The offence under this section has now been made a cognizable offence under the Cr PC, 1973. Though a bailable offence, it can be made non-bailable by a notification by the State Government under section 10(2) of the Criminal Law Amendment Act, 1932.

There must be evidence that the accused had knowledge of the order with the disobedience of which he is charged. Mere proof of a general notification promulgating the order does not satisfy the requirements of the section.[114.] "Promulgation" does not require publication in newspapers or by posters.[115.] Mere disobedience of an order does not constitute an offence in itself; it must be shown that the disobedience has or tends to a certain consequence,[116.] namely, annoyance, obstruction, etc. The annoyance has to be proved as a fact; mere mental annoyance of the authorities concerned is not enough.[117.] It is also necessary to see that the order was not only lawfully made but duly promulgated and the accused had knowledge of the order, else his conviction cannot be sustained.[118.] Where a standing crop was attached by means of an order under section 145 Cr PC, 1973 and the accused, who had come to know the order, reaped and removed the crop, an offence under this section was held to have been committed. It was a disobedience packed with a tendency to cause riot or affray.[119.] The complaint of this offence must disclose that the disobedience of the order led to the consequences narrated in clauses (2) and (3) of section 188, IPC, 1860, otherwise no cognizance can be taken on such a complaint.[120.] It is not necessary that, if the order disobeyed was that of a civil Court, a complaint should be received from that Court. A criminal Court can entertain a complaint of disobedience from any other source.[121.]

It is open to a person charged under this section to plead in defence that the order, though made with jurisdiction, was utterly wrong or improper on merits.[122.]

[s 188.1] Necessary particulars in the complaint.—

In order to attract the provisions of section 186 IPC, 1860, it has to be seen whether the public servant in the discharge of his public functions has been voluntarily obstructed or not. It is reiterated that what was mentioned in the complaint was that the government administration was disrupted for half an hour. Mere disruption of government administration without there being a specific mention that the public servants were obstructed from voluntarily discharging their public functions would not attract section 186 IPC, 1860.[123.]

Knowledge of orders.—The offence of disobedience of the orders of a public servant is not committed where there is nothing to show that the accused person had knowledge of the order.[124.]

[s 188.2] Curfew Order and Shoot to kill.—

Violation of a curfew order under section 144, Cr PC, 1973, is a minor offence punishable under section 188, IPC, 1860, and as such the executive instruction to "Shoot to Kill" for violation of a prohibitory order under section 144 Cr PC, 1973, is *ultra vires* section 144 Cr PC, 1973, section 188 IPC, 1860, Articles 20(1) and 21 of the Constitution and is, therefore, void and unlawful.[125.]

[s 188.3] Prohibitory order under Food and Safety Standards Act, 2006.—

Disobedience to a prohibitory order issued by the Food and Safety Commissioner from possessing or transporting *Gutka* or *Pan Masala* would not cause breach of law and order. The Commissioner's order is not an order contemplated under Chapter 10 of the IPC, 1860. Besides, the prohibitory order issued under section 30 of the FSS Act, 2006 and its violation, would amount to offence only under section 55 of the FSS Act, 2006. This specific provision is made in the special enactment, which is a law in itself. It would not permit any one to apply section 188 of the IPC, 1860 for such breach or violation.[126.]

[s 188.4] Complaint.—

A written complaint by a public servant concerned is *sine qua non* to initiate a criminal proceeding under section 188 of the IPC, 1860 against those who, with the knowledge that an order has been promulgated by a public servant directing either 'to abstain from a certain act, or to take certain order, with certain property in his possession or under his management' disobey that order.[127.]

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114. *Ramdas Singh*, (1926) 54 Cal 152 .

115. *Srimati Tugla*, (1955) 2 All 547 .

116. *Lachhmi Devi*, (1930) 58 Cal 971 .

