***Perjurers only ‘gain’, they ‘lose’ nothing***

***Victims of perjury ‘always lose’***

**How perjurer wins at every turn of litigation is, schematically, elucidated by the author through following points -**

* ***Firstly, making false statement in Court(s), practically, goes undetected in lot many cases or despite detection, the opposite party fails to prove its falsity and hence in large number of cases, perjurer wins the case.***
* ***Secondly, even if the opposite party or his counsel detects the falsehoods and demonstrate the same to the Court and wins the case defeating the falsehoods; in Indian Justice System of today, too many years are wasted in demonstrating the falsity of such a false statement or forgery of such a false or forged document and all this time the perjurer keeps on enjoying the fruits of property or right for which he is not entitled.***
* ***Thirdly, since no penal action is, normally, taken against him for professing such falsehood(s), he repeats the exercise again elsewhere, victimising yet another law-abiding litigant.***
* ***Fourthly, even if a judge decides to take penal action against such perjury, he issues Show Cause Notice (even contrary to the mandate of full bench decision of Hon’ble Supreme Court in “Pritish Vs. State of Maharashtra (2002) 1 SCC 253”, and again months & years are consumed debating on this Show Cause Notice.***
* ***Fifthly, the perjurer may challenge the issuance of Show-Cause Notice or prosecution launched under S.340 Cr.P.C. and most often gets the same quashed, as demonstrated by various judgments & decisions cited in this book, bringing procedural loopholes or lack of understanding of provisions of S.340 Cr.P.C. or Summary procedure under S.344 Cr.P.C. on the part of the Court concerned.***
* ***Sixthly, he may, on receiving Show-Cause Notice, even tender apology, and hence may be allowed to go scot-free, say after paying a cost of Rs.50,000/- or so, which may not be even 1/3rd of the fees/legal expenses incurred by the victim party in demonstrating the falsehood and its litigative offshoots.***
* ***Seventhly, even if he gets prosecuted, still may get acquitted by exploiting the loops & lacunas of interpretation.***

***Finally, even if he gets convicted, he may still enjoy leniency of Court(s) and escape with mocking punishment of ‘admonition’ as in*** ***State Vs. ASI Shankar Lal etc.*** (cited in #1.4.3 ***post***)

***An honest assessment will reveal that out of about 50 million cases pending in Indian Courts, upto about 20 million cases may be plagued with the evil of professing falsehoods either in pleadings or in evidence or even in arguments. Out of these about 20 million cases, hardly, in few thousand cases, applications U/S.340 Cr.P.C. are moved and in just few hundred of such applications prosecutions are preferred. Unfortunately, analysis may reveal that not even in scores of such prosecutions, law takes its just & correct course. And in all those 20 million cases, it can be said that ‘perjury rules’ if not winning ultimately but certainly delaying the justice to the needy & aggrieved.***

Chapter 1

1. **Law of Perjury – An Outline**

The administration of justice in any civilised society is prime requirement for sustaining the regulated growth and development of the Society in an orderly manner. Any laxity or inefficiency in administering justice has high impact on separatist and explosive tendencies. The failure of system of justice administration acts like a double-edged sword, one in the form of rebellious display by dissatisfied lot of the litigants, accentuating their tendency to lose faith in the system of ‘Rule of Law’ and consequent taking of law in their own hands. The other form appears as encouragement to those anti-social elements who already have disruptive elements in their characters, having no control of morality on their minds and are out on breaking the law without any regard to other people’s dignity, liberty, or convenience.

Like any other system of law, we also have in built voluminous provisions of law to control the errant behaviour and punish the guilty.

* 1. **Problem of Proof Vs. Truth**

It will be enlightening to borrow a para (as quoted by Hon’ble Delhi High Court in **“State (GNCT of Delhi) Vs. Siddhartha Vashisht @ Manu Sharma & Others, Crl. A. No.193/2006”**)from 'The Problem of Proof' by Albert S. Osborn, (Published by New York, Methew Bender & Co. 1926 pp. 226. 393) nearly a century ago as follows:

"The astonishing amount of perjury in courts of law is a sad commentary on human veracity. In spite of the oath, more untruths are probably uttered in court than anywhere else. This deviation from veracity ranges from mere exaggeration all the way to vicious perjury. Much of this untrue testimony grows directly out of human nature under unusual stress and is not an accurate measure of truth speaking in general. In order to shield a friend or help one to win in what is thought to be a just cause, or because of sympathy for one in trouble, many members of the frail human family are inclined to violate the truth in a court of law as they will not do elsewhere.”

* + 1. **Motto of Court - Satyamev Jayate (Truth shall Triumph)**

If there be any place where truth ought to be held in peculiar honour, from which falsehoods ought to be driven with peculiar severity, in which exaggerations, which elsewhere would be applauded as the innocent sport of the fancy, or pardoned as the natural effect of excited passion, ought to be discouraged, that place is Court of Justice.

On the contrary, in the present times, men who, in any other circumstances, would shrink from falsehood, have no scruple about setting up false pleas against just demands, giving the impression that there is one place, and only one, where deliberate untruths, told with intent to injure, are not considered as discreditable and that place is Court of Justice. Thus, the authority of the Court, seems to operate to lower the standard of morality, and to diminish the stream in which veracity is held and the very place which ought to be kept sacred from misrepresentations such as would elsewhere be venial, becomes the only place where it is considered as idle scrupulosity to shrink from deliberate falsehood.

Actually, if a person tells a lie to a friend, on revelation of truth, the friendship goes. A businessman loses his customers/clients if he deals in lies with them. A relationship becomes sour, if lies are professed on either side. But the Courts in India seem to be the ‘safe haven’ to profess lies and in most cases no harm comes to a perjurer in India, who turns out to be victorious at the end.

***These are not the views of the author, instead, these are the impressions one gets when he goes through various judgments & decisions of Hon’ble Supreme Court & many High Courts of India, excerpts whereof are referred to and reproduced in this book.***

***The motto must be that Courts should not be allowed to be taken for a ride on lies so easily.***

* + - 1. **Dalip Singh Vs. State of U.P., (2010) 2 SCC 114**

The Hon’ble Supreme Court observed,

"1. For many centuries, Indian society cherished two basic values of life i.e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over-shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.”

* + - 1. **Satyender Singh Vs. Gulab Singh, 2012 (129) DRJ 128**

The Division Bench of Delhi High Court, following Hon’ble Supreme Court in ***Dalip Singh Vs. State of U.P., (2010) 2 SCC 114****,* observed,

"2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts' time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court. Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.”

* + - 1. **Chandra Shashi Vs. Anil Kumar Verma, (1995) 1 SCC 421**

Hon'ble Supreme Court held:

“2. Anyone who takes recourse to fraud, deflects the course of judicial proceedings; or if anything is done with oblique motive, the same interferes with the administration of justice.

….

8. ***To enable the courts to ward off unjustified interference in their working, those who indulge in immoral acts like perjury, prevarication and motivated falsehoods have to be appropriately dealt with, without which it would not be possible for any court to administer justice in the true sense and to the satisfaction of those who approach it in the hope that truth would ultimately prevail.***

9. The word ‘interfere’, means in the context of the subject, any action which checks or hampers the functioning or hinders or tends to prevent the performance of duty, as stated at p. 255 of Words and Phrases (permanent End.), Vol. obstruction of justice is to interpose obstacles or impediments, or to hinder, impede or in any manner interrupt or prevent the administration of justice. Now, ***if recourse to falsehood is taken with oblique motive, the same would definitely hinder, hamper or impede even flow of justice and would prevent the courts from performing their legal duties as they are supposed to do.***

... if the publication be with intent to deceive the court or one made with an intention to defraud, the same would be contempt, as it would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid mens rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large.”

* + - 1. **Sanjeev Kumar Mittal Vs. The State, (2010) 174 DLT 214**

Hon’ble Delhi High Court observed,

“***10.5 In the present case, a deliberate and calculated fabrication of documents has been prima facie made out.***

It was not a case of inaction. Considerable time and strain of brain had been involved in drafting and forging the will with such meticulous hints and advice on fabrication and the petition containing false statement on oath and forged documents have been filed in this Court.

***The petitioner has ventured to stab truth, so recklessly and so seriously, that it should not go unnoticed by a Court of law which works under the constitutional symbol proclaiming to the world that Truth, and truth alone, ultimately flourishes***.” (*Emphasis supplied*)

* + 1. **History & development of law of perjury**

**Perjury as a common law offence** - The first penal statute in England was enacted in the fifteenth century. It was known as "forswearing" and has always been viewed as a serious challenge to the sanctity of judicial proceedings.

As a lawyer, the author knew little about the history and development of law of perjury but when a false allegation supported with an affidavit was made against none else but the then Chief Justice of India, Hon’ble Mr. Justice A.S. Anand, Hon’ble Supreme Court deliberated in finer details of history & development of law of perjury in the case discussed below and that certainly enriches & enlightens our knowledge of law of perjury.

* + - 1. **Re: Suo Moto Proceedings against Mr. R. Karuppan, (2001) 5 SCC 289**

As observed by Hon’ble Supreme Court -

“At common law courts took action against a person who was shown to have made a statement, material in the proceedings, which he knew to be false or did not believe to be true. The offence committed by him is known as perjury. Dealing with the history of the offence, Standford H., Kadish in “Encyclopedia of Crime and Justice” (Vol.3) observed:

"**History of the offence** -

Before witnesses had any formal role in trials, there was no need for a perjury law. In the Middle Age, when the English common law was developing, trial by battle was used to test a sworn accusation. Similarly, for the sworn denial of a serious charge based on mere suspicion, an ordeal administered by a priest was the predominant mode of trial until it was abolished in 1215 as superstitious. Finally, at least until the Assize of Clarendon (1166), less serious accusations could be successfully answered by "compurgation", that is, by obtaining a sufficient number of "oath helpers" to support the defendant’s credibility, Trials in the modern sense began to develop only in the thirteenth century.

Little is reliably known about the conduct of jury trials prior to the sixteenth century, but in civil cases, it seems that genuine witnesses were permitted to give their accounts, although they could not be compelled to appear. In early criminal cases, the jury seems always to have included some who, aware of the commission of a crime in their community brought the suspect before a judge. Those witnesses who did attend these early trials were perceived as part of the jury and retired with them to deliberate, often to make their disclosures in secret. It was the verdict, not the testimony, that was perceived as either true or false; the only remedy for falsehood remotely akin to a perjury prosecution was a seldom-invoked procedure called "the writ of attaint," created in 1202 and not abolished formally until 1825. Though attaint, the jury would be punished for a ’false’ verdict and the verdict itself overturned. Witness first testified under oath in criminal cases on behalf of the Crown in the sixteenth century. No witnesses for the defense were permitted until the mid-seventeenth century, since they would have been witnesses against the Crown, and not until 1702 were defense witnesses permitted to be sworn (I Anne, St. 2, c:9, s:3 (1 70 1) (England) (repealed)). By the late seventeenth century the jury had lost all its testimonial functions, and witnesses thus became the sole means of bringing facts to the judge’s and jury’s attention:

Since the early common law had no established mechanism for dealing with false swearing by witnesses, the Court of Star Chamber assumed for itself the power to punish perjury. This authority was confirmed by statute in 1487 (Star Chamber Act, 3 Hen. 5, c. I (1487) (England) (repealed). The first detailed statute against false swearing was enacted in 1562 (5 Eliz. I, C: 9 (1562) (England) (Repealed)). When the Star Chamber was abolished in 1640, its judicially defined offence of perjury passed into English common law, reaching any cases of false testimony not covered by the terms of the statute.

Edward Coke, whose views strongly influenced early American law, wrote in his Third Institute, published in 1641, that perjury was committed when, after a ’lawful oath’ was administered in a ’judicial proceeding’, a person swore ’absolutely and falsely’ concerned a point ’material’ to the issue in question (\*164). In this form, the law remained unchanged into the twentieth century."

In India, law relating to the Offence of perjury is given a statutory definition under Section 191 and Chapter XI of the Indian Penal Code, incorporated to deal with the offences relating to giving false evidence against public justice. The offences incorporated under this Chapter are based upon recognition of the decline of moral values and erosion of sanctity of oath. ***Unscrupulous litigants are found daily resorting to utter blatant falsehood in the courts*** which has, to some extent, resulted in polluting the judicial system. ***It is a fact, though unfortunate, that a general impression is created that most of the witnesses coming in the courts despite taking oath make false statements to suit the interests of the parties calling them. Effective and stern action is required to be taken for preventing the evil of perjury, conceitedly let loose by vested interest and professional litigants***. **The mere existence of the penal provisions to deal with perjury would be a cruel joke with the society unless the courts stop to take an evasive recourse despite proof of the commission of the offence under Chapter XI of the Indian Penal Code. *If the system is to survive, effective action is the need of the time. …***” (*Emphasis supplied*)

* 1. **Provisions of Law of Perjury: Indian Penal Code, 1860**

In India the **Law of Perjury** is, principally, enshrined in Ss.191 to 196, 197, 198, 199, 200 along with manifested falsehoods in Ss. 205 to 211 of Indian Penal Code. Sections 191 & 192 define, basically, the genus of perjury and Sections 196 to 200 IPC define species of perjury, whereas, Sections 205 to 211 define other offences against administration of justice based on falsehoods. These sections find their place in Chapter XI of Indian Penal Code, 1860 titled as “Of False Evidence and offences against Public Justice”. The Sections 463, 471, 475 & 476 IPC are attracted ***when the making of false or forged document offends or gets inter-twined with the above-referred sections i.e., forgery for the purpose of perjury***.

* + 1. **False Evidence & Offences against Public Justice: Ch.XI IPC**

Chapter XI of Indian Penal Code, 1860 is titled, “Of False Evidence and Offences against public justice”. The sections 191 to 200 IPC define and elaborate the offences of ‘false evidence’ and prescribe punishments therefor. Whereas, offences defined and described in Ss.201 to 229A IPC fall in the category of offences against public justice.

Sections 191, 192, 193, 194, 195, 196, 197, 198, 199 or 200 and 205 to 211 and 228 IPC are relating to “Administration of Justice”. These sections provide for offences, which have a direct bearing on the administration of justice and hence the complaint by a private person is barred under S.195 Cr.P.C., **if such offence is committed in or in relation to Court proceedings or in respect of document ‘produced’ or ‘given in evidence’ in any proceeding of “Court”, judicial in nature.** In such case the Authority to file a complaint would be vested in Court or declared to be a Court by operation of law and only the Court concerned (or the Court to whom such Court is subordinate) can file the complaint that too, strictly following the procedure prescribed in S.340 Cr.P.C.

* + 1. **Offence(s) of ‘False Evidence’**

Now, chapter XI of IPC includes Sections 191 to 200, which can be safely said to fall under the part heading “**Of false evidence**” **i.e., perjury** and Sections 201 IPC to 229 IPC can be said to be covered under the latter part of the heading **“offences against public justice”**, though ‘false evidence’ is also an offence against public justice.

