances of the case and that the document in question is intended to be used in such a proceeding.⁴⁸

2. 'Public servant'.—The provisions of this section are not confined to false evidence to be used in judicial proceedings, but to any proceeding before a public servant. A Government correspondence was stealthily removed by accused No. 1 and handed over to the pleader of accused Nos. 2 and 3. The correspondence was replaced by accused No. 1. It was afterwards discovered that some papers had disappeared from the correspondence whilst others had been either mutilated or altered. It was held that accused Nos. 2 and 3 were guilty of offences under sections 466 and 193.⁴⁹

3. 'Material'.—The false evidence under this section should be material to the case in which it is given though not so under section 191.⁵⁰ The word 'material' means of such a nature as to affect in any way, directly or indirectly, the probability of anything to be determined by the proceeding, or the credit of any witness, and a fact may be material although evidence of its existence was improperly admitted.⁵¹

4. 'Fabricate'.—The term fabrication refers to the fabrication of false evidence; and if the evidence fabricated is intended to be used in a judicial proceeding, the offence is committed as soon as the fabrication is complete; it is immaterial that the judicial proceeding has not been commenced,⁵² or that no actual use has been made of the evidence fabricated. The mere fabrication is punishable under section 193; the use of the fabricated evidence is punishable under section 196.

The evidence fabricated must be admissible evidence.⁵³

[s 192.2] Liability of accused for fabricating false evidence.—

It has been held by the High Courts of Calcutta⁵⁴ and Bombay⁵⁵ that an offender who fabricates false evidence to screen himself from punishment is liable to be convicted under this section. The Allahabad High Court⁵⁶ has veered round to the same view, after distinguishing an earlier case⁵⁷ to the contrary.

[s 192.3] Vicarious liability.—

Neither [section 192 IPC, 1860](#) nor [section 199 IPC, 1860](#), incorporate the principle of vicarious liability, and therefore, it was incumbent on the complainant to specifically aver the role of each of the accused in the complaint.⁵⁸ [Penal Code](#) does not contain any provision for attaching vicarious liability on the part of the managing Director or the Director for the Company when the accused is the company. Vicarious liability arise provided any provision exists in that behalf in the statute. It is obligatory on the part of the complainant to make requisite allegations which would attract the provision constituting vicarious liability.⁵⁹

[s 192.4] CASES.—Fabrication of evidence to be used in judicial proceeding.—

The brother of an accused person applied to the Court on behalf of the accused asking that the witnesses for the prosecution might first be made to identify the accused. The Court assenting to this request, he produced before the Court ten or twelve men, none of whom could be identified as the accused by any of the witnesses. Upon being asked by the Court where the accused was, he pointed out a man who was not the accused. It was held that he was guilty of fabricating false evidence.⁶⁰ The accused, who was in possession of the complainant's house as a yearly tenant, about the time the tenancy came to an end, prepared another rent-note for a period of four years and got it registered without the complainant's knowledge. It was held that the accused had fabricated false evidence inasmuch as the rent-note, which contained an admission against the interest of the accused, could be admitted in evidence on his behalf.⁶¹ By swearing a false affidavit the accused makes himself *prima facie* liable under section 193 read with [sections 191 and 192 of the IPC, 1860](#).⁶² In order to have the value of CFC excluded for the purpose of excise duty, letters were fabricated and the same were

seized in a raid. Fifteen months later, taking up a notice of motion, High Court directed filing of criminal complaints against the appellant under section 192. While agreeing that the Division Bench was not wrong in making the direction, which it did on the merits of the case, Supreme Court held that the High Court did not appear to have bestowed sufficient attention while deciding upon the expediency contemplated by section 340.⁶³

[s 192.5] No fabrication if no erroneous opinion could be formed touching any point material to result of proceeding.—

It is now well settled that prosecution for perjury should be sanctioned by the Court only in those cases where there is a *prima facie* case of deliberate and conscious falsehood on a matter of substance and the conviction is reasonably probable or likely.⁶⁴ It is also very necessary that the portions of the witness's statement in regard to which he has, in the opinion of the Court, perjured himself, should be specifically set out in or form annexure to the show cause notice issued to the accused so that he is in a position to furnish adequate and proper reply in regard thereto and be able to meet the charge.⁶⁵

[s 192.6] No fabrication of evidence fabricated is inadmissible.—

The mere fact that a document would be ultimately inadmissible in evidence does not necessarily take it out of the mischief of section 193.⁶⁶

1. *S Palani Velayutham v District Collector Tirunelveli TN*, (2010) 1 SCC (Cr) 401 : (2009) 10 SCC 664 [LNIND 2009 SC 1659] : (2009) 12 SCR 1215 [LNIND 2009 SC 1659] .

42. Subs. by The [Information Technology Act, 2000](#) (Act 21 of 2000) section 91 and First Sch, w.e.f. 17 October 2000, for the words "makes any false entry in any book or record, or makes any document contained on false statement". The words "electronic record" have been defined in section 29A.

43. *Babu Lal v State of UP*, (1964) 1 Cr LJ 555 : AIR 1964 SC 725 [LNIND 1963 SC 218] .
Maharashtra State Electricity Distribution Co Ltd v Datar Switchgerar Ltd, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ. 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68; See *State of MP v Asian Drugs*, 1990 Cr LJ 105 MP, the defence exposing fabrication by Inspectors under The [Drugs and Cosmetics Act, 1940](#) (23 of 1940).

44. *Sushanta Sarkar v State of Nagaland* 2012 Cr LJ 4467 (Gau).

45. The [General Clauses Act, 1897](#) (X of 1897), section 3 (37)

46. *Venkatachalam Pillai*, (1864) 2 MHC 43 ; *Tulja v State*, (1887) 12 Bom 36, 42.

