

such an enquiry would amount to an offence under [section 193, IPC, 1860](#).<sup>74</sup> Giving false evidence in support of the prosecution case during the course of trial falls within the ambit of [sections 193 and 195, IPC, 1860](#), and not under [section 211, IPC, 1860](#), as there is no institution of criminal proceeding in such a case.<sup>75</sup> (See Comments under sub-head "Falsely Charges" under section 211 *infra*.) Where the accused abetted the offence of forgery by creating a false document with a view to use it in a suit but did not use it in the suit, it was held that there was no question of prosecuting him under [section 193, IPC, 1860](#), nor was a Court complaint under section 195(1) (b) (i), [Cr PC, 1973](#), necessary in the case. The accused could be safely prosecuted under [section 467](#) read with [section 114, IPC, 1860](#), on a private complaint.<sup>76</sup>

Where the accused police-officer asked a police official to forge the signature of his superior on the carbon copy of the counter-affidavit containing false averments and the same was filed in the Supreme Court with that forged signature, the accused was held guilty of an offence under section 192.<sup>77</sup>

Questions which a person is compelled to answer and the answers which have a tendency to incriminate, cannot be the sole basis of a charge of perjury.<sup>78</sup>

### **[s 193.1] Court Complaint: When?—**

In *Iqbal Singh Marwah v Meenakshi Marwah*,<sup>79</sup> the [Constitution](#) Bench held that the section 195(1)(b)(ii) -[Cr PC, 1973](#) which mandates that 'no Court shall take cognizance of offences relating to documents given in evidence except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate', would be attracted only when the offences enumerated in the said provision have been committed with respect to a document after it has been produced or given in evidence in a proceedings in any Court, i.e., during the time when the documents was in **custodial legis**.<sup>80</sup> Though the Rent Controller discharges *quasi-judicial* functions, he is not a Court, as understood in the conventional sense and he cannot, therefore, make a complaint under [section 340 Cr PC, 1973](#).<sup>81</sup>

### **[s 193.2] Belated complaint.—**

A witness made false statement before a competent Court and the accused were convicted. The appellate Court (Sessions Court) held that the witness had given false statement and directed that a notice be issued to him to show cause why a complaint under [section 193, IPC, 1860](#) be not filed against him. The notice was issued and after hearing him, the Court directed that a complaint be filed. The High Court found that the notice issued to him was no notice because it did not specify the portions that were found to be false, besides the statement was recorded ten years ago. The Court held that it was not proper to file a complaint at that stage. The Court set aside the order of the Sessions Judge.<sup>82</sup>

### **[s 193.3] Supreme Court cannot convert itself into trial Court.—**

The accused filed a forged affidavit before the Supreme Court. It was held by the three Judge Bench that the Supreme Court could not try and convict the accused. The order of the Supreme Court convicting the accused and sentencing him to three months' imprisonment was liable to be set aside because of non-compliance of procedure prescribed by [sections 195 and 340, Cr PC, 1973](#) and also because of lack of original jurisdiction to try a criminal offence under [section 193, IPC, 1860](#). Directions to the

competent authority to proceed in the matter were not issued because the accused had already served out the sentence of imprisonment imposed on him.<sup>83.</sup>

#### **[s 193.4] False Affidavits.—**

The swearing of false affidavits in judicial proceedings not only has the tendency of causing obstruction in the due course of judicial proceedings but has also the tendency to impede, obstruct and interfere with the administration of justice. The due process of law cannot be permitted to be slighted nor the majesty of law be made a mockery by such acts or conduct on the part of the parties to the litigation or even while appearing as witnesses. Anyone who makes an attempt to impede or undermine or obstruct the free flow of the unsoiled stream of justice by resorting to the filing of false evidence commits criminal contempt of the Court and renders himself liable to be dealt with in accordance with the Act. On facts, High Court found that apart from committing contempt of Court the accused-1 has also committed an offence of perjury punishable under [section 193, IPC, 1860](#) committed in relation to proceedings of the Court. Court directed the Registrar (Judicial) under section 340(3)(b), [Cr PC, 1973](#) to file a complaint before the jurisdictional Magistrate in this regard.<sup>84.</sup>