The following offence(s) given in Chapter XI of Indian Penal Code, 1860, **if committed in or in relation to any Court proceeding or in respect of document ‘produced’ or ‘given in evidence’ in any Court proceeding,** are termed as **‘perjury’** and **would then be** covered within the ambit and scope of bar of S.195(1)(b)(i) of the Code of Criminal Procedure, 1973 -

| **Table 1.1** | | |
| --- | --- | --- |
| **Indian Penal Code, 1860** | | |
| **Section** | **Heading title of Section** | **Classification** |
| **S.191** | **Giving false evidence** |  |
| **S.192** | **Fabricating false evidence** |  |
| **S.193** | **Punishment for false evidence**  **(*viz. offences defined in Ss.191 & 192, 196, 197, 198, 199 & 200 IPC*)** | **Para I: Non-Cognizable**, Punishment for 7 years and fine, Bailable & **Non-Compoundable**, Triable by Magistrate of first class  **Para II: Non-Cognizable**, Punishment for 3 years and fine, Bailable, Triable by any Magistrate |
| **S.194** | **Giving of fabricating false evidence with intent to procure conviction of capital offence** | **Para I: Non-Cognizable**, Punishment for life, or rigorous imprisonment for 10 years and fine, Non Bailable & **Non-Compoundable**, Sessions Triable  **Para II: Non-Cognizable**, Punishment- Death or as prescribed in Para I, Non- Bailable, Sessions Triable |
| **S.195** | **Giving or fabricating false evidence with intent to procure conviction of offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards** | **Non-Cognizable**, Punishment- same as for the offence, Non-Bailable & **Non-Compoundable**, Sessions Triable |
| **S.196** | **Using evidence known to be false** | **Non-Cognizable**, Punishment- same as for giving false evidence, **Non-Compoundable**, Bailable or Non-bailable according as offence of giving false evidence, Triable by Court by which offence of giving or fabricating false evidence is triable |
| **S.197** | **Issuing or signing false certificate** | **Non-Cognizable**, Punishment- same as for giving false evidence, **Non-Compoundable**,  Bailable or Non-bailable according as offence of giving false evidence, Triable by Court by which offence of giving or fabricating false evidence is triable |
| **S.198** | **Using as true a certificate known to be false** | **Non-Cognizable**, Punishment- same as for giving false evidence, **Non-Compoundable**,  Bailable or Non-bailable according as offence of giving false evidence, Triable by Court by which offence of giving or fabricating false evidence is triable |
| **S.199** | **False statement made in declaration which is by law receivable as evidence** | **Non-Cognizable**, Punishment- same as for giving or fabricating false evidence, **Non-Compoundable**, Triable by Court by which offence of giving false evidence is triable |
| **S.200** | **Using as true such declaration knowing it to be false** | **Non-Cognizable,** Punishment- same as for giving or fabricating false evidence, Bailable, **Non-Compoundable,** Triable by Court by which offence of giving false evidence is triable |

* + 1. **Other offence(s) against public justice**

The following offence(s) described in Ss.201 to 229A, given in Chapter XI of Indian Penal Code, 1860 are collectively, described as ‘other offences against public justice’ (besides the offences of ‘false evidence’). Though all these offences described in Ss.201 IPC to 229A IPC are against public justice, still only Ss.205 to 211 & S.228 IPC are kept under Court control vide bar of jurisdiction enshrined in S.195(1)(b) Cr.P.C., that too only for the limited extent i.e., **if said offences are committed ‘in’ or ‘in relation' to any Court proceedings or in respect of document ‘produced’ or ‘given in evidence’ in any Court proceeding** perhaps because the offences described U/Ss.201, 202, 203, 204, 212 to 227 (including S.216A, 225A, 225B) and 228A, 229 & 229A IPC despite being broadly against public justice, do not involve direct meddling with the **‘active administration of justice under Court’s direct control’** though remotely many of these offences (e.g. Ss.201, 202, 204, 212, 216, 216A, 227 & 229A etc.) can be said to be ‘in relation to a Court proceeding’.

| **Table 1.2** | | |
| --- | --- | --- |
| **Indian Penal Code, 1860** | | |
| **Section** | **Heading title of Section** | **Classification** |
| **S.201** | Causing disappearance of evidence of offence, or giving false information to screen offender | **Para I: Cognizable or Non-Cognizable** according as the offence in relation to which disappearance of evidence is caused, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Sessions Triable  **Para II**: **Non-Cognizable**, Punishment- Imprisonment for 3 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: **Non-Cognizable**, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Triable by Court by which the offence is triable |
| **S.202** | Intentional omission to give information of offence by person bound to inform | **Non-Cognizable**, Punishment- Imprisonment for 6 months or fine or both, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.203** | Giving false information respecting an offence committed | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.204** | Destruction of document to prevent its production as evidence | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.205** | **False personation for purpose of act or proceeding in suit or prosecution** | **Non-Cognizable**, Punishment- Imprisonment for 3 years or fine or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.206** | **Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution** | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.207** | **Fraudulent claim to property to prevent its seizure as forfeited or in execution** | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.208** | **Fraudulently suffering decree for sum not due** | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.209** | **Dishonestly making false claim in Court** | **Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.210** | **Fraudulently obtaining decree for sum not due** | **Non-Cognizable**, Punishment- Imprisonment for 3 years or fine or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.211** | **False charge of offence made with intent to injure** | **Para I: Non-Cognizable**, Punishment- Imprisonment for 2 years or fine or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: **Non-Cognizable**, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: **Non-Cognizable**, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Sessions Triable |
| **S.212** | **Harbouring offender** | **Para I: Cognizable**, Punishment- Imprisonment for 5 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: **Cognizable**, Punishment- Imprisonment for 3 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: **Cognizable**, Punishment- Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.213** | **Taking gift, etc., to screen an offender from punishment** | **Para I: Cognizable**, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: **Cognizable**, Punishment- Imprisonment for 3 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: **Cognizable**, Punishment- Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.214** | **Offering gift or restoration of property in consideration of screening offender** | **Para I: Non-Cognizable**, Punishment- Imprisonment for 7 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: **Non-Cognizable**, Punishment- Imprisonment for 3 years and fine, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: **Non-Cognizable**, Punishment- Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.215** | **Taking gift to help to recover stolen property, etc.** | Punishment- Imprisonment for 2 years or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.216** | **Harbouring offender who has escaped from custody or whose apprehension has been ordered** | **Para I:** Punishment- Imprisonment for 7 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: Punishment- Imprisonment for 3 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: Punishment- Imprisonment for a quarter of the longest term, and of the description provided for the offence, or fine, or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.216A** | **Penalty for harbouring robbers or dacoits** | Punishment- Rigorous Imprisonment for 7 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.217** | **Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture** | Punishment- Imprisonment for 2 years or fine or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.218** | **Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture** | Punishment- Imprisonment for 3 years or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.219** | **Public servant in judicial proceeding corruptly making report, etc., contrary to law** | Punishment- Imprisonment for 7 years or fine or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.220** | **Commitment for trial or confinement by person having authority who knows that he is acting contrary to law** | Punishment- Imprisonment for 7 years or fine or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.221** | **Intentional omission to apprehend on the part of public servant bound to apprehend** | **Para I:** Punishment- Imprisonment for 7 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para II**: Punishment- Imprisonment for 3 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: Punishment- Imprisonment for 2 years, with or without fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.222** | **Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed** | **Para I:** Punishment- Imprisonment for life, or imprisonment for 14 years, with or without fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Court of Session  **Para II**: Punishment- Imprisonment for 7 years, with or without fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: Punishment- Imprisonment for 2 years, with or without fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.223** | **Escape from confinement or custody negligently suffered by public servant** | Punishment- Imprisonment for 2 years or fine or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.224** | **Resistance or obstruction by a person to his lawful apprehension** | Punishment- Imprisonment for 2 years or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.225** | **Resistance or obstruction to lawful apprehension of another person** | **Para I:** Punishment- Imprisonment for 2 years, or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by Court of Session  **Para II**: Punishment- Imprisonment for 3 years and fine, **Cognizable**, Non-Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para III**: Punishment- Imprisonment for 7 years and fine, **Cognizable**, Non-Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
|  |  | **Para IV**: Punishment- Imprisonment for 7 years and fine, **Cognizable**, Non-Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class  **Para V**: Punishment- Imprisonment for life or imprisonment for 10 years and fine, **Cognizable**, Non-Bailable, **Non-Compoundable**, Triable by Court of Session |
| **S.225A** | **Omission to apprehend, or sufferance of escape, on part of public servant, in cases not otherwise, provided for** | **Para I:** Punishment- Imprisonment for 3 years, or fine, or both, **Non-Cognizable**, Bailable, **Non-Compoundable**,  Triable by Magistrate of the First Class  **Para II**: Punishment- Simple Imprisonment for 2 years, or fine, or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by Magistrate of the First Class |
| **S.225B** | **Resistance or obstruction to lawful apprehension, or escape or rescue in cases not otherwise provided for** | Punishment- Imprisonment for 6 months or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.227** | **Violation of condition of remission of punishment** | Punishment of original sentence, or if part of the punishment has been undergone, the residue, Non-**Cognizable**, Bailable, **Non-Compoundable, Triable by Court by which the original offence was triable** |
| **S.228** | **Intentional insult or interruption to public servant sitting in judicial proceedings** | Punishment- Simple Imprisonment for 6 months or fine of 1000 rupees or both, **Non-Cognizable**, Bailable, **Non-Compoundable**, Triable by the Court in which the offence is committed, subject to the provisions of Chapter XXVI |
| **S.228A** | **Disclosure of identity of the victim of certain offences, etc.** | Punishment- Imprisonment for 2 years and fine, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |
| **S.229** | **Personation of a juror or assessor** | Punishment- Imprisonment for 2 years or fine or both, **Non-Cognizable**,Bailable, **Non-Compoundable**, Triable by any Magistrate of the first class |
| **S.229A** | **Failure by person released on bail or bond to appear in court** | Punishment- Imprisonment for 1 year or fine or both, **Cognizable**, Bailable, **Non-Compoundable**, Triable by any Magistrate |

* + 1. **Offence(s) of ‘perjury’ coupled with ‘forgery’**

The offences, referred to in clause S.195(1)(b)(ii) of the Code of Criminal Procedure, 1973, are covered in the bar of S.195(1)(b) Cr.P.C. **only in a limited sense** i.e., only when such offence is alleged to have been committed in respect of a **document ‘produced' or ‘given in evidence’** **i.e., when the document is custodia-legis** and has the **effect on administration of justice in a proceeding in any Court.**

|  |  |  |
| --- | --- | --- |
| **Table 1.3** | | |
| **Indian Penal Code, 1860** | | |
| **Section** | **Heading title of Section** |  |
| **S.463** | **Forgery** | Punishment for 2 years or fine or both, Bailable, **Non-Compoundable,** Triable by Magistrate of first class |
| **S.471** | **Using as genuine a forged [document or electronic record]** | Punishment- same as forgery of such document, Bailable, **Non-Compoundable,** Triable by Magistrate of first class |
| **S.475** | **Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material** | Punishment- Imprisonment for life, or imprisonment for 7 years and fine, Bailable, **Non-Compoundable, Triable by the Magistrate of the first class** |
| **S.476** | **Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material** | Punishment- Imprisonment for 7 years and fine, Non- Bailable, **Non-Compoundable**  Triable by the Magistrate of the first class |

* 1. **Salient features of Law of Perjury in India**

***The title-heading “Of False Evidence and offences against Public Justice” given to Chapter XI of Indian Penal Code, 1860 has a natural meaning and a spirit behind it. The words ‘public justice’ are not limited in the sense restricted to a Court precinct or Court proceeding, instead the spirit is that whenever, an act is committed so as to lead to or capable of leading to injustice vis-a-vis dispensing justice to the public, it needs to be punished as per law enshrined therein.***

The legislature has worked very hard in schematically devising & categorising not only the forms of perjury but also prescribe appropriate punishments commensurate with the gravity of perjury committed and consequences ensuing from such perjury.

The author has stated these sections in their fully expanded form in **Table- 1.4** (***post***), to demonstrate as to how the legislature has schematically devised these definitions in these sections so as not to let a person committing perjury escape the clutches of law. If the act of a person comes in any one clause of these expanded forms i.e., ingredients specified in any particular numbered clause are present, the person shall be guilty of perjury and interest of justice will suffer if such an offender is not prosecuted for perjury. Whereas, if his act does not provide/satisfy all the ingredients (or is short even by one ingredient) either of these clauses of this expanded form, the person shall not be guilty of perjury, and he is likely to be coming under one or the other **‘*exceptions of prudence***’ and it shall not be **‘expedient in the interest of justice**’ to initiate the prosecution. For example -

* If a person states falsehood because of fading memory or failure to recollect facts due to lapse of time ***makes a false statement but believing it to be true***, the requirement of ‘believing to be false’ would be absent and hence that part of the ingredient of S.191 IPC would not be there.
* If a person makes contradictory statements under grilling cross-examination without any knowledge or comprehension (as specified in S. 191 IPC) of his own contradiction, he will not be guilty of perjury.

Many such other instances are detailed in ‘exceptions of prudence’ given in ***Chapter 8 (post)***.

* + 1. **Perjury - a Non-Compoundable offence**

***As is clear from Table 1.1. (given in #1.2.2.) that the offences enumerated in Chapter XI i.e., Ss.191 to 200 and 205 to 211 and 218 IPC, being offences against administration of justice, have been made Non-compoundable by the legislature. Hence once the factum of commission of offence is established i.e., the ingredients of the offence are present, even Hon’ble High Courts cannot compound the offence nor quash the some by exercising its inherent powers U/S. 482 Cr.P.C. But on the basis of technical defects in launching the prosecution by the ‘Courts concerned’ large number of such complaints are quashed by Hon’ble High Courts and sometimes even by Hon’ble Supreme Courts. The question crops up in author’s mind, “Can the ‘expediency in the interest of justice’ be allowed to suffer just because of ignorance or lack of understanding of provisions of law of perjury (and/or offences against public justice) on the part of the ‘Court concerned’?” That too when the legislature had taken extra care by providing parallel powers U/S.340(2) Cr.P.C. to the ‘Superior Courts’ (to whom the ‘Court concerned’ is subordinate) to lodge the complaints, contemplated U/S.195(1) Cr.P.C.***

***If we go by the judgment of Hon’ble Supreme Court in “Perumal Vs. Janki, Crl. Appeal No.169 of 2014”, Hon’ble High Courts instead of quashing the complaint for ‘want of recording the finding of expediency in the interest of justice’ on the part of the ‘Court concerned’, at least in the cases, where offence specified in S.195(1)(b) Cr.P.C. prima-facie ‘appears to have been committed’, should itself lodge the complaint after properly recording a ‘finding of expediency in the interest of justice’. Because, in author’s view, by not doing so ‘interest of justice’ and the ‘victims of perjury’ suffer remedilessly and perjury wins/ perjurers encouraged in their mischief, certainly not in consonance with the intention or spirit of legislature, while investing parallel powers in Superior judiciary U/S.340(2) Cr.P.C. to contain the mischief of perjury & such other offences against public justice in case the ‘Court concerned’ is inactive to do so.***

* + 1. **Huge punishment: upto 7 years may extend to death penalty**
* ***Punishment in S.193 IPC***

**Mere ‘giving false evidence’ with knowledge or belief of falsity (as specified in S.191 IPC) in *any stage of judicial proceeding entails a punishment with imprisonment upto 7 years and fin*e even if the statement is not material to the result of such judicial proceeding. Similarly, *‘fabricating false evidence’ for the purpose of being used in any stage of ‘judicial proceeding’ with the intention as specified in S.192 IPC or ‘giving false evidence’ with the intention specified in Ss.196, 197, 198, 199 or 200 IPC* *has been made punishable with imprisonment which may extend to* *seven years and fine*.** This punishment needs to be contrasted with the punishment for ‘fabricating false evidence’ for the purpose of being used in any ‘other case’ in 2nd part of S.193 IPC, which is imprisonment upto 3 years and fine.

* ***Huge punishment in S.194 IPC***

***The ‘giving’ or ‘fabricating’ false evidence with intent to procure conviction of capital offence has been made punishable* with imprisonment for life or with imprisonment for a term which may extend to ten years besides fine.**

**Section 194 IPC further provides that *if innocent person is convicted because of such false or fabricated evidence, the person giving or fabricating false evidence shall be punished either with death* or the punishment described above.**

* ***More severe punishment in S.195 IPC***

***The ‘giving’ or ‘fabricating’ false evidence* with intent to procure conviction for an offence punishable with imprisonment for life or imprisonment for a term of seven years or more, has been made to entail the same punishment as prescribed for that offence. *Hence if a person ‘gives’ or ‘fabricates’ false evidence with intent to procure a conviction for imprisonment upto 10 years or life imprisonment, such a person/perjurer shall be liable for punishment of imprisonment upto 10 years or life, respectively, as the case may be.***

* + 1. **Specifically defining 'giving false evidence’ & ‘fabricating false evidence’**

The legislature has provided its own specific definition of ‘giving false evidence’, detailing therein as to what kind of ‘statements’ (contradistinguished from the word ‘evidence’) under what kind of circumstances shall be deemed ‘giving false evidence’; as the S.191 IPC concludes with the phrase “**is said *to give false evidence”***. So irrespective of the definition of the word ‘evidence’ in S.3 of Evidence Act, 1872, every statement oral or written, which satisfies the requirements of S.191, S.196, S.197, S.198, S.199 or S.200 IPC, shall be deemed to be 'giving false evidence’; there also section concludes with the phrase “**is said *to fabricate false evidence”***.

Similarly, it is specifically defined as to causing of what kind of circumstances to exist or what kind of false entry in a book or statement in a record or document or electronic record shall be taken as ‘fabricating false evidence’.

The Courts are not supposed to give its own constructed definition to the phrase ‘giving false evidence’ by putting together the separate individual meanings of the three words viz. ***‘giving’, ‘fabricating’, ‘false’ & ‘evidence’*** as the same would not only be impossible to be coterminous and congruent with the legislative definitions of **‘*giving false evidence*’** or ‘***fabricating false evidence*’** in Ss.191 and 192 IPC r/w Ss.196 IPC to 200 IPC but also hazardous; besides, being intrusion in legislative domain. Even ‘causing a circumstance to exist’ is covered within the definition of ‘fabricated false evidence’ provided by the legislature (if the ingredients as to the intention specified in S.192 IPC are satisfied) but otherwise it may be difficult to express and include the phrase ***“such circumstance”*** within the ‘literal’ meaning of the word ‘fabricated’ or within the definition of the word ‘evidence’ under S.3 of Evidence Act, 1872.