47. *Govind Pandurang*, (1920) 22 Bom LR 1239 , 45 Bom 668.

48. *Rajaram*, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] ; *Govind Pandurang*, *Ibid*.

49. *Vallabhram Ganpatram*, (1925) 27 Bom LR 1391 .

50. Tookaram, (1862) Unrep. CrC 2.
51. Stephen's Digest, Art 148; SP Kohli, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
52. Mula, (1879) 2 All 105 .
53. Zakir Husain, (1898) 21 All 159 .
54. Superintendent and Remembrancer of Legal Affairs, Bengal v Taraknath Chatterji, (1935) 62 Cal 666 .
55. Rama Nana, (1921) 46 Bom 317, 23 Bom LR 987.
56. Bhagirath Lal, (1934) 57 All 403 .
57. Ram Khilawan, (1906) 28 All 705 .
58. Maharashtra State Electricity Distribution Co Ltd v Datar Switchgear Ltd, (2010) 10 SCC 479 [LNIND 2010 SC 979] : 2011 Cr LJ 8 : (2010) 12 SCR 551 : (2011) 1 SCC (Cr) 68.
59. Maksud Saiyed v State of Gujarat, (2008) 5 SCC 668 [LNIND 2007 SC 1090] : JT 2007 (11) SC 276 [LNIND 2007 SC 1090] : 2008 (5) SCR 1240 : (2008) 6 Scale 81 [LNIND 2008 SC 848] : (2008) 2 SCC (Cr) 692.
60. Cheda Lal, (1907) 29 All 351 .
61. Rajaram, (1920) 22 Bom LR 1229 [LNIND 1920 BOM 119] .
62. Baban Singh, 1967 Cr LJ 6 : AIR 1967 SC 68 [LNIND 1966 SC 47] .
63. Phiroze Dinshaw Lam v UOI, 1996) 8 SCC 209 : (1996) 1 SCC (Cr) 575.
64. SP Kohli, 1978 Cr LJ 1804 : AIR 1978 SC 1753 [LNIND 1978 SC 235] .
65. Ibid.
66. Mahesh Chandra Dhupi, (1940) 1 Cal 465 .

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[s 193] Punishment for false evidence.

Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding,¹ shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine, and whoever intentionally gives or fabricates false evidence in any other case,² shall be punished with imprisonment of either description for a term which may extend to three years, and shall also be liable to fine.

Explanation 1.—A trial before a Court-martial; ⁶⁷. [***] is a judicial proceeding.

Explanation 2.—An investigation directed by law preliminary to a proceeding before a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in an enquiry before a Magistrate for the purpose of ascertaining whether Z ought to be committed for trial, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding, A has given false evidence.

Explanation 3.—An investigation directed by a Court of Justice according to law, and conducted under the authority of a Court of Justice, is a stage of a judicial proceeding, though that investigation may not take place before a Court of Justice.

ILLUSTRATION

A, in any enquiry before an officer deputed by a Court of Justice to ascertain on the spot the boundaries of land, makes on oath a statement which he knows to be false. As this enquiry is a stage of a judicial proceeding. A has given false evidence.

COMMENT.—

Sections 191 and 192 define the offences punishable under this section. The first paragraph applies only to cases in which the false evidence is given in a judicial proceeding, the second to all other cases. If the offence is committed in any stage of a judicial proceeding it is more severely punishable than when it is committed in a non-judicial proceeding.

Intention is the essential ingredient in the [constitution](#) of this offence. If the statement was false, and known or believed by the accused to be false, it may be presumed that in making that statement he intentionally gave false evidence. In order to make a person liable for perjury it is necessary that he should have made a statement on oath regarding the facts on which his statement was based and then deny those facts on oath on a subsequent occasion.⁶⁸ The mere fact that a deponent has made contradictory statements at two different stages in a judicial proceeding is not by itself always sufficient to justify a prosecution for perjury under section 193 but it must be established that the deponent has intentionally given false statement in any stage of the 'judicial proceeding' or fabricated false evidence for the purpose of being used in any stage of the 'judicial proceeding'.⁶⁹

It is not necessary that the false statement should be material to the case. The gist of the offence is the giving or fabrication of false evidence intentionally. Where knowledge of falsity is proved, intention is readily presumed.⁷⁰

1. 'Any stage of a judicial proceeding'.—The recording of a statement under section 161 itself is a judicial proceeding in view of Explanation 2 to section 193 in so far as recording of a statement is part of the investigation directed by law preliminary to a proceeding before a Court of justice and therefore is a stage of the judicial proceedings. Mere failure to support contention made in said FIR while giving evidence under [section 164 Cr PC, 1973](#), can't conclusively lead to hold that he had given false evidence by departing from contentions made in FIR.⁷¹ Where a witness in Sessions trial deposing contrary to what he had said in a statement recorded under section 164, recourse to section 340 cannot be taken without first deciding whether the earlier statement was false.⁷² In the course of proceedings for execution of a decree in a Court which had no jurisdiction to entertain such proceedings the judgment-debtor made a false statement and produced a forged receipt. The Court made a complaint under [section 195 of the Criminal Procedure Code](#) for prosecution of the judgment-debtor in respect of the said offences; it was held that if during the course of the proceedings which were *ultra vires* and illegal any offence under section 471 of the Code was committed, it could not be said that it was committed in or in relation to, or by a party to, any judicial proceedings, in which evidence could be legally taken, and therefore the complaint must be dismissed.⁷³ Since enquiry conducted by an officer of the Railway Protection Force is a judicial proceeding under [section 9 of The Railway Property \(Unlawful Possession\) Act, 1966](#), furnishing of false documents in course of