#### **[s 193.5] CASES.—**

A father handed over the custody of his minor daughter to the accused woman for household chores, but thereafter his efforts to get back his daughter failed. He filed a *habeas corpus* petition and the Court directed the respondent to produce the girl in response to which the respondent produced some other girl of the same name to mislead the Court. The Court directed that a complaint under sections 193, 196 and 199 be lodged against the respondent.<sup>85.</sup> Declaration in an application filed under [section 482 of Cr PC, 1973](#) that the applicant had not approached the Supreme Court or the High Court earlier is not perjury, though applicant had filed for anticipatory Bail before the Sessions Court.<sup>86.</sup>

#### **[s 193.6] Hostile witness.—**

In a prosecution under sections 489B and 489C, all prosecution witnesses who were police officials turned hostile. Subsequently they filed affidavits stating that they were threatened by higher officers not to support their previous statements during investigation. Court set aside the order of acquittal of the accused, ordered re-trial and directed to proceed under sections 193 and 195A.<sup>87.</sup> After a long span of time, the prosecution witnesses filed a false affidavit stating that they were coerced and tutored by police. They were held liable for perjury.<sup>88.</sup>

**2. 'In any other case'.—**A statement made in the course of a public investigation under [section 164 of the Code of Criminal Procedure](#) comes within these words.<sup>89.</sup> Whether the accused has really made a false statement or not is a question of fact, which can be decided at the trial and not in quashing proceeding, when the allegations, which have been made against the accused do make out a *prima facie* case under [section 193, IPC, 1860](#).<sup>90.</sup> A person married the daughter of his maternal uncle, after converting to Christianity. If they married before conversion this marriage would have come under 'Sapindas relations' which is prohibited under the [Hindu Marriage Act, 1955](#). After conversion into Christianity the marriage does not fall under 'Sapinda' relationship. It

cannot be said that there was any false declaration. It is held that offence punishable under [section 193 of IPC, 1860](#) is not made out.<sup>91.</sup>

**[s 193.7] [Section 193 IPC, 1860](#) and Section 125A of the Representation of Peoples Act, 1950.—**

Where a specific penal provision is made under the Act providing a penalty for filing false affidavit under section 125A of the Act, without anything more, for filing such a false affidavit, that alone, no prosecution under the general penal provision of [section 193 of the Penal Code](#) is entertainable. Furthermore, the penal provision under [section 193 IPC, 1860](#) has to be understood giving significance to the expressions 'intentionally giving or fabricating false evidence', 'in any stage of a judicial proceeding' or 'in any other case.' Giving or fabricating false evidence in the aforesaid section whether it be in the judicial proceeding or in any other case must have been intended to form an opinion on the evidence erroneously and such forming of opinion should be touching the point material to the result of such proceeding. Viewed in that angle the declaration to be made by a candidate in his affidavit filed with his nomination paper over the matters prescribed by the election commission when he contests an election, it cannot be stated that the candidate is giving evidence by affidavit but at best only a declaration on the particulars sought for. If the candidate fails to furnish information or gives false information which he knows or has reason to believe to be false or conceals any information he is liable to be prosecuted only for the offence under section 125A of the Act, and not for the penal offence under [section 193 IPC, 1860](#).<sup>92.</sup>