* + 1. **Ss.196 to 200 IPC: ‘Giving false evidence’- extended canvas**

***So as not to let an offender ‘giving false evidence’ escape the clutches of law, many other cognate acts have been made deemed ‘giving false evidence’ or ‘fabricating false evidence’ by incorporating Sections 197, 198, 199 & 200 and 196 IPC to augment the definitions of ‘giving false evidence’ or ‘fabricating false evidence’ in Ss.191 & 192 IPC, enabling such acts to be punishable U/S.193 IPC.***

The language used/phraseology employed by the legislature in concluding phrases of these sections viz. **“shall be punished in the same manner as if he gave or fabricated false evidence”** in S.196 or **“shall be punished in the same manner as if he gave false evidence”** in Ss.197, 198, 199 or 200 IPC indicates that these are sort of provisions enabling the Court to punish the offenders under S.193, 194 or 195 IPC (as per the gravity of facts of the case) for those instances of ‘giving false evidence’ or ‘fabricating false evidence’ that may not be covered within the definitions of ‘giving false evidence’ or ‘fabricating false evidence’, specified in S.191 & S.192 IPC, respectively, but which, nevertheless, amount to ‘giving’ or ‘fabricating’ false evidence so far as administration of justice is concerned. It is evident that the intention of the legislature was, not to let an offender escape the clutches of law by pointing out limitations on the scope of applicability of Ss.191 or 192 IPC though his act de-facto amounted ‘giving false evidence’ or ‘fabricating false instance’ and hence they provided for these additional instances, specified in Ss.196 to 200 IPC, which were akin to the offences specified in Ss.191 and 192 IPC, and hence liable to be punished in the same manner.

* + 1. **Reach of the provisions of law of perjury**
* ***An act constituting the offence defined under S.191 IPC, is de-facto kept at the highest level of perjury, simply because the person offending that section states falsehood despite being bound by ‘an oath’ OR by ‘an express provision of law’ or ‘being bound by law to make a declaration upon any subject’. This category of falsehoods is made punishable even if such false statement is NOT material to the result of proceeding.***

***Section 191 IPC uses the phraseology, ‘whoever, ……, makes any statement which is false, and which …is said give false evidence.”***

***Hence, the offence stands committed, the moment a person makes a statement (despite either being bound by an oath or by an express provision of law to state truth or bound by law to make a declaration upon any subject), which is false (despite knowing the same to be false or believing the same to be false or not believing the same to be true) and such person becomes liable for punishment the moment he ‘intentionally’ makes such a false statement and nothing further is required to be proved.***

***However, the punishment factor U/S.193 IPC for such ‘giving false evidence’ shall vary as per the proceedings i.e., if this ‘giving false evidence is ‘in any of the judicial proceeding’, the punishment will be upto 7 years imprisonment and fine and if this ‘giving false evidence’ is in ‘any other case’, the punishment factor shall be upto 3 years imprisonment and fine.***

***For example, a person is bound by an express provision of law (say, the Oaths Act, 1969) to state truth in an affidavit and if such an affidavit is required by law to be given before a public servant as a proof of some fact, say as proof of date of birth before various public authorities or fact of being of marriageable age before a Marriage Registrar etc., the person making a false statement in such an affidavit commits an offence of ‘giving false evidence’ under S.191 IPC, the moment he, knowingly, makes a false statement, though the same shall be punishable in second para of S.193 IPC as giving false evidence ‘in any other case’.***

***If an interpretation is put upon the phrase ‘giving false evidence’ restricting it to only ‘judicial proceedings’ or Courts, the same will render the prescription in second para of S.193 IPC “and whoever intentionally gives ….. false evidence in any other case…” redundant or otiose.***

* + - ***An offence of ‘fabricating false evidence’ under S.192 IPC is made punishable under S.193 IPC (or under Ss.194 IPC or S.195 IPC as per gravity of intended consequence in the facts & circumstances of the case). A conjoint reading of S.192 IPC and S.193 IPC makes it clear that*** ***mere fabrication of false evidence is an offence punishable under S.193 IPC, whether any proceeding is pending in any Court or not. The offence specified under S.192 IPC is the one of ‘fabricating false evidence’ for being used in a ‘judicial proceeding’ or ‘proceeding taken by law before a public servant as such’ or ‘before an arbitrator’. A bare look at the ingredients of the section makes it clear that***

***“whoever, causes any circumstance to exist or makes any false entry in any book or record or electronic record or makes any document or electronic record containing a false statement’***

***with the threefold compound intention specified in S.192 IPC, completes the offence under S.192 IPC, the moment a person commits any of these acts, he renders himself liable for punishment U/S.193 IPC.***

* + - ***If such act is done with the object specified in first para of S.193 IPC i.e., the person ‘fabricates false evidence for the purpose of being used’ in any stage of judicial proceeding, he renders himself liable for a punishment of upto 7 years and fine.***
    - ***If such act is done with the object specified in second para of S.193 IPC i.e., the person ‘fabricates*** ***false evidence for the purpose of being used’ in any other case, he renders himself liable for a punishment of upto 3 years and fine.***

***Neither in the first para of S.193 IPC nor in second para, it is required that the person should ‘use’ such fabricated false evidence in the sense of ‘giving fabricated false evidence’ in any judicial proceeding or ‘in any other case’ contemplated in first or second para, respectively, of S.193 IPC.***

***Even the phrase ‘fabricates’ false evidence is followed by the words “for the purpose of being used in any stage of judicial proceeding” occurring in first para of S.193 IPC, indicating thereby that the offence is complete the moment ‘fabrication’ is done for said ‘purpose’ with the intention specified in S.192 IPC.***

***Actually, if the offence of ‘fabricating false evidence’ is committed in the sense of ‘giving fabricated false evidence’, the legislature has provided a separate provision for the same viz. S.196 IPC, which provides that if a person ‘corruptly’ uses or even attempts to use such ‘fabricated false evidence’ as true or genuine, shall be punishable in the same manner as ‘giving or fabricating false evidence’. The ‘use’ or ‘giving’ of such ‘fabricated false evidence’ cannot be culled out from the phraseology employed in S.192 IPC, on the contrary, if the offence under S.192 IPC is interpreted to include such ‘giving’ in the sense of ‘using’ fabricated false evidence, the same will render the legislature’s framing of S.196 IPC redundant, particularly, when the word ‘corruptly’ is used, apparently, to protect the innocent users, unknowingly using such evidence.***

***Further, the language of S.196 IPC makes ‘use’ or ‘attempt to use’ of false or fabricated evidence punishable in the same manner as ‘giving false evidence’ or ‘fabricating false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if gravity of intended consequence in*** ***the facts & circumstances of the case so mandate) and hence the application of S.196 IPC is not limited to judicial proceedings or proceeding before a public servant as such or before an arbitrator instead the phrase ‘in any other case’ employed in second para of S.193 IPC is open to interpretation and applicability as per the facts & circumstances of a particular case. However, to fall within S.196 IPC, the ‘false evidence’ must satisfy either of the three conditions specified in S.191 IPC and ‘fabricated evidence’ must satisfy the threefold intention specified in S.192 IPC.***

* + - ***Similarly, the offence specified U/S.197 IPC is complete the moment, ‘a person issues or signs any certificate (required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence), knowing or believing that such certificate is false in any material point. The person doing so shall be liable to be punished in the same manner as if he ‘gave false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if gravity of intended consequence in*** ***the facts & circumstances of the case so mandate) and for being liable for such punishment, the person is not required to file said certificate in the sense of giving in Court or in any judicial proceedings or before any 'public servant'.***

***In other words, if a person creates a ‘certificate’ (false in material particulars), which is receivable as evidence of any fact (as specified in S.197 IPC), the offence under S.197 IPC is complete and he becomes liable to be punished under S.193 IPC in the same manner as if he gave false evidence, whereas, actually, neither the section requires nor the person has given such certificate as ‘evidence’ in any proceeding be it ‘judicial proceeding’ or ‘proceeding taken by law before a public servant as such’ (contemplated as second category under S.192 IPC) or ‘in any proceeding taken before a public servant otherwise nor used in any other manner whatsoever, corruptly or innocently.***

***In author’s view, this is that kind of offence, which is contemplated under the phrase “in any other case” in second para of S.193 IPC being punishable with imprisonment of upto 3 years and fine.***

***As a matter of fact, if the person, knowingly, gives such a certificate (issued or signed as contemplated under S.197 IPC) in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator or before a public servant otherwise, such a person, actually, commits one more offence, specified under S.198 IPC, which is also made punishable in the same manner as if he ‘gave false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if gravity of intended consequence in the facts & circumstances of the case so mandate).***

***So, if a person commits an offence U/S.197 IPC and does not perform the further act of using it ‘corruptly’ or otherwise, does not mean that he should be allowed to go scot-free. Instead, if there are no proceedings pending before or decided by any Court at the time of issuing or signing such ‘materially’ false certificate, the question of filing complaint by such Court cannot arise (and hence the bar of S.195(1) Cr.P.C. will not be applicable) and a private complaint shall be maintainable. The offence under S.197 IPC is a non-compoundable offence and the same cannot be allowed to be an auto-excused one just because punishment for such an offence is provided for in S.193 IPC, which finds mention under S.195(1) Cr.P.C. because the bar applies only when such offence (punishable under S.193 IPC) is committed ‘in’ or ‘in relation to’ or ‘in respect of a document produced or given in evidence’. If this pre-condition is not satisfied, the private complaint shall be maintainable though the offender shall be liable for lesser punishment (of upto 3 years and fine) prescribed under para 2 of S.193 IPC.***

* + - ***A conjoint reading of S.191 IPC and S.199 IPC makes the intention of the legislature clear that if the declarations made by a person are not of the kind that* a person is bound by law to make upon any subject *then too a person is not allowed to profess falsehoods in his declarations, if the same* are receivable as evidence of any fact *i.e., if the declarations are of the* kind that a ‘Court of justice’ or ‘public servant’ or ‘other person’ is either bound by law to receive as evidence of fact or even authorised by law to receive as evidence of fact**.

***The offence under S.199 IPC is also complete the moment a person, knowingly (or believingly), makes any false statement in a declaration, which is receivable as evidence of any fact (in the sense that a Court of justice or public servant or any other person is either bound or authorised by law to receive the same as evidence of such fact), if it fulfils the other requirement of the section i.e., falsity is touching any point material to the object for which such declaration is made.***

***Hence, such a person becomes liable to be punished under S.193 IPC in the same manner as if he gave false evidence, whereas, here also, neither the section requires nor the person has given such declaration as ‘evidence’ in any proceeding be it ‘judicial proceeding’ or ‘proceeding taken by law before a public servant as such’ (contemplated as second category under S.192 IPC) or before an arbitrator or ‘in any proceeding taken before a public servant otherwise nor used the same before any other person, corruptly or innocently.***

***Again, this is the kind of offence, which is contemplated under the phrase “in any other case” in second para of S.193 IPC being punishable with imprisonment of upto 3 years and fine.***

***Further, since the offence of ‘making a materially false declaration’ contemplated U/S.199 IPC is complete the moment such a declaration is made, the section does not require the further act of using such a declaration so as to complete the liability for punishment under S.193 IPC in the same manner as giving false evidence. The legislature has provided a separate provision for ‘knowingly’ using such false declaration viz. S.200 IPC, which provides that if a person ‘corruptly’ uses or even attempts to use such ‘materially false declaration’ as true, shall be punishable in the same manner as ‘giving false evidence’. The ‘use’ or ‘giving’ of such ‘false declaration’ cannot be culled out from the phraseology employed in S.199 IPC, on the contrary, if the offence under S.199 IPC is interpreted to include such ‘giving’ in the sense of ‘using’ ‘materially false declaration’, the same will render the legislature’s framing of S.200 IPC redundant and otiose, particularly, when the word ‘corruptly’ is used, apparently, to protect the innocent users, unknowingly using such evidence.***

***As a matter of fact, if we compare the phraseology employed in S.197 IPC (for false “certificates” receivable as evidence of any fact) with the one employed in S.199 IPC (for false “declarations” receivable as evidence of any fact), the legislature has used ‘Court of justice’ or ‘public servant’ as bound or authorised to receive such certificate as evidence of fact (under S.197 IPC) but has extended the scope by including ‘other person’ besides ‘Court of Justice’ of ‘public servant’ when it came to declarations under S.199 IPC (receivable as evidence of fact).***

***In other words, S.199 IPC defines the offence to have been committed not only when the ‘declaration’ contemplated under said section is receivable before any Court of justice or public servant but also before ‘other person’. For example, a Hindu person getting married in an Arya Samaj Mandir has to make a declaration that he is of marriageable age and not previously married. If such declaration is false, the Pujari of the temple performing the marriage will fall in the category of ‘other person’ contemplated in S.199 IPC. To author’s mind, the rationale behind including such ‘other person’ within the ambit of ‘declarations’ under S.199 IPC must be two-fold. First, if such persons are not included in the provision prohibiting false declaration(s), marriage certificates (which are receivable as evidence of marriage in a Court of justice as well as before public authorities) based on false declarations may be created, which shall, essentially, be against public justice. Second, if the marriageable age (of a couple at the time of marriage) becomes an issue before a Court of justice, this marriage certificate and the declaration in that regard made before the Pujari shall be receivable as evidence of such fact.***

***Further, the language of S.200 IPC makes ‘use’ or ‘attempt to use’ of such ‘materially false declaration' punishable in the same manner as ‘giving false evidence’ or ‘fabricating false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if gravity of intended consequence in the facts & circumstances of the case so mandate) and hence the application of S.200 IPC is not limited to judicial proceedings i.e., Court of justice or proceeding before a public servant acting as such. However, to fall within S.200 IPC, the ‘false declaration’ must satisfy the conditions specified in S.199 IPC i.e., the same is receivable as evidence of any fact by the three categories of persons specified in S.199 IPC and the same is materially false vis-a-vis the object of such declaration to the knowledge of the person making it.***

***It is further provided by the legislature vide Explanation appended to with S.200 IPC that intention to corruptly use such ‘materially false declaration’ is punishable, once the use or ‘attempt to use’ is confirmed even though such declaration may not be ‘technically’ admissible and hence not ‘evidence’ in judicial sense.***

* ***To summarise, a person commits the offence of ‘giving false evidence’ or ‘fabricating false evidence’ punishable under S.193 IPC, if he***
* ***makes a false statement despite being bound by an oath or express provision of law or bound by law to make a declaration upon any subject, knowing or believing the same to be false or not believing the same to be true (S.191 IPC).***
* ***causes any circumstance to exist or 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, or in a proceeding taken by law before a public servant 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 material to the result of such proceeding (S.192 IPC).***
* ***corruptly uses or attempts to use as true or genuine evidence, any evidence which he knows to be false or fabricated (S.196 IPC).***
* ***issues or signs any certificate required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence, knowing or believing that such certificate is false in any material point (S.197 IPC).***
* ***corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point (S.198 IPC).***
* ***in any declaration made or subscribed by him, which declaration any Court of Justice, or any public servant or other person, is bound or authorised by law to receive as evidence of any fact, makes any statement which is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or used (S.199 IPC).***
* ***corruptly uses or attempts to use as true any such declaration, knowing the same to be false in any material point (S.200 IPC).***
* ***The offences U/Ss.191, 192, 197 & 199 IPC are complete the moment, the act contemplated in any of these sections is done with the requisite mens-rea i.e., the knowledge or intention, specified in the particular section.***
* ***The offences, defined in Ss.196, 198 or 200 IPC are dependent upon the offences specified in Ss.191, 192, 197 or 199 IPC, respectively, i.e., when offences defined in Ss.191, 192, 197 or 199 IPC are complete.***
* ***The offences, defined in Ss.196, 198 or 200 IPC will be complete only when further act of ‘corruptly’ using or ‘attempting to use’ such ‘false evidence’ or ‘fabricated false evidence’ (as contemplated under either of Sections 191, 192, 197 or 199 IPC) is established.***
* ***If any of these offences specified U/Ss. 191, 192, 196, 197, 198, 199 or 200 IPC are committed ‘in any of the judicial proceeding’ or for the purpose of being used ‘in any stage of judicial proceeding’, severe punishment of upto seven years imprisonment with fine shall be applicable. (may even go upto death sentence or life imprisonment if the gravity of intended consequence of perjury makes Ss.194 & 195 IPC applicable.***
* ***If any of these offences specified U/Ss. 191, 192, 196, 197, 198, 199 or 200 IPC are committed NOT ‘in any of the judicial proceeding’ NOR for the purpose of being used ‘in any stage of judicial proceeding’ but for the purpose of being used ‘in any other case’, lesser punishment of upto three years imprisonment with fine under 2nd para of S.193 IPC shall be applicable.***
* ***The sections 191, 192, 196, 197, 198, 199 & 200 IPC are so defined that a person committing de-facto perjury cannot escape the clutches of law. In its endeavour to achieve this object the definitions are so framed that though there may be some overlapping sometimes and an act of perjurer may be falling in two sections (satisfying all the ingredients of both the sections) but the perjurer cannot escape after committing the mischief, that’s why offence under either of these sections are made punishable in the like manner i.e., U/S.193 IPC (or U/S. 194 or 195 IPC, if applicable due to gravity of the intended consequence of perjury).***