117. *Pradip*, AIR 1960 Assam 20 ; *DN Ramaiah*, 1972 Cr LJ 1158 (Mysore); *Saroj Hazra*, 48 Cr LJ 747 (Cal); *Bharat Raut*, 1953 Cr LJ 1787 24.(Pat); *Dalganjan*, 1956 Cr LJ 1176 (All); *Fakir Charan Das*, 1957 Cr LJ 1151 (Ori); *Pradip Choudhury*, 1960 Cr LJ 251 (Assam); *Ram Manohar Lohia*; 1968 Cr LJ 281 (All).

118. *K Papayya v State*, 1975 Cr LJ 1784 (AP).

119. *Bhagirathi Shrichandan v Damodar*, 1987 Cr LJ 631 (Ori).

120. *Padan Pradhan*, 1982 Cr LJ 534 (Pat).

121. *Thavasiyappan v Periasamy Nadar*, 1992 Cr LJ 283 .

122. *Bachuram v State*, AIR 1956 Cal 102 [LNIND 1955 CAL 186] .

123. *Anurag Thakur v State of HP,* 2016 Cr LJ 3363 : I L R 2016 (III) HP 1314.

124. *Bhoop Singh Tyagi v State,* 2002 Cr LJ 2872 (Del).

125. *Jayantilal v State*, 1975 Cr LJ 661 (Guj); see also *R Deb : Op Cit*, pp 840-841.

126. *Ganesh Pandurang Jadhao v The State of Maharashtra*, 2016 Cr LJ 2401 : III (2016) CCR 334 (Bom).

127. *State of UP v Mata Bhikh*, (1994) 4 SCC 95 [LNIND 1994 SC 311] : JT 1994 (2) SC 565 [LNIND 1994 SC 311] : (1994) 2 Scale 235 : (1994) 1 SCC (Cr) 831 : 1994 (2) SCR 368 [LNIND 1994 SC 311] . See also *C Muniappan v State of TN,* (2010) 9 SCC 567 [LNIND 2010 SC 809] : AIR 2010 SC 3718 [LNIND 2010 SC 809] : (2010) 3 SCC (Cr) 1402 : 2010 (8) Scale 637 : JT 2010 (9) SC 95 [LNIND 2010 SC 809] .

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 189] Threat of injury to public servant.

Whoever holds out any threat of injury to any public servant, or to any person in whom he believes that public servant to be interested, for the purpose of inducing that public servant to do any act, or to forbear or delay to do any act, connected with the exercise of the public functions of such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

State Amendment

Andhra Pradesh.— *In Andhra Pradesh offence under section 189 is cognizable.*

[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].

COMMENT—

Under this section there must be a threat of injury either to the public servant or to any one in whom the accused believes the public servant to be interested. What the section deals with are menaces which would have a tendency to induce the public servant to alter his action. See section 503 which defines criminal intimidation and applies in all cases. This section deals with criminal intimidation of a public servant. Threats of violence to a public servant who accepted bribe money but did not do the promised work are not covered by this section. A public servant deserves protection, since in the performance of his duties, he is likely to cause disappointment to many and invite their wrath. That is why under sections 189 and 353 and various other sections of the IPC, 1860, a public servant is strongly protected and punishment for offences against him is made deterrent. However if a public servant has gone astray and indulged in malpractices, more especially by way of taking bribe, he would necessarily become subject to public criticism and private accountability. What appears then at the forefront is not the performance of duty by the public servant, but the non-performance of some contract *dehors* the normal functions of the public servant. If that illegal contract gives rise to any act of violence at any stage, such acts cannot constitute by any stretch of imagination acts contemplated and punished under sections 353 and 189, IPC, 1860.[128.]

Where workers of Communist Party (Marxist) went to a police station to protest against the arrest of their party workers and in the process asked the police-officer to release them on threat of dire consequences, it was held that the accused had committed an offence under this section.[129.] By a notification under section 10 of the

Criminal Law Amendment Act, 1932, the State Government can make this section a cognizable offence for a specified area.