**[s 193.8] [Section 193 IPC, 1860](#) and proceedings under [section 340 Cr PC, 1973](#).—**

Power to punish under [section 344 Cr PC, 1973](#) and [section 193 Cr PC, 1973](#) are distinct. [Section 344 Cr PC, 1973](#) calls for summary trial, whereas under [section 193 IPC, 1860](#) offender is to be tried as warrant case. [Section 344 Cr PC, 1973](#) vests powers in the Courts to summarily try and punish the accused. It is for this reason that [section 344 Cr PC, 1973](#) prescribes sentence also. The Judge either should have convicted the petitioner under [section 344 Cr PC, 1973](#) or ought not to have invoked [section 193 IPC, 1860](#). Once, the Judge opted to try the petitioner for the offence under [section 193 IPC, 1860](#), it was incumbent upon him to hold an inquiry under [section 340 Cr PC, 1973](#) and then to frame a charge and try the offender for a warrant case as minimum sentence prescribed under [section 193 IPC, 1860](#) is three years.<sup>93.</sup> Before lodging a complaint as provided by section 340 of the Code, the Court has to record a finding of any (i) *prima facie* case and deliberate falsehood on a matter of substance; (ii) there is reasonable foundation for the charge; and (iii) it is expedient in the interest of justice that a complaint should be filed.<sup>94.</sup> An enquiry when made, under [section 340 \(1\) Cr PC, 1973](#), is really in the nature of affording a *locus poenitentiae* to a person and if at that stage the Court chooses to take action, it does not mean that he will not have full and adequate opportunity in due course of the process of justice to establish his innocence. When the trial of the appellant commences under [section 193, IPC, 1860](#) the reasons given or those in the order passed under section 340 (1), [Cr PC, 1973](#) should not weigh with the criminal Court in coming to its independent conclusion whether the offence under [section 193, IPC, 1860](#) has been fully established against the appellant beyond reasonable doubt.<sup>95.</sup>

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] .
67. The words "or before a Military Court of Request" omitted by Act 13 of 1889, section 2 and Sch.
68. *Ismail Khan v State of Karnataka*, 1992 Cr LJ 3566 (Kant).
69. *KTMS Mohd v UOI*, AIR 1992 SC 2199 : 1992 Cr LJ 2781 .
70. *Sadasiba*, (1956) Cut 87; *Pravinchand v Ibrahim Md*, 1987 Cr LJ 1795 (Bom).
71. *Bimal Das v The State of Tripura*, 2012 Cr LJ 1252 (Gau).
72. *Thomman v IInd Addl Sessions Judge*, 1994 Cr LJ 48 (Ker).
73. *Sumat Prasad v State*, (1942) All 42 .
74. *BC Saxena*, 1983 Cr LJ 1432 (AP).
75. *Santosh Singh v Izahar Hussain*, 1973 Cr LJ 1176 : AIR 1973 SC 2190 [LNIND 1973 SC 160] .
76. *State of Karnataka v Hemareddy*, 1981 Cr LJ 1019 : AIR 1981 SC 1417 [LNIND 1981 SC 44] : (1981) 2 SCC 185 [LNIND 1981 SC 44] .
77. *Afzal v State of Haryana*, AIR 1996 SC 2326 [LNIND 1996 SC 130] : 1996 Cr LJ 1679 .
78. *NSR Krishna Prasad v Directorate of Enforcement LBK Market*, 1992 Cr LJ 1888 (AP). See section 132, The [Indian Evidence Act](#), 1972.
79. *Iqbal Singh Marwah v Meenakshi Marwah*, (2005) 4 SCC 370 [LNIND 2005 SC 261] : AIR 2005 SC 2119 [LNIND 2005 SC 261] .
80. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
81. *Iqbal Singh Narang v Veeran Narang*, AIR 2012 SC 466 [LNIND 2011 SC 1189] : (2012) 2 SCC 60 [LNIND 2011 SC 1189] ; 2012 AIR (SCW) 730 : (2012) 1 SCC (Cr) 740.
82. *Jagdish Prasad Singhal v State of Rajasthan*, 1994 Cr LJ 759 (Raj).
83. *Randhir Singh v State of Haryana*, AIR 2000 SC 544 [LNIND 2000 SC 27] : 2000 Cr LJ 755 . Another ruling to the same effect, *MS Ahlawat v State of Haryana*, AIR 2000 SC 168 [LNIND 1999 SC 1395] : (2000) Cr LJ 388 ; *Mohammed Zahid v Govt. of NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] .
84. *Advocate General, Karnataka v Chidambara*, 2004 Cr LJ 493 (Kant).
85. *R Rathinam v Kamla Vaiduriam*, 1993 Cr LJ 2661 (Mad).
86. *Rajkumar Dhanuji Bombarde v Madhukar Wankhede*, 2008 Cr LJ 661 (Bom).
87. *Court on Its Own Motion v State of Punjab*, 2012 Cr LJ 2240 (PH).
88. *State of MP v Badri Yadav*, 2006 Cr LJ 2128 : AIR 2006 SC 1769 [LNIND 2006 SC 229] : (2006) 9 SCC 549 [LNIND 2006 SC 229] .
89. *Purshottam Ishvar*, (1920) 23 Bom LR 1 ; 45 Bom 834 (FB). *Mohammed Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : 1998 Cr LJ 2908 , false entries in case diary, interpolations, cooking up false case against the accused, show-cause notices issued against the concerned police officer for the offence.
90. *Sushanta Sarkar v State of Nagaland*, 2012 Cr LJ 4467 (Gau).
91. *O P Gogne v State*, 2012 Cr LJ 1718 (Del).
92. *Ganesh Kumar v PK Raju*, 2013 (2) Ker LT 434 : 1 LR 2013 (2) Ker 710 .
93. *Jaskaran v State of Haryana*, 2008 Cr LJ 4261 (PH).
94. *Rit Lai Khatway v State of Bihar*, 2007 Cr LJ 593 (Pat). See also *State (Govt. of NCT of Delhi) v Pankaj Chaudhary*, AIR 2018 SC 5412 [LNIND 2018 SC 565] .