***For example, a false certificate (U/S.197 IPC) is certainly a document and the person signing or issuing may be doing so also with the intention specified under S.192 IPC; say a Doctor issuing false medical certificate as to the sick health or mental condition of a person with a view, that such certificate so appearing in evidence may cause a Judge to entertain an erroneous opinion about facts of health of such person and hence affecting the result of proceeding before such Judge. The user of such certificate may be committing an offence under S.198 IPC as well as U/S. 196 IPC. In either case, the offence has been made punishable in the same manner i.e., under S.193 IPC (or under S.194 or S.195 IPC, if applicable in the particular facts & circumstances of the case) so that the accused cannot claim any prejudice. The burden of proof on prosecution may be much less if offence U/Ss.197 or 198 IPC is proved, whereas, the burden to prove specific threefold intention of S.192 IPC may be little heavier.***

***Similarly, the declarations provided for under S.191 IPC (which a person is bound by law to make) may also satisfy the ingredients of the declarations provided for in S.199 IPC and hence the act of a person may be punishable under both. But again, the same makes no difference because in either case, the offence has been made punishable under S.193 IPC (or under S.194 or S.195 IPC, if applicable in the particular facts & circumstances of the case). Though the burden of proof on prosecution will be lesser if S.191 IPC is invoked because in S.191 IPC, the prosecution will not be required to prove that the false declaration was ‘material’ to the result of proceeding or object of declaration, whereas, in S.199 IPC, the prosecution will have to prove that the ’falsity’ was material to the object of declaration.***

***Similarly, an affidavit containing false statement (affirming despite being bound by an ‘express provision of law to state truth’ i.e., the Oaths Act, 1969) will fall within the mischief of S.191 IPC as well as S.199 IPC because an affidavit is always a declaration and the Courts or public servants are authorised to receive the same as evidence of fact. Such an affidavit may also fall within the mischief of S.192 IPC because quite often the same is prepared with the threefold intention specified in S.192 IPC. But again, the burden of proof on prosecution will be different in all the three cases, the same being simplest in S.191 IPC because there the prosecution will have to prove the falsity and knowledge or belief of falsity (or belief of its being not true), whereas, under S.199 IPC, the prosecution will have to discharge an additional burden of proving that the falsity was material to the object of declaration and for establishing the offence under S.192 IPC, the prosecution will have to prove specific threefold intention as required under S.192 IPC. But again, since in either of the three sections viz. S.191 or S.192 or S.199 IPC, the offence has been made punishable in the same manner i.e., under S.193 IPC (or under S.194 or S.195 IPC, if applicable in the particular facts & circumstances of the case), the offender shall be liable for punishment even if the prosecution fails to prove the specific threefold intention of S.192 IPC and also fails to prove that the falsity was material to the object of declaration but succeeds to establish that such declaration contained a false statement and the person swearing the affidavit knew about the falsity or even believed the statement to be false was or even believed that the statement was not true.***

* ***To summarise and comprehend, the scheme of punishment factor for ‘giving false evidence’ or ‘fabricating false evidence’ under ‘first’ or ‘second’ para of S.193 IPC or under S.194 IPC or under S.195 IPC,.***

***Let us consider following situations -***

* ***If a medical certificate about the insanity of a person is false and the same is capable of being used as (contradistinguished from actual use) as evidence of a fact of ‘insanity’ of such person before a public servant, authorised to receive the same as evidence, the person issuing or signing such certificate would have committed the offence under S.197 IPC and liable for punishment of imprisonment of upto 3 years and fine under second para of S.193 IPC.***
* ***Now if the same medical certificate about the insanity of a person was false and was prepared for the purpose of being used ‘in any stage of a judicial proceeding’ and capable of being used as (contradistinguished from actual use) as evidence of a fact of ‘insanity’ of such person before a Court of Justice, authorised to receive the same as evidence, the person issuing or signing such certificate would have committed the offence under S.197 IPC and liable for punishment of imprisonment of upto 7 years and fine under ‘first’ para of S.193 IPC.***
* ***But if the same medical certificate about the insanity of a person was false and was prepared for the purpose of being used ‘in a any stage of a judicial proceeding’ with intent to procure conviction of an offence punishable with imprisonment for life or imprisonment for a term of seven years or upwards and capable of being used as (contradistinguished from actual use) as evidence of a fact of ‘insanity’ of such person before a Court of Justice, authorised to receive the same as evidence, the person issuing or signing such certificate would have committed the offence under S.197 IPC and liable for punishment as that person, if convicted of such offence would be punished i.e., with imprisonment for life or imprisonment for a term of seven years or upwards under S.195 IPC, as per the facts of a particular case.***
* ***Now if the same medical certificate about the insanity of a person was false and was prepared for the purpose of being used ‘in any stage of a judicial proceeding’ with intent to procure conviction of capital offence (say under S.305 IPC) and capable of being used as (contradistinguished from actual use) as evidence of a fact of ‘insanity’ of such person before a Court of Justice, authorised to receive the same as evidence, the person issuing or signing such certificate would have committed the offence under S.197 IPC and liable for punishment with imprisonment for life or with imprisonment for a term which may extend to ten years besides fine under S.194 IPC.***
* ***But in this last situation of Capital offence, if a person would be actually convicted and executed on the basis of such false medical certificate, the person issuing or signing such certificate as well as the person using the same would be liable to be punished with death or with imprisonment for life or with imprisonment for a term which may extend to ten years besides fine under S.194 IPC.***
* ***In all above cases (except the last one), the person would be liable for said punishment even if such person had not, actually, used such false certificate before a public servant or in any stage of the judicial proceeding but had prepared the same with specified criminal intention & object.***

***Nevertheless, the ‘corrupt’ user of such false certificate (despite knowing the falsity) would also be punishable in the same manner, though the offence would then fall under S.198 IPC.***

* + 1. **Expanded Forms: Ss.191, 192, 196, 197, 198, 199 & 200 IPC defining ‘Giving false evidence’/‘Fabricating false evidence’**

The legislature has employed canvassing phraseology while framing sections defining perjury so as not to let an offender, committing perjury, escape by making use of definitional holes. Let us look, individually, completed alternate clauses of these provisions of perjury i.e., ‘giving false evidence’ and/or ‘fabricating false evidence’ viz. Ss.191, 192, 196, 197, 198, 199 & 200 IPC by separately expanding principal clause with each of the subordinate clauses provided in the alternative in the definition of section.

| **Table 1.4** | |
| --- | --- |
| Expanded Form of Sections of perjury i.e., ‘giving false evidence’ and ‘fabricating false evidence’ viz. Ss.191, 192, 196, 197, 198, 199 & 200 IPC | |
| **S.191 IPC** | |
| i) | ***Making a false statement despite knowing the falsity of statement and being bound by an oath to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| ii) | ***Making a false statement despite knowing the falsity of statement and being bound by an express provision of law to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| iii) | ***Making a false statement despite knowing the falsity of statement and being bound by law to make a declaration is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| iv) | ***Making a false statement despite believing the falsity of statement and being bound by an oath to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| v) | ***Making a false statement despite believing the falsity of statement and being bound by an express provision of law to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| vi) | ***Making a false statement despite believing the falsity of statement and being bound by law to make a declaration is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| vii) | ***Making a false statement despite not believing the truth of statement and being bound by an oath to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| viii) | ***Making a false statement despite not believing truth of statement and being bound by an express provision of law to state truth is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| ix) | ***Making a false statement despite not believing the truth of statement and being bound by law to make a declaration is punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.192 IPC** | |
| x) | ***Causing a circumstance to exist – intentionally - leading to an erroneous opinion by a person sitting in a judicial proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xi) | ***Causing a circumstance to exist – intentionally -leading to an erroneous opinion by a public servant sitting in a proceeding taken by law (akin to judicial proceeding) on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xii) | ***Causing a circumstance to exist – intentionally - leading to an erroneous opinion by an arbitrator sitting in an arbitration proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xiii) | ***Making any false entry in any book or record – intentionally - leading to an erroneous opinion by a person sitting in a judicial proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xiv) | ***Making any false entry in any book or record – intentionally - leading to an erroneous opinion by a public servant sitting in a proceeding taken by law (akin to judicial proceeding) on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xv) | ***Making any false entry in any book or record – intentionally - leading to an erroneous opinion by an arbitrator sitting in an arbitration proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xvi) | ***Making any document or electronic record containing a false statement – intentionally - leading to an erroneous opinion by a person sitting in a judicial proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xvii) | ***Making any document or electronic record containing a false statement – intentionally - leading to an erroneous opinion by a public servant sitting in a proceeding taken by law (akin to judicial proceeding) on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xviii) | ***Making any document or electronic record containing a false statement – intentionally - leading to an erroneous opinion by an arbitrator sitting in an arbitration proceeding on a point material to the result of proceeding has been made punishable ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.196 IPC** | |
| xix) | ***Corruptly’ using ‘false’ evidence as true evidence despite knowing the ‘false’ character of such evidence has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xx) | ***Corruptly’ using fabricated’ evidence as true evidence despite knowing the ‘fabricated’ character of such evidence has been made punishable as ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxi) | ***Corruptly’ using ‘false’ evidence as genuine evidence despite knowing the ‘false’ character of such evidence has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxii) | ***Corruptly’ using fabricated’ evidence as genuine evidence despite knowing the ‘fabricated’ character of such evidence has been made punishable as ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxiii) | ***‘Corruptly’ attempting to use ‘false’ evidence as true evidence despite knowing the ‘false’ character of such evidence has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxiv) | ***‘Corruptly’ attempting to use ‘fabricated’ evidence as true evidence despite knowing the ‘fabricated’ character of such evidence has been made punishable as ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxv) | ***‘Corruptly’ attempting to use ‘false’ evidence as genuine evidence despite knowing the ‘false’ character of such evidence has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxvi) | ***‘Corruptly’ attempting to use ‘fabricated’ evidence as genuine evidence despite knowing the ‘fabricated’ character of such evidence has been made punishable as ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.197 IPC** | |
| xxvii) | ***‘Issuing’ ‘false’ certificate, required by law to be given, despite knowing that such certificate is false in any material point has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxviii) | ***‘Signing’ ‘false’ certificate, required by law to be signed, despite knowing that such certificate is false in any material point has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxix) | ***‘Issuing’ ‘false’ certificate, relating to any fact of which such certificate is by law admissible in evidence, despite knowing that such certificate is false in any material point has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxx) | ***‘Signing’ ‘false’ certificate, relating to any fact of which such certificate is by law admissible in evidence, despite knowing that such certificate is false in any material point has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.198 IPC** | |
| xxxi) | ***‘Corruptly’ using certificate, required by law to be given but ‘false in material point’ despite knowing the ‘false in material point’ character of such certificate has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxii) | ***‘Corruptly’ attempting to use certificate, required by law to be given but ‘false in material point’ despite knowing the ‘false in material point’ character of such certificate has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxiii) | ***‘Corruptly’ using certificate, relating to any fact of which such certificate is by law admissible in evidence but ‘false in material point’ despite knowing the ‘false in material point’ character of such certificate has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxiv) | ***‘Corruptly’ attempting to use certificate, relating to any fact of which such certificate is by law admissible in evidence but ‘false in material point’ despite knowing the ‘false in material point’ character of such certificate has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.199 IPC** | |
| xxxv) | ***Making any false statement in a declaration (made by him), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxvi) | ***Making any false statement in a declaration (made by him), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxvii) | ***Making any false statement in a declaration (made by him), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxviii) | ***Making any false statement in a declaration (made by him), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xxxix) | ***Making any false statement in a declaration (subscribed by him), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xl) | ***Making any false statement in a declaration (subscribed by him), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xli) | ***Making any false statement in a declaration (subscribed by him), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlii) | ***Making any false statement in a declaration (subscribed by him), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xliii) | ***Making any false statement in a declaration (made by him), which any public servant is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xliv) | ***Making any false statement in a declaration (made by him), which any public servant is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlv) | ***Making any false statement in a declaration (made by him), which any public servant is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been used punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlvi) | ***Making any false statement in a declaration (made by him), which any public servant is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlvii) | ***Making any false statement in a declaration (subscribed by him), which any public servant is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlviii) | ***Making any false statement in a declaration (subscribed by him), which any public servant is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| xlix) | ***Making any false statement in a declaration (subscribed by him), which any public servant is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| l) | ***Making any false statement in a declaration (subscribed by him), which any public servant is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| li) | ***Making any false statement in a declaration (made by him), which any person is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lii) | ***Making any false statement in a declaration (made by him), which any person is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| liii) | ***Making any false statement in a declaration (made by him), which any person is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been used punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| liv) | ***Making any false statement in a declaration (made by him), which any person is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lv) | ***Making any false statement in a declaration (subscribed by him), which any person is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lvi) | ***Making any false statement in a declaration (subscribed by him), which any person is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lvii) | ***Making any false statement in a declaration (subscribed by him), which any person is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lviii) | ***Making any false statement in a declaration (subscribed by him), which any person is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| **S.200 IPC** | |
| lix) | ***‘Corruptly’ using as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lx) | ***‘Corruptly’ using as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxi) | ***‘Corruptly’ using as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxii) | ***‘Corruptly’ using as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxiii) | ***‘Corruptly’ attempting to use as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ or ‘fabricating false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxiv) | ***‘Corruptly’ attempting to use as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is made, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxv) | ***‘Corruptly’ attempting to use as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is bound by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
| lxvi) | ***‘Corruptly’ attempting to use as true a declaration (despite knowing the same to be false in any material point), which any Court of Justice is authorised by law to receive as evidence of any fact, touching any point material to the object for which declaration is used, has been made punishable as ‘giving false evidence’ i.e., under Ss.193, 194 or 195 (as per the gravity of consequence of the act).*** |
|  | * ***The ‘Explanation’ appended to with S.200 IPC makes it clear that the offence under Ss.199 and 200 IPC shall be complete even if the ‘declaration’ referred to therein is ‘inadmissible’ on the ground of some informality.*** |

* + 1. **Expanded forms of other offences affecting administration of justice viz. Ss.205 to 211 IPC**

Let us look, individually, completed but alternate clauses of these provisions affecting administration of justice viz. Ss.205 to 211 IPC by separately expanding principal clause with each of the subordinate clauses provided in the alternative in the definition of the section.

| **Table 1.5** | |
| --- | --- |
| **Expanded forms of other offences viz. Ss.205 to 211 IPC, affecting administration of justice, covered in bar of S.195(1)(b) Cr.P.C.** | |
| **S.205 IPC** | |
| lxvii) | ***False personation in any suit i.e., making any admission in such assumed character has been made punishable under S.205 IPC.*** |
| lxviii) | ***False personation in any suit i.e., making any statement in such assumed character has been made punishable under S.205 IPC.*** |
| lxix) | ***False personation in any suit i.e., confessing any judgment in such assumed character has been made punishable under S.205 IPC.*** |
| lxx) | ***False personation in any suit i.e., making any process to be issued in such assumed character has been made punishable under S.205 IPC.*** |
| lxxi) | ***False personation in any suit i.e., becoming security in such assumed character has been made punishable under S.205 IPC.*** |
| lxxii) | ***False personation in any suit i.e., doing any other act in such assumed character has been made punishable under S.205 IPC.*** |
| lxxiii) | ***False personation in any criminal prosecution i.e., making any admission in such assumed character has been made punishable under S.205 IPC.*** |
| lxxiv) | ***False personation in any criminal prosecution i.e., making any statement in such assumed character has been made punishable under S.205 IPC.*** |
| lxxv) | ***False personation in any criminal prosecution i.e., confessing any judgment in such assumed character has been made punishable under S.205 IPC.*** |
| lxxvi) | ***False personation in any criminal prosecution i.e., making any process to be issued in such assumed character has been made punishable under S.205 IPC.*** |
| lxxvii) | ***False personation in any criminal prosecution i.e., becoming security in such assumed character has been made punishable under S.205 IPC.*** |
| lxxviii) | ***False personation in any criminal prosecution i.e., becoming bail in such assumed character has been made punishable under S.205 IPC.*** |
| lxxix) | ***False personation in any criminal prosecution i.e., doing any other act in such assumed character has been made punishable under S.205 IPC.*** |
| **Expanded forms lxxx) to ……… of Ss.206 to 211 IPC are given in Appendix B.** | |

* + 1. **Court’s control on prosecutions for perjury**

Section 195(1) Cr.P.C. imposes an inhibition on a Court not to take cognizance of the different offences as enumerated therein except upon satisfaction of the conditions laid down therein. S.195 and S.340 Cr.P.C. insulate parties to a Court proceeding or witnesses appearing in Court from criminal prosecutions by all and sundry or by persons actuated by personal malice or ill-will. This is ensured by insisting on there being prosecutions, only when the interest of public justice renders it necessary. The said provisions effectively interdict prosecutions when interest of justice cannot be served. They provide protection to persons from prosecutions on insufficient grounds and ensure that there shall be prosecution only when the Court, after due consideration, is satisfied that there is a proper case to put a party to a Court proceeding or witness to trial. At the same time, if offences affecting the administration of justice are committed, then the offender ought not to escape from the due process of law. Striking a balance between the public requirement to bring an offender against public justice to face the consequences and to insulate misuse of the law, is the legislative wisdom in providing the mechanism available by a conjoined application of S.195 and S.340 Cr.P.C. Thus, the Courts play most pivotal role in enforcement of laws relating to perjury.