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128. *Duraikhannu v State of TN*, 1987 Cr LJ 1461 (Mad); *Mrityunjoy Das v State*, 1987 Cr LJ 909 (Cal).

129. *De Cruz*, (1884) 8 Mad 140.

THE INDIAN PENAL CODE

CHAPTER X OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS

This Chapter contains penal provisions intended to enforce obedience to the lawful authority of public servants. Contempt of the lawful authority of Courts of Justice, of Officers of Revenue, Officers of Police, and other public servants are punishable under this head.

[s 190] Threat of injury to induce person to refrain from applying for protection to public servant.

Whoever holds out any threat of injury to any person for the purpose of inducing that person to refrain or desist from making a legal application for protection against any injury to any public servant legally empowered as such to give such protection, or to cause such protection to be given, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.

State Amendment

Andhra Pradesh.—Offence under section 190 is cognizable.

[Vide A.P.G.O. Ms. No. 732, dated 5th December, 1991].

COMMENT—

The object of this section is to prevent persons from terrorising others with a view to deter them from seeking the protection of public servants against any injury. Where a clergyman, knowing that a civil suit was pending against a person for the possession of certain church property, excommunicated him for withholding it, it was held that the clergyman had committed no offence under this section. By a notification under section 10(1) of the Criminal Law Amendment Act, 1932 the State Government can make this offence a cognizable one for a specified area while such notification remains in force.

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 191] Giving false evidence.

Whoever, being legally bound by an oath or by an express provision of law to state the truth, or being bound by law to make a declaration upon any subject,[1] makes any statement which is false,[2.] and which he either knows or believes to be false or does not believe to be true,[3.] is said to give false evidence.

***Explanation* 1.—A statement is within the meaning of this section, whether it is made verbally or otherwise.**

***Explanation* 2.—A false statement as to the belief of the person attesting is within the meaning of this section, and a person may be guilty of giving false evidence by stating that he believes a thing which he does not believe, as well as by stating that he knows a thing which he does not know.**

ILLUSTRATIONS

(a) A, in support of a just claim which B has against Z for one thousand rupees, falsely swears on a trial that he heard Z admit the justice of B's claim. A has given false evidence.

(b) A, being bound by an oath to state the truth, states that he believes a certain

signature to be the handwriting of Z, when he does not believe it to be the handwriting of Z. Here A states that which he knows to be false, and therefore gives false evidence.

(c) A, knowing the general character of Z's handwriting, states that he believes a certain signature to be the handwriting of Z; A in good faith believing it to be so. Here A's statement is merely as to his belief, and is true as to his belief, and therefore, although the signature may not be the handwriting of Z, A has not given false evidence.

(d) A, being bound by an oath to state the truth, states that he knows that Z was at a particular place on a particular day, not knowing anything upon the subject. A gives false evidence whether Z was at that place on the day named or not.

(e) A, an interpreter or translator, gives or certifies as a true interpretation or translation of a statement or document which he is bound by oath to interpret or translate truly, that which is not and which he does not believe to be a true interpretation or translation. A has given false evidence.

COMMENT.—

Ingredients.—The offence under this section involves three ingredients:—

(1) A person must be legally bound;

  (a) by an oath, or any express provision of law, to state the truth; or

  (b) to make a declaration upon any subject.

(2) He must make a false statement.

(3) He must;

  (a) know or believe it to be false, or

  (b) not believe it to be true.