95. *K Karunakaran v TV Eachara Warriar*, AIR 1978 SC 290 [LNIND 1977 SC 319] : (1978) 1 SCC 18 [LNIND 1977 SC 319] .

## 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.<sup>1</sup>

#### **[s 194] Giving or fabricating false evidence with intent to procure conviction of capital offence.**

**Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital <sup>96</sup>[by the law for the time being in force in <sup>97</sup>[India]] shall be punished with <sup>98</sup>[imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine;**

**if innocent person be thereby convicted and executed.**

**and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.**

#### **COMMENT.—**

This is an aggravated form of the offence of giving or fabricating false evidence made punishable by section 193.

To constitute an offence under this section the accused must give false evidence intending thereby to cause some person to be convicted of a capital offence. A person who brings before a Court a witness whom he has tutored to tell a false story concerning a murder case before it, commits an offence under this section.<sup>99.</sup>

**[s 194.1] CASE.—**

Where the Investigating Officer fabricated false evidence by manipulating the records in large number of documents to get the accused persons convicted and the time was not mentioned in documents prepared during investigation conviction under section 194 was held proper.<sup>100.</sup> Where the Investigating Inspector concocted false evidence with the help of two *sarpanchas* and villagers to rope in an innocent man in a false murder case which led to his conviction by the Sessions Court and during the course of hearing of the appeal in the High Court the so-called murdered man appeared in person before the High Court, it was held that the Inspector, the *sarpanchas* and the other witnesses were liable to be prosecuted under [section 194, IPC, 1860](#), read with [section 340, Cr PC, 1973](#).<sup>101.</sup>

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] .

96. Subs. by the A.O. 1948, for "by the law of British India or England".

97. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

98. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

99. *Sur Nath Bhaduri*, (1927) 50 All 365 .

100. *Suresh Chandra Sharma v State of MP*, AIR 2009 SC 3196 ; 2009 Cr LJ 4288 (SC).

101. *Darshan Singh*, 1985 Cr LJ NOC 71 (P&H). See also *Baij Nath Dubey v Avas Evam Vikas Parishad*, 1997 Cr LJ 2681 (All).

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#### **[s 195] Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment.**

Whoever gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which <sup>102</sup>[by the law for the time being in force in <sup>103</sup>[India]] is not capital, but punishable with <sup>104</sup>[imprisonment for life], or imprisonment for a term of seven years or upwards, shall be punished as a person convicted of that offence would be liable to be punished.

#### ILLUSTRATION

A gives false evidence before a Court of Justice, intending thereby to cause Z to be convicted of a dacoity. The punishment of dacoity is <sup>105</sup>[imprisonment for life], or rigorous imprisonment for a term which may extend to ten years, with or without fine. A, therefore, is liable to <sup>106</sup>[imprisonment for life] or imprisonment, with or without fine.