Chapter XXVI of Cr.P.C., wherein fall Sections 340 and 341 and other attendant provisions, is filed "Provisions as to Offences affecting the Administration of Justice". Sections 340 provides that when any Court is of the opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Clause (b) of Sub-section (1) of Section 195, which ***may ‘appear to have been committed’*** ***in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court,*** the Court may proceed to act in accordance with the different clauses under S.340(1) Cr.P.C., after such preliminary inquiry, if any, as it thinks necessary.

The embargo of S.195 (1)(b) Cr.P.C. of requiring a complaint in writing by the Court concerned, if the ***offence is alleged to have been committed******‘in’******or ‘in relation to’ a Court proceeding***, is placed to safeguard innocent witnesses or persons, who have stated falsehoods without intention or knowledge, say, due to fading memory, slip of memory or failure to recollect facts, accidentally or negligently i.e., the cases, wherein it is not expedient in the interests of justice to launch prosecution. But ***this embargo shall have no application if the offence(s) specified in these Ss.191, 192, 196, 197, 198, 199 & 200 IPC have NOT been committed ‘in’ or ‘in relation to’ a Court proceeding i.e., in the cases, where these offences of ‘giving false evidence’ or ‘fabricating false evidence’ are punishable under 2nd para of S.193 IPC and in such cases, a private complaint shall be maintainable***.

Section 195 Cr.P.C. deals with three distinct categories of offence. Clauses (a), (b)(i) and (b)(ii), respectively, relate to (1) Contempt of lawful authority of public servants, (2) Offences against public justice, and (3) offences relating to documents’ given in evidence. Clause (b)(iii) depends on Clause (b)(i) or (b)(ii), as the case may be, and governs criminal conspiracy or attempt to commit any offence specified under Clause (b)(i) or (b)(ii), as well as abetment of such offences. Clause (a) deals with offences which directly affect the functioning of or discharge of lawful duties of a public servant and are punishable under Sections 172 to 188 IPC which occur in Chapter X of the Indian Penal Code, 1860 with the heading, “Of Contempts of Lawful Authority of Public Servants”. The offences mentioned in Clause (b)(i) of Section 195(1) Cr.P.C. relate to ‘giving false evidence’ (U/S.191 IPC) or fabricating false evidence’ (U/S.192 IPC) or ‘using false or fabricated evidence’ (U/S.196 IPC) or ‘issuing or signing false certificate’ (U/S.197 IPC) or ‘using false certificate’ (U/S.198 IPC) or ‘making a false declaration’ (U/S.199 IPC) or ‘using false declaration’ (U/S.200 IPC). If such offences are committed ‘in’ or ‘in relation to’ any judicial proceeding i.e., before a Court of Justice or before a public servant **acting** **as such**, and also some other offences, which have a direct correlation with the judicial proceedings in a Court of Justice i.e., the proceedings judicial in nature. Clause (b)(ii) of Section 195(1) applies to cases where the allegations relate to offences enumerated therein which fall under Chapter XVIII of IPC, which deals with “Offences relating to documents and to property marks. Clause (b)(i) of Section 195(1) Cr.P.C. governs offences punishable under Sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, all of which fall under Chapter XI of IPC, relating to “False Evidence and Offences against Public Justice”.

* + 1. **Maintaining Check of Court’s control & Balance of justice to the individual**

***The phrase ‘in any other case’ occurring in para 2 of S.193 IPC makes it clear that the commission of offence is not restricted only to ‘judicial proceeding’, a mis-impression reflected in so many judgments of Hon’ble High Courts and even those of Hon’ble Supreme Court, cited in this book, which give the impression that the moment an offence punishable U/S.193 IPC is committed, the complaint by the ‘Court concerned’ is necessary.***

The title heading of S.195 Cr.P.C. is ***“Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence”*** and the title heading of Chapter XI of Indian Penal Code, 1860 is ***“Of false evidence and offences against public justice*”**. But though the offences described under Ss.201, 202, 203, 204, 212 to 227 (including S.216A, 225A, 225B) and 228A, 229 & 229A IPC are also the ***offences against public justice***, there is no bar on a private complaint despite the same having been put in the chapter titled as “… ***offences against public justice****”.*

These offences (Ss.202, 203, 212, 213, 214, 215, 216, 216A, 221, 222, 223, 224, 225, 225A, 225B, 228A) can be committed and are committed without any direct connection with the Court proceeding or even if connected to or having reference to any Court proceeding (Ss.201, 204, 217, 218, 227, 229 & 229A) the commission of offence is complete outside the Court and therefore, the same are not put under Court’s direct control. The offence(s) described in Ss.219, 220 & 221 IPC may be directed against the Judge or Magistrate itself hence the question of these sections being put under such Court’s control would be violative of first principle of natural justice. However, some Courts observe,

***“This is eloquent enough a legislative material to note that the embargo in Section 195(1) is absolute and any prosecution for offences enumerated therein could be only by following the procedure prescribed in Sections 340.”***

In author’s view, to state so would be incorrect. These offences, specified in S.195(1)(b)(i) Cr.P.C. fall under Court’s exclusive control only if the offences are committed **‘in’** or **‘in relation to’** any proceeding in any Court **and** the offences, specified in S.195(1)(b)(ii) Cr.P.C. are put under Court’s exclusive control in a more limited sense i.e., when the document is custodia-legis (as interpreted by Constitutional bench of Hon’ble Supreme Court in Iqbal Singh Marwah’s case’). Ss. 191, 196, 197, 198, 199 & 200 IPC define the law of ‘giving false evidence’ and S.192 & 196 IPC define the law of ‘fabricating false evidence’ generally. The embargo of S.195(1) Cr.P.C. is not applicable when the offence is committed, say, in a proceeding before an Arbitrator. Curiously, the offences U/Ss. 197 & 198 IPC are made punishable U/S.193 IPC (and S.193 IPC is mentioned in S.195(1)(b) Cr.P.C.) but said sections viz. 197 IPC & 198 IPC are not mentioned in S.195(1)(b) Cr.P.C., the way other sections e.g., 196, 199 & 200 IPC find mention in S.195(1)(b) Cr.P.C. The plausible reason is that the offence defined U/S.197 IPC is complete the moment a person issues or signs a certificate knowingly containing false statement because the certificate is by itself an evidence of a fact (receivable in a Court of justice or before a public servant) and such a person renders himself liable for punishment prescribed in 2nd part of S.193 IPC which refers to as ‘in other cases’ though there may be no judicial proceeding or proceeding in any Court related to/ referable to such Certificate nor he may even have any intention to use the same in Court.

As a matter of fact, if the document is forged with the ‘threefold’ intention specified in S.192 IPC and ‘for the purpose of being used in any stage of judicial proceeding’ as specified in S.193 IPC (where punishment for fabricating such false/fabricated evidence is provided), then only the offence will be under Court’s ‘exclusive’ control. In all ‘other cases’ (referred to in 2nd para of S.193 IPC, prescribing lesser punishment), private complaint shall be maintainable even if the offence does fall in the category of offences specified in S.195(1)(b) Cr.P.C. ***That’s why, ‘giving false evidence’ or ‘fabricating false evidence’ for the purpose of being used ‘in other cases’ do not come under the bar of S.195(1)(b) Cr.P.C. and can be prosecuted by a private complaint but the punishment entailed will be the one provided in 2nd para of S.193 IPC***.

Similarly, S.201 IPC (***causing disappearance of evidence***) or S.204 IPC (***Destruction of document or electronic record to prevent its production as evidence***) may be in relation to a case pending before the Court, still the same does not find mention in S.195(1)(b) Cr.P.C. because ‘such destruction of evidence’ is not seen or shown by the Court nor takes place within the processes under the direct control of the Court. But if the same destruction of evidence (referred to U/S.201) or of document or electronic record (referred to U/S.204 IPC) is done by an Ahalmad/Court’s record keeper (say by removing a document from the Court’s judicial record file) with the intention of causing the formation of erroneous opinion by the judge, the same shall amount to ‘causing a circumstance to exist’ within the ambit of S.192 IPC and hence such destruction would fall (because of specific intention behind the act) under S.192 IPC and not under S.201 IPC or S.204 IPC. But if the act of Ahalmad in removing the document from the judicial file is not coupled with the intention specified under S.192 IPC, his offence shall not fall under S.192 IPC though the same may fall under any other relevant section of IPC e.g. Ss.166, 167, 217, 218 or may be even under any other special law say Prevention of Corruption Act, 1987 (if the act of ahalmad satisfies the ingredients specified therein) as per the specific facts and circumstances of a particular case and the intention inferable therefrom.

***As a corollary, if the offences specified in S.195(1)(b) Cr.P.C. are committed in the sense that the commission of offence is though complete but the same is not ‘in’ or ‘in relation to’ any Court proceeding or the commission of offence is complete long before a document’s ‘production' or ‘giving in evidence’ in any Court proceeding, particularly, when there is no Court proceeding ‘pending’ or ‘completed’ at the time of commission of such offence, a private complaint shall be maintainable even in respect of offences mentioned in S.195(1)(b) Cr.P.C***.

| **Table 1.6** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| Offences U/Ss.191, 192, 196, 197, 198, 199 & 200 IPC are punishable under S.193 IPC (or U/Ss.194 or 195 IPC) | | | | Complaint by ‘Court concerned’ OR Private Complaint | | |
| S.193 IPC | | | | S.195(1)(b) Cr.P.C. | | |
| **Para 1 -**  **Upto 7 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | in | **judicial proceeding** | ‘in’ | **any Court proceeding** | Bar of S.195(1)(b) Cr.P.C. **applies** and private complaint **not maintainable** |
| in any stage of | in relation to’ |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used | in | ‘in’ |
| in any stage of | in relation to’ |
| Corruptly using or attempting to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC | ‘produced or given in evidence’ |  |
| Corruptly using or attempt to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC | ‘produced or given in evidence’ |  |
| **Giving** false evidence U/S.191 IPC | In proceedings taken by law before a public servant **as such** | | Declared by law to be ‘judicial proceeding’ or akin to Court proceeding | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Para 2 - upto 3 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | In proceedings taken by law before a public servant | | N**ot** declared by law to be ‘judicial proceeding’ nor akin to ‘Court proceeding’ | | Bar of S.195(1)(b) Cr.P.C. **does not apply,** and private complaint **is maintainable** |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Giving** false evidence U/S.191 IPC | **Before an arbitrator** | | Bar of S.195(1)(b) Cr.P.C. **does not apply,** and a private complaint **is maintainable** | | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Para 2 - upto 3 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | **In any other case -**   * Issuing a false Medical Certificate * Issuing or signing a false birth certificate * Issuing a false Marriage Certificate * Issuing * Using a false Medical certificate, Birth Certificate or Marriage certificate etc. before any public servant as evidence of such fact * Making a false declaration, receivable as evidence of any fact, before any public servant or other person * Using a false declaration, contemplated U/S.199 IPC as true before any public servant or other person | | Bar of S.195(1)(b) Cr.P.C. **does not apply,** and a private complaint **is maintainable** | | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| Committing offence of -   * ‘Issuing or signing a false certificate U/S.197 IPC’ * ‘Making or subscribing a false declaration U/S.199 IPC |
| Corruptly using or attempt to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC |

* + - 1. **M. L. Sethi Vs. R. P. Kapur & Anr, AIR 1967 SC 528**

Full bench of Hon’ble Supreme Court held,

“***…. implying that private prosecutions for the offences mentioned in clauses (b) & (c) of sub-s. (1) of S.195, Cr.P.C., are barred absolutely and under no circumstances can such offences be brought before courts by private persons***. In the case of cl. (b), there is the clear limitation that private prosecutions are barred only if the offence mentioned in that section was alleged to have been committed in, or in relation to, any proceeding in any Court. ***If the offence was not committed in, or in relation to, any proceeding in any Court, a private complaint is clearly permissible. The question of upholding the dignity and prestige of courts of law only arises after there are proceedings in the Courts and not at the stage when no such proceedings have been instituted or have come into existence in any Court.***” (*Emphasis Supplied)*

* + 1. **‘Cut-Short’ Summary procedure for ‘obvious’ cases of perjury by ‘witnesses’**

Legislature has enacted Section 344 Cr.P.C. to provide for expeditious and summary manner of trying the witnesses committing perjury, but this procedure, prescribed under S.344 Cr.P.C. is meant for those explicit and flagrant cases of perjury wherein the perjury is of unchallengeable nature and ‘obvious’ and no further elaboration or additional documents (beyond those available on judicial record) are required to demonstrate the commission of offence of such perjury viz. “giving of false evidence” or “fabricating false evidence” and the commission of offence is kind of explicit to the Sessions Judge or Magistrate of first class, while going through the entire record of evidence ***at the time of judgment or final order disposing of the judicial proceeding***. Not only that, the discretion to invoke S.344 Cr.P.C. has not been given to every Court before whom the perjury is committed, instead the same has been restricted only to the cases of commission of perjury before Session Court and the Court of Magistrate of first class, who regularly deal with such criminal trials and are more aptly equipped to conduct Summary Trials, prescribed under S.344 Cr.P.C.

The Summary procedure in S.344 Cr.P.C. is an alternative to the procedure prescribed under Sections 340- 343 Cr.P.C. but for restricted category of witnesses. Even in those cases when the Court is of opinion that the ***perjury, even though committed, is likely to raise complicated questions or deserves more serious punishment than that permissible under the proposed section, or is otherwise of such a nature that the ordinary procedure is more appropriate, the court will not proceed under S. 344 Cr.P.C.***

* + - 1. **Jai Bhagwan Vs. State (Govt. of NCT Delhi) Crl. Appeal Nos.2298 & 2299 of 2009 (SC)**

The spirit of the 5- Judge Constitution bench judgment of Hon’ble Supreme Court’s observation in para 18 of **Iqbal Singh Marwah’s case** was that a victim of perjury should not be rendered remediless and wrongdoer must not escape, whereas, the para became the escape route for the offenders to dodge the prosecution for committing perjury or the offences specified in S.195(1)(b) Cr.P.C. or detailed in Chapter XI of the Indian Penal Code.

***The judgment in 5-Judge Constitutional bench in Iqbal Singh Marwah’s case does not lay down the law for letting go the offenders committing perjury or the offences specified in S.195(1)(b) Cr.P.C. instead allows the prosecution*** of certain category of offenders (that seem to fall under clause (ii) of S.195(1)(b) Cr.P.C.) ***even through private complaints. To let go the offenders committing perjury or the offences specified in S.195(1)(b) Cr.P.C. by using some possibilities or plausibilities discussed by Hon’ble Supreme Court in its reasoning observations would be erroneous, leading to miscarriage of justice***.