1. 'Legally bound by an oath or by an express provision of law, etc.'— In case the recourse to a false plea is taken with an oblique motive, it would definitely hinder, hamper or impede the flow of justice and prevent the Courts from performing their legal duties.[2] The Courts have to follow the procedures strictly and cannot allow a witness to escape the legal action for giving false evidence before the Court on mere explanation that he had given it under the pressure of the police or for some other reason. Whenever the witness speaks falsehood in the Court, and it is proved satisfactorily, the Court should take a serious action against such witnesses.[3] It is necessary that the accused should be legally bound by an oath before a competent authority. If the Court has no authority to administer an oath the proceeding will be *coram non judice* and a prosecution for false evidence will not stand.[4.] Similarly, if the Court is acting beyond its jurisdiction it will not be sustained.[5.] For the essentiality of section 191, petitioner must have been legally bound to speak truth or make a declaration and he must have stated or declared what is false. He must also know or believe what he has stated or declared is false or he has believed it true. If there is no compulsion to make any declaration as required by law, Section 191 will not have any

application. The information given by him is not on any oath nor was he bound to give such information under any provision of Law.[6.]

[s 191.1] 'By an oath'.—

An oath or a solemn affirmation is not a *sine qua non* in the offence of giving false evidence.[7.] The offence may be committed although the person giving evidence has been either sworn or affirmed.[8.] Whenever in a Court of law a person binds himself on oath to state the truth, he is bound to state the truth and he cannot be heard to say that he should not have gone into the witness box or should not have made an affidavit. It is no defence to say that he was not bound to enter the witness box.[9.]

[s 191.2] 'By an express provision of law'.—

Under this clause sanction of an oath is not necessary; there must be a specific provision of law compelling a person to state the truth. Where the accused is not bound by an express provision of law to state the truth he cannot be charged with giving false evidence.[10.]

[s 191.3] 'Declaration upon any subject'.—

In certain cases the law requires a declaration from a person of verification in a pleading—and if such a declaration is made falsely it will come under this clause. The words 'any subject' denote that the declaration must be in connection with a subject regarding which it was to be made.

2. 'Any statement which is false'.—It is not necessary that the false evidence should be material to the case in which it is given.[11.] If the statement made is designedly false, the accused is liable whether the statement had a material bearing or not upon the matter under enquiry before the Court.[12.]

3. 'Knows or believes to be false or does not believe to be true'.—The matter sworn to must be either false in fact, or, if true, the accused must not have known it to be so. The making of a false statement, without knowledge as to whether the subject-matter of the statement is false or not, is legally the giving of false evidence.[13.] Where a man swears to a particular fact, without knowing at the time whether the fact be true or false, it is as much perjury as if he knew the fact to be false, and equally indictable.[14.] However, a man cannot be convicted of perjury for having acted rashly, or for having failed to make reasonable inquiry with regard to the facts alleged by him to be true.[15.]

[s 191.4] Two Contradictory Statements.—

Merely because a person makes two contradictory statements, one of which must be false, it does not make out a case of perjury unless the falsity of one of the two statements as charged in the indictment is positively proved to be so.[16.] In India a prosecution for perjury seems to be possible in such a case by virtue of illustration (e) of section 221, The Code of Criminal Procedure, 1973, it has been held to be inexpedient to do so in the interest of justice. Thus, where a person made one statement under section 164 Cr PC, 1973 and a diametrically opposite statement in Court during the enquiry or trial, he could in view of this illustration be charged in the

alternative and convicted of intentionally giving false evidence, although it cannot be proved which of these contradictory statements was false. But to do so may be to tie him down to his previous false statement under section 164 Cr PC, 1973, and preventing him from telling the truth even belatedly at the later stage of enquiry or trial. The Supreme Court too has felt that a witness whose statement has been recorded under section 164 Cr PC, 1973, feels tied to his previous statement and as such his evidence has to be approached with caution.[17.] In the instant case as it could not be shown that the earlier statements of the witnesses recorded under section 164 Cr PC, 1973 were true and those given before the Magistrate in course of the enquiry were false, the complaints of perjury filed against the witnesses were directed to be withdrawn.[18.]