This section is similar to the preceding section except as regards the gravity of the offence in respect of which the perjury is committed. The preceding section deals with perjury in the case of an offence punishable with death, this section deals with perjury of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards. In the case of a person who burnt his own house and charged another with the act, it was held that he should not be convicted under this section, but under section 211,<sup>107</sup> but where A, with a view to having B convicted, assisted in concealing stolen railway pins in his house and field, it was held that A was properly convicted of an offence under this section.<sup>108</sup> Giving false evidence in support of the prosecution case amounts to an offence under [sections 193 and 195, IPC, 1860](#), and not under [section 211, IPC, 1860](#).<sup>109</sup> Misstatement of facts and concealment of an essential fact in a writ petition amounts to giving false evidence. The petitioner was liable to face proceedings for giving false evidence.<sup>110</sup> It is not necessary that fabrication of false evidence takes place only inside the Court as it can also be fabricated outside the Court though has been used in the Court.<sup>111</sup>

A Disciplinary Proceedings Tribunal is not a Court for the purposes of this section. It is not "a court in the accepted sense of that term, though it may possess some of the trappings of a court."<sup>112</sup> A party giving an answer to a question put under Order 10 r. 2 of the [CPC](#) when not under oath and when not being examined as a witness, cannot attract [section 195 IPC, 1860](#).<sup>113</sup> Police-officers fabricated the evidence in order to book the appellant under TADA. From the materials on record, Supreme Court was of the opinion that it is expedient in the interest of justice that an enquiry should be made in accordance with sub-section (1) of [section 340, Cr PC, 1973](#) into the commission of offences under sections 193, 195 and 211.<sup>114</sup>

### **[s 195.1] St. Kitts (Chandraswamy) Case.—**

The respondent, was at the relevant time, serving as Director (Enforcement) with the government of India. The respondent was a public servant at the time of the commission of the alleged offence, no cognizance of the offence could have been taken against him in the absence of sanction under [section 197 Criminal Procedure Code](#).<sup>115</sup>

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] .

102. Subs. by the A.O. 1948, for "by the law of British India or England".

103. Subs. by Act 3 of 1951, section 3 and Sch, for "the States" (w.e.f. 1 April 1951).

104. Subs. by Act 26 of 1955, section 117 and Sch, for "transportation for life" (w.e.f. 1 January 1956).

105. Subs. by Act 26 of 1955, section 117 and Sch., for "transportation for life" (w.e.f. 1 January 1956).

106. Subs. by Act 26 of 1955, section 117 and Sch., for "such transportation" (w.e.f. 1 January 1956).

107. *Bhugwan Ahir*, (1867) 8 WR (Cr) 65.

108. *Rameshar Rai*, (1877) 1 All 379 .

109. *Santokh Singh*, 1973 Cr LJ 1176 : AIR 1976 SC 2190 .
110. *Dehri Cooperative Development v State of Bihar*, 2002 Cr LJ 3396 (Pat); *Mohammed Zahid v Govt. NCT of Delhi*, 1998 Cr LJ 2908 : AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] , for note on the case see under section 193. Also see *Harrianna Gowda v State of Karnataka*, 1998 Cr LJ 4756 (Kant).
111. *Ram Dhan v State of UP*, 2012 (4) Scale 259 [LNIND 2012 SC 1057] : 2012 AIR (SCW) 2500 : 2012 Cr LJ 2419 : (2012) 5 SCC 536 [LNIND 2012 SC 1057] : AIR 2012 SC 2513 [LNIND 2012 SC 1057] **relied** on *Sachida Nand Singh v State of Bihar*, (1998) 2 SCC 493 [LNIND 1998 SC 138] .
112. *R Venkat Reddy v State of AP*, 1992 Cr LJ 414 .
113. *Kapil Corepacks Pvt Ltd v Harbans Lal*, 2 AIR 2010 SC 2809 [LNIND 2010 SC 697] : 2010 (7) Scale 558 [LNIND 2010 SC 697] : (2010) 9 SCR 500 [LNIND 2010 SC 697] : (2010) 3 SCC (Cr) 924.
114. *Mohd Zahid v Govt. of NCT of Delhi*, AIR 1998 SC 2023 [LNIND 1998 SC 557] : (1998) 5 SCC 419 [LNIND 1998 SC 557] .
115. *State through Central Bureau of Investigation v B L Verma*, (1997) 10 SCC 772 ; See also *Asha Sunder Shivdasani v Aruna Ramesh Kriplani*, 2001 Cr LJ 2146 (Bom) - proceedings quashed as hit by section 195 Cr PC, 1973.