But it is curious to note the judgment of smaller bench of Hon’ble Supreme Court in “**Jai Bhagwan Vs. State (Govt. of NCT Delhi) Crl Appeal No. 2298 of 2009 and 2299 of 2009 (SC)”** and how the said bench founded ***“inexpediency in the interests of justice”****,*having the effect of go the offender by citing the plausibility reasoning/argument of 5-Judge Constitution Bench of **“Iqbal Singh Marwah & Anr Vs. Meenakshi Marwah & Anr (2005)4 SCC 370”**, whereas, in letter & in spirit the 5-Judge bench had given that reasoning to allow the prosecution of that limited category of offenders, specified therein, even on private complaints.

|  |  |
| --- | --- |
| **Jai Bhagwan Vs. State (Govt. of NCT Delhi) Crl Appeal No. 2298 of 2009 & 2299 of 2009** | **5- Judge Constitutional bench of Supreme Court in** **Iqbal Singh Marwah Vs. Meenakshi Marwah & Anr (2005) 4 SCC 370** |
| 8. In Iqbal Singh Marwah and Another V. Meenakshi Marwah and Another (2005) 4 SCC 370, a Constitution Bench of this Court has gone into the scope of Section 340 CrPC. Para 23 deals with the relevant consideration:  “23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words “court is of opinion that it is expedient in the interests of justice”. This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). ***This expediency will normally be judged by the court*** by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, **such commission of offence has upon administration of justice.** It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint.” | Hon’ble Supreme Court Observed,  “18. In view of the language used in Section 340 Cr.P.C. the Court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the Section is conditioned by the words "Court is of opinion that it is expedient in the interest of justice." This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the Court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(i)(b). This expediency will normally be judged by the Court by weighing not the magnitude of injury suffered by the person affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in Court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the Court may not consider it expedient in the interest of justice to make a complaint. The broad view of clause (b)(ii), as canvassed by learned counsel for the appellants, ***would render the victim of such forgery or forged document remedyless***. Any interpretation which leads to a situation where a victim of a crime is rendered remedyless, has to be discarded. |

Thus as is clear from highlighted portions in right column, Supreme Court in Iqbal Singh Marwah’s case only observed a possibility (while giving its reasoning to counter the broad view of bar U/S.195(1)(b)(ii) suggested by Counsel in that case) that sometimes Court ***may*** not file the complaint in the circumstances narrated in paras 18, 19, 20 & 21 but the Constitution bench did not hold that in all the circumstances narrated in those paras, it shall not be expedient in the interest of justice to file a complaint. Thus, ***to use para 18 of said judgment (incorrectly referred to be para 23) as judicial dicta/ ratio to be followed as a rule to judge expediency, may not be regarded as fair treatment to the spirit of observations of Constitution Bench, particularly, when Constitution bench was more concerned with not rendering the victim of such forgery ‘remediless’ and hence opening the room for allowing the private complaints in respect of documents forged earlier*** and not when the same were custodia-legis by restricting the scope of bar of S.195 Cr.P.C. ***This relaxation in bar of S.195 Cr.P.C. would still be available only in respect of certain category of offences falling in clause (ii) of S.195(1)(b) Cr.P.C. The Constitutional bench in Iqbal Singh Marwah’s case has not relaxed the bar in respect of any offence falling in clause (i) of S.195(1)(b) Cr.P.C. Now if inexpediency is concluded in the case of forgery, the bar is lifted by constitution bench and the victim can file private complaint. But if this observation (of possibility reasoning) is used as yardstick of testing the expediency, then the victim of ‘false evidence’ under S.191 IPC or 192 IPC or S.196 IPC to 200 IPC (without any element of forgery) would necessarily be rendered ‘remediless’ thus defeating the very purpose of reasoning and concern of 5- Judge Constitution bench in Iqbal Singh Marwah’s case of not rendering a victim ‘remediless’***. Because still for a victim of ‘false evidence’ (without the element of forgery, Section 195(1)(b) Cr.P.C. shall bar any complaint by the victim and Court will not feel it expedient if this interpretation (given in “**Jai Bhagwan Vs. State (Govt. of NCT Delhi) Crl Appeal No. 2298 of 2009 and 2299 of 2009 (SC)”**) is put upon the reasoning observations of constitution bench judgment in Iqbal Singh Marwah’s case and used as a mandate not to prosecute the persons committing perjury or the offences specified in S.195(1)(b)(i) Cr.P.C.

* + 1. **Ingredients break-up of S.197 IPC**

**Whoever ,**

* **issues OR**
* **signs**
* **any certificate**
* **required by law to be**
* **given OR**
* **signed,**

**OR**

* **relating to any fact of which such certificate is**
* **by law admissible in evidence,**
* **knowing OR**
* **believing that**
* **such certificate is**
* **false in any material point,**
* **shall be punished in the same manner as if he gave false evidence.**
  + 1. **Scope & Object of S.197 IPC**

***The offence specified U/S.197 IPC is complete the moment, ‘a person issues or signs any certificate (required by law to be given or signed, or relating to any fact of which such certificate is by law admissible in evidence), knowing or believing that such certificate is false in any material point. The person doing so shall be liable to be punished in the same manner as if he ‘gave false evidence’ i.e., under S.193 IPC*** (or under Ss.194 IPC or S.195 IPC if the facts & circumstances of the case so mandate) ***and for being liable for such punishment, the person is not required to file said certificate in the sense of giving in Court or in any judicial proceedings or before any 'public servant'.***

***In other words, if a person creates a ‘certificate’ (false in material particulars), which is receivable as evidence of any fact (as specified in S.197 IPC) , the offence under S.197 IPC is complete and hence he becomes liable to be punished under S.193 IPC in the same manner as if he gave false evidence, whereas, actually, neither the section requires nor the person has given such certificate as ‘evidence’ in any proceeding be it ‘judicial proceeding’ or ‘proceeding taken by law before a public servant as such’ (contemplated a second category under S.192 IPC) or ‘in any proceeding taken before a public servant otherwise nor used in any other manner whatsoever, corruptly or innocently.***

***In author’s view, this is that kind of offence, which is contemplated under the phrase “in any other case” in second para of S.193 IPC being punishable with imprisonment of upto 3 years and fine.***

***As a matter of fact, if the person, knowingly, gives such a certificate (issued or signed as contemplated under S.197 IPC) in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator or before a public servant otherwise, such a person, actually, commits one more offence, specified under S.198 IPC, which is also made punishable in the same manner as if he ‘gave false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if the facts & circumstances of the case so mandate).***

***So if a person commits an offence U/S.197 IPC and does not perform the further act of using it ‘corruptly’ or otherwise, does not mean that he should be allowed to go scot-free. Instead, if there are no proceedings pending before or decided by any Court at the time of issuing or signing such ‘materially’ false certificate, the question of filing complaint by such Court cannot arise (and hence the bar of S.195(1) Cr.P.C. will not be applicable) and a private complaint shall be maintainable.***

***The offence under S.197 IPC is a non-compoundable offence and the same cannot be allowed to be an auto-excused one just because punishment for such an offence is provided for in S.193 IPC, which finds mention under S.195(1) Cr.P.C. because the bar applies only when such offence (punishable under S.193 IPC) is committed ‘in’ or ‘in relation to’ or ‘in respect of a document produced or given in evidence’ and if this pre-condition is not satisfied, the private complaint shall be maintainable and the offender shall be liable for lesser punishment (of upto 3 years and fine) prescribed under para 2 of S.193 IPC.***

* + 1. **“Certificate”**
    2. **“issuing a certificate”**

The word ‘issuing’ involves

* + 1. **“signing a certificate”**

Signing a certificate necessarily requires

* + 1. **"required by law to be given”**
       1. **Vijay Enterprises Vs. Gopinath Mahadev Koli, 2006 (4) BOMCR 701**

Hon’ble Bombay High Court held:

“6. ... It is needless to state that ***justice delivery system has to be pure and should be such that the persons who are approaching the Courts and filing the proceedings must be afraid of using fabricated documents and also of making false statements on oath. We are a Court of Law sitting here to ascertain the truth and give justice in accordance the law to establish truth and not being misled by the advocates and the parties in the various directions so as to make it almost impossible to give effective and truthful justice to the litigants at large***. In my opinion keeping in mind the aforesaid position it is high time that where the people have blatantly used the fabricated document for the purpose of achieving the desired result even by misleading the Court and / or by making false statement and by using fabricated documents cannot escape the penalties. This is an unfortunate case before me where the persons who have used the certificate are illiterate. There are people who are behind them are powerful. But they are taking shelter behind the fact that the certificate has been brought to them by those illiterate persons. ***In spite of the aforesaid it has been established on the record not only the three persons have obtained the fabricated document but the builder and brokers and the lawyer have all conscientiously utilized the said certificate knowing fully well that the said certificate is fabricated.*** Firstly, because all of them knew that there are two certificates produced one bearing No. 15 and another bearing No. 98. The builder, the brokers and the lawyer not being literate and having resources before entering into the agreement and filing the proceedings in the Court ought to have ascertained and verified the veracity of the said document. But admittedly they have not done so before using the said document in the Court proceedings. ***This is not a mere lapse but the fact is that the fabricated document has been consciously used by the said persons.*** In that light of the matter, I am of the opinion that each of the aforesaid persons are guilty of using fabricated document in the Court proceedings and are consequently guilty of contempt of court. I am also of the opinion that utilising the fabricated document in the court proceedings amounts to interference with the administration of justice and thus attracts the liability of contempt. In effect, it is the builder and the brokers who have been on investigation found to be the real persons in moving an application through an illiterate person Mahadu Lakhama Kakade to utilise the said certificate. Though the application was in the name of Mahadu Lakhma Kakade, in fact by virtue of the joint development agreement the real beneficiary was Manoj Kumar Devadiga as he was entitled to develop the said property. I am of the view that this is a fit case where action must be taken.”

* + 1. **"required by law to be signed”**
    2. **“relating to any fact of which such certificate is by law admissible in evidence”**

Admissibility in evidence of such certificate is an essential ingredient to complete the offence. Hence if such certificate is not admissible in evidence, the offence will not be complete.

* + 1. **Examples of such Certificates**

**Certificate U/S.65 B of Evidence Act, 1872**

**Certificate under Banker’s Book Evidence Act**

* + 1. **“false in any material point”**

Such certificate’s being false in material point is an essential ingredient for the offence to be complete.

* + 1. **“knows to be false”**

For detailed commentary on knowledge see Chapter 3 p. …. (ante).

* + 1. **“believes to be false”**

For detailed commentary on knowledge see Chapter 3 p. …. (ante).

* 1. **S.198. Using as true a certificate known to be false**

| Indian Penal Code, 1860 | |
| --- | --- |
| S.198 | **Using as true a certificate known to be false -** |
|  | Whoever corruptly uses or attempts to use any such certificate as a true certificate, knowing the same to be false in any material point, **shall be punished in the same manner as if he gave false evidence**. |
|  | **CLASSIFICATION OF OFFENCE**  Non- cognizable—Bailable—Triable by court by which offence of giving false evidence is triable—Punishment: The same as for the giving or fabricating false evidence—Non-compoundable. |

* + 1. **Ingredients break-up of S.198 IPC**

**Whoever,**

* **corruptly**
* **uses OR**
* **attempts to use**
* **any such certificate**
* **as a true certificate,**
* **knowing the same**
* **to be false in any material point,**
* **shall be punished in the same manner as if he gave false evidence.**
  + 1. **Scope & Object of S.198 IPC**

***If the person, knowingly, gives a false certificate (issued or signed as contemplated under S.197 IPC) in a judicial proceeding or in a proceeding taken by law before a public servant as such or before an arbitrator or before a public servant otherwise, such a person, actually, commits one more offence, specified under S.198 IPC, which is also made punishable in the same manner as if he ‘gave false evidence’ i.e., under S.193 IPC (or under Ss.194 IPC or S.195 IPC if the facts & circumstances of the case so mandate).***

* + 1. “**corruptly”**
    2. **“using”**
    3. **“attempt to use”**

These words & phrase shall have the same meaning as given in S.196 IPC and hence the commentary in #5.5.2, #5.5.3 and #5.5.5 may be referred to.

* + 1. **“such certificate”**

The phrase ‘such certificate’ essentially has the reference to the certificates specified in S.197 IPC and hence for satisfying the ingredients of S.198 IPC, the ingredients of S.197 IPC must be satisfied first.

* + 1. **“Knows to be false”**

For detailed commentary readers may refer commentary given in #3.9.1

* + 1. **“false in any material point”**

For detailed commentary readers may refer commentary given in #4.10.2

* + - 1. **Tasleema Vs. State (NCT of Delhi) & Ors, WP (Crl.) No.758/2008**

Hon’ble Delhi High Court has held,

“41. … Mr. Sidharth Luthra, the Ld. Senior Counsel appearing on behalf of the respondent No. 4 had submitted that it was Section 471 IPC which would come into play in the present case. That Section relates to the punishment for using as genuine, a forged document or electronic record, which a person knows or has reason to believe to be a forged document or electronic record. The reply to the Show cause Notice submitted by the petitioner outlines the circumstances under which the said birth certificate was filed in Court. Apart from the unconditional apology tendered by the petitioner, she has also stated that she believed that the said birth certificate was a genuine one. It is not as if she knew and believed the same to be false and yet submitted the same before the Court.”

***However, the bar under S.195(1)(b)(ii) Cr.P.C. restricting taking of cognizance by any Magistrate except on the complaint in writing of that Court concerned, is NOT EXTENDED for the offences defined under Ss.197 & 198 IPC and any Court of competent Magistrate can take cognizance on the basis of a private complaint.***

***The rationale behind non-inclusion of these two sections in the embargo of S.195(1)(b)(i) Cr.P.C. seems to be that the offence specified in S.197 IPC is complete, the moment a false certificate is issued or signed and there may be instances of commission of these offences, where there may be, absolutely, no connection to or pendency of a Court proceeding, whereas, the embargo of S.195(1)(b)(i) Cr.P.C. is applicable only when the offences specified therein are committed ‘in, or in relation to any proceeding in any Court’. Similarly, there may be many instances of “corrupt” “use” of such false certificates, punishable under S.193 IPC, where there is no reference to or connection with Court proceedings. Since the offences are made punishable in the same manner as giving false evidence i.e., punishable as provided under S.193 IPC (2nd part). Now if the falsely issued or signed certificate is used in ‘any stage of judicial proceeding’, naturally, the same shall be punishable under 1st part of S.193 IPC and same will be ‘in’ or ‘in relation to’ Court proceeding and the embargo of S.195(1)(b)(i) Cr.P.C. shall apply (as S.193 IPC finds mention in said sub-clause). But if the offence is not ‘in’ or ‘in relation to’ Court proceeding and hence the same shall be punishable under 2nd part of S.193 IPC and the embargo of S.195(1)(b) shall have no application.***

***Nevertheless, reference to the same cannot be ignored while concluding the ingredients of offence committed by a person ‘giving false evidence’ because of the use of phrase shall be punished in the same manner as if he gave false evidence in Ss.197 & 198 IPC. More because S.195(1)(b)(ii) makes difference only in respect of launching the prosecution but once the prosecution is initiated, culpability of offender has to be seem with the aid of all the provisions, specifying the ingredients of offence of ‘giving false evidence’*.**

**As per Scheme of Chapter XI of Indian Penal Code, containing the provisions regarding offences, affecting administration of justice-**

S.199 IPC predicates ‘making and subscribing’ of a ‘declaration or statement’ referred to in said section, punishable as ‘giving false evidence’ i.e., the offence defined in S.191 IPC and punishable under S.193 IPC. And S.200 IPC predicates ‘corruptly’ using or ‘attempting to use’ any such declaration, defined in S.199 IPC ‘as true’, an offence punishable in the same manner as of ‘giving false evidence’ i.e., the offence defined in S.191 IPC and made punishable under S.193 IPC.

It is evident that Ss.199 & 200 IPC are carved out to cover the left out arena of offenders, ‘giving false evidence’, particularly, the kind of evidence that would be receivable as evidence and which can be so regarded by a Court of Justice, a public servant or a person authorised by law to so receive without the ‘maker’ of such ‘statement or declaration’, actually, stepping into the witness box and falling into the category of persons ‘giving false evidence in judicial proceedings.

* + 1. “**Ingredients break-up of S.195 IPC**

**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 by the law for the time being in force in India is not capital, but**
* **punishable with 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.**
  + 1. **List of offences punishable with life-imprisonment**

This section prescribes aggravated punishment if the intended consequence of perjury is to cause a graver mischief I.e., if the perjury is intended to cause a punishment of life imprisonment or more than seven years.