[s 191.5] As to expert opinion.—

A scientific expert was asked to give his opinion regarding two cartridges, whether those were fired from one firearm or from two different ones, without sending the suspected firearm to him. He gave opinion, *inter alia*, that no definite opinion could be offered in order to link the firearm unless the firearm was made available to him. During the examination, the Court insisted him to give a definite opinion that too without examining the firearm. At that time, he opined that the cartridges appeared to have been fired from two separate firearms. Considering that there was a deliberate deviation in his opinion the High Court initiated proceedings against him under section 340 Cr PC, 1973 for perjury. The Supreme Court held that it is unjust, if not unfair, to attribute any motive to the appellant that there was a somersault from his original stand in the written opinion.[19.]

[s 191.6] Written statements and applications.—

A person filing a written statement in a suit is bound by law to state the truth, and if he makes a statement which is false to his knowledge or belief, or which he believes not be to true, he is guilty of this offence.[20.] Signing and verifying an application for execution containing false statements is an offence under this section, and it makes no difference that at the time when the signature and verification were appended the application was blank.[21.] But the verification of an application, in which the applicant makes a false statement, does not subject him to punishment for this offence, if such application does not require verification.[22.]

[s 191.7] Incriminating statement no justification.—

When a party makes a false statement while legally bound by solemn affirmation, the fact that the statement was one tending to incriminate himself will not justify his acquittal on a charge of giving false evidence.[23.]

[s 191.8] Illegality of trial does not purge perjury.—

The fact that the trial in which false evidence is given is to be commenced *de novo* owing to irregularity does not exonerate the person giving false evidence in that trial from the obligation to speak the truth, and he is liable for giving false evidence.[24.]

[s 191.9] Prosecution for perjury.—

It has been held by the Supreme Court that the courts should sanction the prosecution for perjury only in those cases where perjury appears to be deliberate and where it would be expedient in the interest of justice to punish the delinquent and not merely because there is some inaccuracy in the statement.[25.]

[s 191.10] Accused not liable for giving false evidence.—

The authors of the Code observe:

We have no punishment for false evidence given by a person when on his trial for an offence, though we conceive that such a person ought to be interrogated... If A stabs Z, and afterwards on his trial denies that he stabbed Z, we do not propose to punish A as a giver of false evidence.[26.]

> The accused shall not render himself liable to punishment by refusing to answer questions put by the Court or by giving false answers to them.[27.]

[s 191.11] CASES.—

In a case, where the allegation was that the Attorney General and Chief Vigilance Officer gave consent to prosecute the Complainant without due care and without proper application of mind. The Supreme Court held that it cannot be said that the document conveying consent was a 'false document' or that giving of 'consent' amounted to giving of 'false evidence' or 'fabricating false evidence' at any stage of judicial proceeding.[28.] A person could only be held guilty of an offence under section 191 if false evidence is knowingly given or when the statement is believed to be not true.[29.] A witness falsely deposing in another's name;[30.] and a person falsely verifying his plaint;[31.] and an official making a false return of the service of summons,[32.] were held guilty of giving false evidence. The Supreme Court has held that where a false affidavit is sworn by a witness in a proceeding before a Court the offence would fall under this section and section 192. It is the offence of giving false evidence or of fabricating false evidence for the purpose of being used in a judicial proceeding.[33.] Where a notice of perjury was issued to certain eye-witnesses but it could not be shown with certainty that they were liars, it was held that the issue of notices was not proper. The Court used its inherent powers and quashed the notices. The challenge was presented by only one of the witnesses on his own behalf as well as that of others.[34.]

[s 191.12] Affidavit.—

An affidavit is evidence within the meaning of section 191 of the IPC, 1860. It was alleged about an affidavit filed in a Court that it contained false statements. The affidavit was filed by the party *suo motu* and not under direction from the Court. Such an affidavit could not be termed as evidence. Hence, no action could be taken against him under the IPC, 1860.[35.] Process Server while he takes information from the neighbours is not expected to get a sworn statement from them. It is neither an affidavit nor a sworn statement. It is only an information, which he has collected to show his *bona fides* that he made attempts to serve the notice on the party. If on the request of process server if any such information is given that information cannot be