Following is the list of offences under Indian Penal Code, 1860, that are made punishable with ***imprisonment for life***.

|  |  |
| --- | --- |
| **Section** | **Offence** |
| **S.121A** | **Conspiracy to commit offences punishable by section 121** |
| **S.122** | **Collecting arms, etc., with intention of waging war against the Government of India** |
| **S.124A** | **Sedition** |
| **S.125** | **Waging war against any Asiatic Power in alliance with the Government of India** |
| **S.128** | **Public servant voluntarily allowing prisoner of state or war to escape** |
| **S.130** | **Aiding escape of, rescuing or harbouring such prisoner** |
| **S.131** | **Abetting mutiny, or attempting to seduce a soldier, sailor or airman from his duty** |
| **S.132** | **Abetment of mutiny, if mutiny is committed in consequence thereof** |
| **S.222** | **Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed** |
| **S.225** | **Resistance or obstruction to lawful apprehension of another person** |
| **S.232** | **Counterfeiting Indian coin** |
| **S.238** | **Import or export of counterfeits of the Indian coin** |
| **S.255** | **Counterfeiting Government stamp** |
| **S.304** | **Punishment for culpable homicide not amounting to murder** |
| **S.304B** | **Dowry death** |
| **S.307** | **Attempt to murder** |
| **S.311** | **Punishment** |
| **S.313** | **Causing miscarriage without woman's consent** |
| **S.314** | **Death caused by act done with intent to cause miscarriage** |
| **S.326** | **Voluntarily causing grievous hurt by dangerous weapons or means** |
| **S.326A** | **Voluntarily causing grievous hurt by use of acid, etc**. |
| **S.329** | **Voluntarily causing grievous hurt to extort property, or to constrain to an illegal act** |
| **S.363A** | **Kidnapping or maiming a minor for purposes of begging** |
| **S.364** | **Kidnapping or abducting in order to murder** |
| **S.364A** | **Kidnapping for ransom, etc**. |
| **S.370** | **Trafficking of person** |
| **S.371** | **Habitual dealing in slaves** |
| **S.376** | **Punishment for rape** |
| **S.376A** | **Punishment for causing death or resulting in persistent vegetative state of victim** |
| **376AB** | **Punishment for rape on woman under twelve years of age** |
| **S.376D** | **Gang rape** |
| **S.376DA** | **Punishment for gang rape on woman under sixteen years of age** |
| **S.388** | **Extortion by threat of accusation of an offence punishable with death or imprisonment for life, etc**. |
| **S.389** | **Putting person in fear or accusation of offence, in order to commit extortion** |
| **S.394** | **Voluntarily causing hurt in committing robbery** |
| **S.395** | **Punishment for dacoity** |
| **S.396** | **Dacoity with murder** |
| **S.400** | **Punishment for belonging to gang of dacoits** |
| **S.409** | **Criminal breach of trust by public servant, or by banker, merchant or agent** |
| **S.412** | **Dishonestly receiving property stolen in the commission of a dacoity** |
| **S.413** | **Habitually dealing in stolen property** |
| **S.436** | **Mischief by fire or explosive substance with intent to destroy house, etc**. |
| **S.449** | **House-trespass in order to commit offence punishable with death** |
| **S.450** | **House-trespass in order to commit offence punishable with imprisonment for life** |
| **S.460** | **All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them** |
| **S.467** | **Forgery of valuable security, will, etc**. |
| **S.472** | **Making or possessing counterfeit seal, etc., with intent to commit forgery punishable under section 467** |
| **S.474** | **Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it genuine** |
| **S.475** | **Counterfeiting device or mark used for authenticating documents described in section 467, or possessing counterfeit marked material** |
| **S.477** | **Fraudulent cancellation, destruction, etc., of will, authority to adopt, or valuable security** |
| **S.489A** | **Counterfeiting currency-notes or bank-notes** |
| **S.489B** | **Using as genuine, forged or counterfeit currency-notes or bank-notes** |
| **S.489D** | **Making or possessing instruments or materials for forging or counterfeiting currency notes or bank-notes** |
| ***Details of these offences are given in Appendix - II*** | |

* + 1. **List of offences punishable with imprisonment for 7 years or more**

Following is the list of offences under Indian Penal Code, 1860, that are made punishable with ***imprisonment of 7 years or more***.

|  |  |
| --- | --- |
| **Section** | **Offence** |
| **S.123** | **Concealing with intent to facilitate design to wage war** |
| **S.**124 | Assaulting President, Governor, etc., with intent to compel or restrain the exercise of any lawful power |
| **S.126** | **Committing depredation on territories of Power at peace with the Government of India** |
| **S.127** | **Receiving property taken by war or depredation mentioned in sections 125 and 126** |
| **S.134** | **Abetment of such assault, if the assault committed** |
| **S.174A** | **Non-appearance in response to a proclamation under section 82 of Act 2 of 1974** |
| **S.201** | **Causing disappearance of evidence of offence, or giving false information to screen offender** |
| **S.211** | **False charge of offence made with intent to injure** |
| **S.213** | **Taking gift, etc., to screen an offender from punishment** |
| **S.214** | **Offering gift or restoration of property in consideration of screening offender** |
| **S.216** | **Harbouring offender who has escaped from custody or whose apprehension has been ordered** |
| **S.219** | **Public servant in judicial proceeding corruptly making report, etc., contrary to law** |
| **S.220** | **Commitment for trial or confinement by person having authority who knows that he is acting contrary to law** |
| **S.221** | **Intentional omission to apprehend on the part of public servant bound to apprehend** |
| **S.222** | **Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed** |
| **S.225** | **Resistance or obstruction to lawful apprehension of another person** |
| **S.231** | **Counterfeiting coin** |
| **S. 234** | **Making or selling instrument for counterfeiting Indian coin** |
| **S.235** | **Possession of instrument or material for the purpose of using the same for counterfeiting coin** |
| **S.236** | **Abetting in India the counterfeiting out of India of coin** |
| **S.240** | **Delivery of Indian coin, possessed with knowledge that it is counterfeit** |
| **S.244** | **Person employed in mint causing coin to be of different weight or composition from that fixed by law** |
| **S.245** | **Unlawfully taking coining instrument from mint** |
| **S.247** | **Fraudulently or dishonestly diminishing weight or altering composition of Indian coin** |
| **S.249** | **Altering appearance of Indian coin with intent that it shall pass as coin of different description** |
| **S.251** | **Delivery of Indian coin, possessed with knowledge that it is altered** |
| **S.256** | **Having possession of instrument or material for counterfeiting Government stamp** |
| **S.257** | **Making or selling instrument for counterfeiting Government stamp** |
| **S.258** | **Sale of counterfeit Government stamp** |
| **S.259** | **Having possession of counterfeit Government stamp** |
| **S.260** | **Using as genuine a Government stamp known to be counterfeit** |
| **S.281** | **Exhibition of false light, mark or buoy** |
| **S.293** | **Sale, etc., of obscene objects to young person** |
| **S.304** | **Punishment for culpable homicide not amounting to murder** |
| **S.306** | **Abetment of suicide** |
| **S.308** | **Attempt to commit culpable homicide** |
| **S.312** | **Causing miscarriage** |
| **S.314** | **Death caused by act done with intent to cause miscarriage** |
| **S.315** | **Act done with intent to prevent child being born alive or to cause it to die after birth** |
| **S.316** | **Causing death of quick unborn child by act amounting to culpable homicide** |
| **S.317** | **Exposure and abandonment of child under twelve years, by parent or person having care of it** |
| **S.325** | **Punishment for voluntarily causing grievous hurt** |
| **S.326B** | **Voluntarily throwing or attempting to throw acid** |
| **S.327** | **Voluntarily causing hurt to extort property, or to constrain to an illegal to an act** |
| **S.328** | **Causing hurt by means of poison, etc., with intent to commit and offence** |
| **S.330** | **Voluntarily causing hurt to extort confession, or to compel restoration of property** |
| **S.331** | **Voluntarily causing grievous hurt to extort confession, or to compel restoration of property** |
| **S.333** | **Voluntarily causing grievous hurt to deter public servant from his duty** |
| **S.354B** | **Assault or use of criminal force to woman with intent to disrobe** |
| **354C** | **Voyeurism** |
| **S.363** | **Punishment for kidnapping** |
| **S.363A** | **Kidnapping or maiming a minor for purposes of begging** |
| **S.365** | **Kidnapping or abducting with intent secretly and wrongfully to confine person** |
| **S.366** | **Kidnapping, abducting or inducing woman to compel her marriage, etc**. |
| **S.366A** | **Procuration of minor girl** |
| **S.366B** | **Importation of girl from foreign country** |
| **S.367** | **Kidnapping or abducting in order to subject person to grievous hurt, slavery, etc.** |
| **S.368** | **Wrongfully concealing or keeping in confinement, kidnapped or abducted person** |
| **S.369** | **Kidnapping or abducting child under ten years with intent to steal from its person** |
| **S.370** | **Trafficking of person** |
| **S.370A** | **Exploitation of a trafficked person** |
| **S.372** | **Selling minor for purposes of prostitution, etc.** |
| **S.373** | **Buying minor for purposes of prostitution, etc**. |
| **S.376B** | **Sexual intercourse by husband upon his wife during separation** |
| **S.376C** | **Sexual intercourse by a person in authority** |
| **S.380** | **Theft in dwelling house, etc**. |
| **S.381** | **Theft by clerk or servant of property in possession of master** |
| **S.382** | **Theft after preparation made for causing death, hurt or restraint in order to the committing of the theft** |
| **S.386** | **Extortion by putting a person in fear of death or grievous hurt** |
| **S.387** | **Putting person in fear of death or of grievous hurt, in order to commit extortion** |
| **S.392** | **Punishment for robbery** |
| **S.393** | **Attempt to commit robbery** |
| **S.398** | **Attempt to commit robbery or dacoity when armed with deadly weapon** |
| **S.399** | **Making preparation to commit dacoity** |
| **S.401** | **Punishment for belonging to gang of thieves** |
| **S.402** | **Assembling for purpose of committing dacoity** |
| **S.404** | **Dishonest misappropriation of property possessed by deceased person at the time of his death** |
| **S.407** | **Criminal breach of trust by carrier, etc**. |
| **S.408** | **Criminal breach of trust by clerk or servant** |
| **S.420** | **Cheating and dishonestly inducing delivery of property** |
| **S.433** | **Mischief by destroying, moving or rendering less useful a light-house or sea-mark** |
| **S.435** | **Mischief by fire or explosive substance with intent to cause damage to amount of one hundred or (in case of agricultural produce) ten rupees** |
| **S.437** | **Mischief with intent to destroy or make unsafe a decked vessel or one of twenty tons burden** |
| **S.439** | **Punishment for intentionally running vessel aground or ashore with intent to commit theft, etc.** |
| **S.451** | **House-trespass in order to commit offence punishable with imprisonment** |
| **S.452** | **House-trespass alter preparation for hurt, assault or wrongful restraint** |
| **S.454** | **Lurking house-trespass or house-breaking in order to commit offence punishable with imprisonment** |
| **S.455** | **Lurking house-trespass or house-breaking after preparation for hurt, assault or wrongful restraint** |
| **S.457** | **Lurking house-trespass or house-breaking by night in order to commit offence punishable with imprisonment** |
| **S.458** | **Lurking house-trespass or house-breaking by night after preparation for hurt, assault, or wrongful restraint** |
| **S.459** | **Grievous hurt caused whilst committing lurking house-trespass or house-breaking** |
| **S.466** | **Forgery of record of Court or of public register, etc**. |
| **S.468** | **Forgery for purpose of cheating** |
| **S.473** | **Making or possessing counterfeit seal, etc., with intent to commit forgery punishable otherwise** |
| **S.476** | **Counterfeiting device or mark used for authenticating documents other than those described in section 467, or possessing counterfeit marked material** |
| **S.477A** | **Falsification of accounts** |
| **S.489C** | **Possession of forged or counterfeit currency-notes or bank-notes** |
| **S.493** | **Cohabitation caused by a man deceitfully inducing a belief of lawful marriage** |
| **S.494** | **Marrying again during lifetime of husband or wife** |
| **S.495** | **Same offence with concealment of former marriage from person with whom subsequent marriage is contracted** |
| **S.496** | **Marriage ceremony fraudulently gone through without lawful marriage** |
| **S.506** | **Punishment for criminal intimidation** |
| ***Details of these offences are given in Appendix - III*** | |

* + 1. **Test as to the requirements for applicability of bar of S.195(1) Cr.P.C.**

Hence, the pre-conditions for the bar of S.195(1)(b) Cr.P.C. to apply in respect of offence(s) under S.193 to S.196, S.199, S.200 IPC or S.206, S.207 or S.211 is that -

1. The offence must be the one under sections mentioned in S.195(1)(b)(i) Cr.P.C.
2. There should be a proceeding in any Court (pending or decided);
3. The offence must be committed ‘in’ or ‘in relation to’ ‘any proceeding in any Court’.

OR

In respect of offences referred to in S.195(1)(b)(ii) Cr.P.C. the bar is further limited only to those cases when the forgery is in respect of the ‘false’ document ‘’produced’ or ‘given in evidence’ having close nexus with the ‘proceeding in any Court’, as elaborated by Hon’ble Supreme Court in **Iqbal Singh Marwah’s case** i.e., in the sense of document being custodia-legis and the bar shall not apply if the document is ‘fabricated’ earlier outside the Court and then filed in Court.

Since the offence(s) fall in the category of ‘offence against public justice’, legislature put the mandate of ‘expedient in the interest of justice’ at the center of S.195(1)(b) Cr.P.C. & S.340 Cr.P.C.

***In author’s opinion, a test that could be applied to decide as to whether the bar of S.195(1) Cr.P.C. on a private complaint shall apply to the facts & circumstances of a particular case or not is :***

Whether, the opinion of the Court concerned, contemplated in S.340 Cr.P.C., andthe mandate of **‘recording a finding’** that **“offence appears to have been committed”** and **“it is expedient in the interests of justice”** are likely to come in conflict with or be contrary to the finding of ‘prima facie’ commission of offence by the Court of Magistrate having jurisdiction on a private complaint.

In author’s view, it is this possibility of conflict in opinion that decides, whether the complaint by the Court concerned is necessary or not. Perhaps to alleviate any such situation of possible conflict of opinion, the legislature felt it more appropriate to leave the issue as to the prima facie to be decided by the Court concerned as it had seen the evidence and complete records before it and the ‘perception & appreciation’ as to prima-facie commission of such offence by such ‘Court concerned’ would necessarily be much better & preferred in comparison to the perception & appreciation by a private complainant or, at his behest & persuasion, by the Court of Magistrate having jurisdiction to entertain private complaint in respect of such offence. In other words, if the Court concerned has dealt with on a point, applying its judicial mind, in respect whereof the Court of Magistrate having jurisdiction may have a different interpretation or appreciation of facts than the Court concerned, complaint by such Court would be necessary.

In all such situations, where the prima-facie commission of offence in the eyes of Court of Magistrate having jurisdiction has a possibility of coming in conflict with the finding by the Court concerned about the offence “appears to have been committed” or “expediency in the interests of justice”, the complaint by the Court concerned would be necessary.

***Hence, if from the facts & circumstances of a particular case, any Court concerned can get the jurisdiction to apply the procedure specified under S.340 Cr.P.C. (whether he exercises his jurisdiction to file a complaint or not or decides not to file a complaint), private complaint shall be barred under S.195(1) Cr.P.C.***

But if the facts of a particular case fail to refer to any ‘particular’ proceeding in any Court (that could have jurisdiction to file a complaint following the procedure specified under S.340 Cr.P.C.) or if the conclusion as to ‘prima-facie commission of any offence’ by the Courts of Magistrate having jurisdiction is not dependent upon or is distinct from offence, which ‘appears to have been committed’ before the Court concerned, the complaint by the Court concerned is not necessary. Hence in all those cases, where it is an independent or distinct offence or when the offence is complete without any reference to any Court proceeding or when such offence is committed in respect to some other proceeding i.e., not related to Court proceeding e.g. ‘giving false evidence’ in a proceeding before an Arbitrator, a private complaint shall be maintainable.

For example - if a false document was produced in a Court but the ‘fabrication’ or ‘forgery’ was not done with the specific intention prescribed under S.192 IPC nor with the sole purpose of being used in any stage of a judicial proceeding, as specified in S.193 IPC, a private complaint for forgery U/S.463 (punishable under S.465 IPC) would be maintainable but the private complaint for the offence U/S.471 IPC would not be maintainable because the user of fabricated false evidence in Court would fall under S.196 IPC (punishable under S.193 IPC).

This, in fact, is author’s approach but the end effect will be found in full consonance with Hon’ble Supreme Court in ***‘Iqbal Singh Marwah Vs. Meenakshi Marwah, (2005) 4 SCC 370’* and ‘*Sachida Nand Singh Vs. State of Bihar (1998) 2 SCC 493)* and *‘Patel Lalji Bhai Somabhai Vs. State of Gujrat (1971(2) SCC 376)***, etc., which hold that, the forgery of documents i.e., the offences provided for in Ss.463, 471, 475 or 476 IPC) shall suffer the embargo of S.195 only for a limited window i.e., the category of offences, described in Sachida Nand Singh’s case, ***when the offence has direct correlation with or bearing on administration of justice or the forgery is committed when the document is custodia-legis***.

| **Table 1.6** | | | | | | |
| --- | --- | --- | --- | --- | --- | --- |
| Offences U/Ss.191, 192, 196, 197, 198, 199 & 200 IPC are punishable under S.193 IPC | | | | Complaint by ‘Court concerned’ OR Private Complaint | | |
| S.193 IPC | | | | S.195(1)(b) Cr.P.C. | | |
| **Para 1 -**  **Upto 7 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | in any of a | **judicial proceeding** | ‘in’ | **any proceeding in any Court** | Bar of S.195(1)(b) Cr.P.C. **applies** and private complaint **not maintainable** |
| in any stage of | in relation to’ |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used | in any stage of | in relation to’ |
| Corruptly using or attempting to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC | ‘produced or given in evidence’ |  |
| Corruptly using or attempt to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC | ‘produced or given in evidence’ |  |
| **Giving** false evidence U/S.191 IPC | In proceedings taken by law before a public servant **as such** | | Declared by law to be ‘judicial proceeding’ or Court proceeding U/S.195 Cr.P.C. | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Para 2 - upto 3 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | In proceedings taken by law before a public servant | | N**ot** declared by law to be ‘judicial proceeding’ or ‘Court proceeding’ U/S.195 Cr.P.C. | | Bar of S.195(1)(b) Cr.P.C. **does not apply** and private complaint **is maintainable** |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Giving** false evidence U/S.191 IPC | **Before an arbitrator** | | Bar of S.195(1)(b) Cr.P.C. **does not apply** and a private complaint **is maintainable** | | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| **Para 2 - upto 3 years imprisonment and fine** | **Giving** false evidence U/S.191 IPC | **In any other case -**   * Issuing a false Medical Certificate * Issuing or signing a false birth certificate * Issuing a false Marriage Certificate * Issuing * Using a false Medical certificate, Birth Certificate or Marriage certificate etc. before any public servant as evidence of such fact * Making a false declaration, receivable as evidence of any fact, before any public servant or other person * Using a false declaration, contemplated U/S.199 IPC as true before any public servant or other person | | Bar of S.195(1)(b) Cr.P.C. **does not apply** and a private complaint **is maintainable** | | |
| **Fabricating** false evidence U/S.192 IPC with the intention specified therein for the purpose of being used |
| Committing offence of -   * ‘Issuing or signing a false certificate U/S.197 IPC’ * ‘Making or subscribing a false declaration U/S.199 IPC |
| Corruptly using or attempt to use as true -   * ‘false evidence’ U/S.196 IPC * ‘Fabricated’ evidence U/S.196 IPC * ‘false certificate’ U/S.198 IPC * ‘false declaration’ U/S.200 IPC |

* + - 1. **M. L. Sethi Vs. R. P. Kapur & Anr, AIR 1967 SC 528**

Full bench of Hon’ble Supreme Court held,

“***We are unable interpret these views expressed by the Madras High Court as implying that private prosecutions for the offences mentioned in clauses (b) & (c) of sub-s. (1) of S.195, Cr.P.C., are barred absolutely and under no circumstances can such offences be brought before courts by private persons. In the case of cl. (b), there is the clear limitation that private prosecutions are barred only if the offence mentioned in that section was alleged to have been committed in, or in relation to, any proceeding in any Court. If the offence was not committed in, or in relation to, any proceeding in any Court, a private complaint is clearly permissible. The question of upholding the dignity and prestige of courts of law only arises after there are proceedings in the Courts and not at the stage when no such proceedings have been instituted or have come into existence in any Court***.

……….

In the present case, there is no doubt that at the stage when the complaint was filed by the respondent against the appellant for the offences under Ss.204, 211 and 385, I.P.C., enquiry on the First Information Report lodged by the appellant was still being conducted by the Police. In such a case, there may be no justification for the Police bringing a charge of false information being given to it until the investigation is completed. But we do not find any requirement anywhere in law that the person affected by the false charge could not file his complaint in Court until the Police had decided that the charge was false. The discretion of the person affected by the false charge was not to be fettered or tied down to the view taken by the Police.

***………***

***“… until some occasion arises for a Magistrate to make a judicial order in connection with an investigation of a cognizable offence by the police, no question can arise of the Magistrate having the power of filing a complaint under S.195(1)(b), Cr. P. C. In such circumstances, if a private person, aggrieved by the information given to the police, files a complaint for commission of an offence under S.211, IPC, at any stage before a judicial order has been made by a Magistrate, there can be no question, on the date on which cognizance of that complaint is taken by the Court, of the provisions of s. 195(1) (b) being attracted, because, on that date, there would be no proceeding in any Court in existence in relation to which the offence under S.211, IPC, can be said to have been committed. The mere fact that on a report being made to the police of a cognizable offence, the proceedings must, at some later stage, end in a judicial order by a Magistrate, cannot, therefore, stand in the way of a private complaint being filed and of cognizance being taken by the Court on its basis.”*** *(Emphasis supplied*)

* + - 1. **Virindar Kumar Satyawadi Vs. The State of Punjab, AIR 1956 SC 153**

A Full Bench of Hon’ble Supreme Court held,

“(5) …. Section 193 makes it an offence to give false evidence whether it be in a judicial proceeding or not, and it likewise makes it an offence to fabricate false evidence for use in a judicial proceeding or elsewhere. ***If the offence is not committed in a judicial proceeding, then it will fall outside section 195(1)(b), which applies only when it is committed in or in relation to a proceeding in Court, there is in consequence no bar to a complaint made in respect thereof unaffected by the restrictions contained in S.195(1)(b)***.” (*Emphasis supplied*)

Chapter 13

1. **Summary Procedure for action against Witnesses, committing “obvious” Perjury**
   1. **S. 344 Cr.P.C: Summary procedure for trial of “obvious” cases of perjury by witnesses**

| Code of Criminal Procedure, 1973 | |
| --- | --- |
| S. 344 | **Summary procedure for trial for giving false evidence** |
|  | (1) If, at the time of delivery of any judgment or final order disposing of any judicial proceeding, a Court of Session or Magistrate of the first class expresses an opinion to the effect that any witness appearing in such proceeding had knowingly or wilfully **given false evidence** or had **fabricated false evidence** with the intention that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and **expedient in the interest of justice that the witness should be tried summarily** for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a reasonable opportunity of showing cause why he should not be punished for such offence, try such offender summarily and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both. |
|  | (2) In every such case the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials. |
|  | **(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.** |
|  | (4) Where, after any action is initiated under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or he shall stay further proceedings of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision. |

* + 1. **Ingredients break-up of S.344 Cr.P.C.**
* **at the time of delivery of**
* **any judgment OR**
* **final order**
* **disposing of any judicial proceeding,**
* **a Court of Session or Magistrate of the first class**
* **expresses an opinion to the effect**
* **that any witness appearing in such proceeding**
* **had knowingly or wilfully**
* **given false evidence or**
* **had fabricated false evidence**
* **with the intention that such evidence should be used in such proceeding,**
* **it or he may take cognizance of the offence, if satisfied that**
* **it is necessary and expedient in the interest of justice**
* **that the witness should be tried summarily for giving or fabricating, as the case may be, false evidence, and**
* **may try such offender summarily**
* **after giving the offender a reasonable opportunity of showing cause**
* **why he should not be punished for such offence, and**
* **sentence him to imprisonment**
* **for a term which may extend to three months, or**
* **to fine which may extend to five hundred rupees, or**
* **with both**
  + 1. **Objects & reasons** **behind incorporating S.344 Cr.P.C**

It is worthwhile to reproduce ‘Statement of objects and reasons’ behind incorporating Section 344 Cr.P.C. which runs as under: -

"A mere repeal of a section, however, without some provision for punishing perjury will not be a satisfactory solution. Some provision whereby perjury of a ***flagrant and unchallengeable type*** could be effectively punished summarily without seriously prejudicing a fair trial of the person concerned is desirable. We are not unaware of the risks involved in giving power to punish perjury to the very court before which it is committed. … The provision which we recommend is of a very limited character, ***being confined to obvious cases of perjury*** and authorizing a small punishment. ***Even this procedure will be discretionary, so that where the court is of opinion that perjury, even though committed by contradictory statements on oath, is likely to raise complicated questions or deserves more serious punishment than that permissible under the proposed section, or is otherwise of such a nature that the ordinary procedure is more appropriate, the court will not proceed under the proposed section****.* (*Emphasis supplied*)

* + 1. **Scope of Section**

Section 344 Cr.P.C. has restricted application only to offences defined in S.191 & S.192, 196, 198 to 200 IPC and only if said offences are committed by witnesses that too before the Courts of Sessions and the Magistrates of first class and only if opinion, in this regard, is formed at the time of delivering judgment or final order.

The object of the legislature underlying enactment of the provisions of Section 344 Cr.P.C. is to provide for expeditious and summary manner of trying the persons committing perjury with a view eradicate the evil of perjury and fabrication of evidence, but this procedure, prescribed under S.344 Cr.P.C. is meant for ‘obvious’ type of cases of perjury. Actually, S.344 Cr.P.C. is meant for those explicit and flagrant cases of perjury wherein the perjury is of unchallengeable nature and no further elaboration or support of additional documents is required to demonstrate the commission of the offence of perjury viz. “giving false evidence” or “fabricating false evidence” and the commission of offence is kind of explicit to the Sessions Judge of Magistrate of first class, while going through the entire record of evidence at the time of judgment or final order disposing of the judicial proceeding. Not only that, the discretion to invoke summary procedure under S.344 Cr.P.C. has been given not to every Court before whom the perjury is committed, instead the same has been restricted only to the cases of commission of perjury before Sessions Court and the Court of Magistrate of first class, who regularly deal with such criminal trials and are more aptly equipped to conduct the Summary Trial, prescribed in S.344 Cr.P.C.

***In author’s view, traces of reasons behind complete overhauling of the then existing Section 479A in the Code of Criminal Procedure Code, 1898 and its substitution with present S.344 in the Code of Criminal Procedure Code, 1973 (particularly, the clause (6) of S.479A of the old Code and its substitution with clause (3) of S.344 of the new Code of 1973), can be had from the full bench judgment of Hon’ble Supreme Court in “Shabir Hussain Bholu Vs. State of Maharashtra, AIR 1963 SC 816”, relevant portion whereof is reproduced below because (in view of S.344 Cr.P.C. of Code of Criminal Procedure, 1973 substituting S.479A of Code of Criminal Procedure, 1898) this portion of said judgment may not be used for reference or reliance for cases arising under S.344 Cr.P.C. under new Code of Criminal Procedure Code, 1973.***

* + - 1. **Shabir Hussain Bholu Vs. State of Maharashtra, AIR 1963 SC 816**

A full bench of Hon’ble Supreme Court had held,

“*(8)* ***We cannot,*** said Miss Kapila, ***ignore the opening words of S.479-A or the provisions of sub-s. (6) of S.479-A***. ***The inevitable effect of these provisions is to exclude the provisions of Ss. 476 to 479 in respect of offences which are dealt with specifically in sub-s. (1).*** Restricting ourselves to a case where the offence consists of intentionally giving false evidence “in any stage of judicial proceeding” it is no doubt true that as under S.476 it is the Court which disposes of such judicial proceeding which primarily has to act under S. 479-A. ***There does not appear to be any real distinction between S. 476 and S.479-A as to the Court which can take action.*** Under S 476 the action may proceed suo motu or on application while under S. 479-A no application seems to be contemplated. But there is nothing in this provision which makes a distinction between flagrant offences and offences which are not flagrant or between serious offences and offences which are not serious. For exercising the powers conferred by this section, the Court has in the first instance, to form an opinion that the person against whom complaint is to be lodged has committed one of the two categories of offences referred to therein. The second condition is that the Court has to come to the conclusion that for the eradication of the evils of perjury and fabrication of false evidence and in the interests of justice it is expedient that a witness should be prosecuted for an offence which appears to have been committed by him. ***Having laid down these conditions, S. 479-A prescribes the procedure to be followed by the Court. If the Court does not form an opinion that the witness has given intentionally false evidence or intentionally fabricated false evidence no question of making a complaint can properly arise.*** Similarly, where the Court has formed an opinion that though the witness has intentionally given false evidence or intentionally fabricated false evidence the nature of the perjury or fabrication committed by him is not such as to make it expedient in the interests of justice to make a complaint it has a discretion not to make a complaint. ***But it does not follow from this that it can later on resort to S.476 and make a complaint against the witness.*** For, even under S. 476 the Court must, before making a complaint, be satisfied that it was expedient in the interests of justice to make an enquiry into the offence committed by the witness. ***It could not be urged, that where the Court wilfully refuses to record at the time of delivering the judgment or final order disposing of the proceedings before it that for the eradication of the evil of perjury and in the interests of justice it was expedient that the witness should be prosecuted for the offence which appears to have been committed by him it could later resort to the provisions of S. 476. The position must be the same where it fails to take action though it is open to it to do so.*** ……. The jurisdiction of the Court to make a complaint against a person arises only from the fact that that person has given false evidence or fabricated false evidence at any stage of the proceeding disposed of by it. The conditions required to be fulfilled by the Court and the procedure to be followed by it for the purpose of exercising its jurisdiction and making a complaint are not to be equated with the conditions which give the Court jurisdiction to make a complaint. From this it would follow that whereas S.476 is a general provision dealing with the procedure to be followed in respect of a variety of offences affecting the administration of justice in so far as certain offences falling under Ss.193 to 195 and S.471, I.P.C. are concerned the Court before which that person has appeared as a witness and which disposed of the case can alone make a complaint.

(9) ***In our opinion, therefore, the view taken in the decisions relied upon by Mr. Prem is not correct and that the view taken in Parshotam Lal’s case, AIR 1959 Punj 145 and Amolak’s case, AIR 1961 Punj 229 to the effect that the provisions of Ss.476 to 479 are totally excluded where an offence is of the kind specified in S.479-A(1) is correct.***” (*Emphasis supplied*)

* 1. **Comparison: S.344 (new Cr.P.C.) Vs. S.479-A (old Cr.P.C.)**

Section 479-A of the old Code of Criminal Procedure, 1898 stands radically/ drastically altered in its new version i.e., S.344 of the new Code of Criminal Procedure, 1973. The author is giving a tabulated comparative contrast for guiding reference.

| S.344, Code of Criminal Procedure, 1973  **Summary procedure for trial for giving false evidence** | S.479-A, Code of Criminal Procedure, 1898  (Incorporated by Act 26 of 1955)  **Procedure in certain cases of false evidence** |
| --- | --- |
| (1) If, at the time of delivery of any judgment or final order disposing of any **judicial** proceeding, a **Court of Session or Magistrate of the first class** **expresses** an opinion to the effect that any **witness** appearing in such proceeding had **knowingly or wilfully** **given false evidence** or had **fabricated false evidence** **with the intention** that such evidence should be used in such proceeding, it or he may, if satisfied that it is necessary and **expedient in the interest of justice that the witness should be tried summarily** for giving or fabricating, as the case may be, false evidence, take cognizance of the offence and may, after giving the offender a **reasonable** opportunity of showing cause why he should not be **punished** for such offence, **try** such **offender** **summarily** and sentence him to imprisonment for a term which may extend to three months, or to fine which may extend to five hundred rupees, or with both. | (1) Notwithstanding anything contained in Section 476 to 479 inclusive when a**ny Civil, Revenue or Criminal Court** is of opinion that any **person** appearing before it as a witness has **intentionally** **given false evidence in any stage of the judicial proceeding** or has intentionally **fabricated false evidence** for the purpose of being used in any stage of the judicial proceeding, and that, for the eradication of the evils of perjury and fabrication of false evidence and **in the interests of justice**, it is expedient that such witness should be **prosecuted** for the offence which appears to have been committed by him, the Court shall, at the time of the delivery of the judgment or final order disposing of **such** proceeding, record a finding to that effect stating its reasons therefore and may, if it so thinks fit, after giving the witness an opportunity of being heard, **make a complaint thereof in writing** signed by the presiding officer of the, Court setting forth the evidence which in the opinion of the Court is false or fabricated and forward the same to a Magistrate of the first class having jurisdiction and may if the accused is present before the Court, take sufficient security for his appearance before such Magistrate and may bind over any person to appear and give evidence before such Magistrate: Provided that where the Court making the complaint is a High Court the complaint may be signed by such officer of the Court as the Court may appoint.  Explanation - For the purposes of this sub- section, a Presidency Magistrate shall be deemed to be a Magistrate of the first class. |
| (2) In every such case the Court shall follow, as nearly as may be practicable, **the procedure prescribed for summary trials**. | (2) Such Magistrate shall thereupon proceed according to law and **as if upon complaint made under Section 200**. |
|  | (3) No appeal shall lie from any finding recorded and complaint made under sub- section (1). |
| **(3) Nothing in this section shall affect the power of the Court to make a complaint under section 340 for the offence, where it does not choose to proceed under this section.** | ***(6) No proceedings shall be taken under Section 476 to 479 inclusive for the prosecution of a person for giving or fabricating false evidence, if in respect of such a person proceedings may be taken under this section".*** |
|  | (5) In any case, where an appeal has been preferred from any decision of a Civil, Revenue or Criminal Court but no complaint has been made under sub-section (1), the power conferred on such Civil, Revenue or Criminal Court under the said sub-section may be exercised by the Appellate Court; and where the Appellate Court makes such complaint, the provisions of sub-section (1) shall apply accordingly, but no such order shall be made, without giving the person affected thereby an opportunity of being heard. |
| (4) Where, after any **action is initiated** under sub-section (1), it is made to appear to the Court of Session or Magistrate of the first class that an appeal **or an application for revision** has been preferred or filed against the **judgment or order** in which the opinion referred to in that sub-section has been expressed, it or he **shall stay further proceedings of the trial** until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial shall abide by the results of the appeal or application for revision. | (4) Where, in any case, **a complaint has been made** under sub-section (1) and an appeal has been preferred against the **decision** arrived at in the judicial proceeding out of which the matter has arisen the hearing of the case before the Magistrate to whom the complaint was forwarded or to whom the case may have been transferred **shall be adjourned until** such appeal is decided; and the Appellate Court, after giving the person against whom the complaint has been made an opportunity of being heard, may, if it so thinks fit, make an order directing the withdrawal of the complaint; and a copy of such order shall be sent to the Magistrate before whom the hearing of the case is pending. |

* 1. **Discretion of invoking S.340 Cr.P.C. or S.344 Cr.P.C.**

In author’s view, this Section 344 Cr.P.C. is sort of an enabling provision to the Courts of Sessions and Magistrate of first class to cut short the length of prosecution of persons ‘knowingly & willingly’ giving false evidence or ‘intentionally’ fabricating false evidence’ and instead of requiring them to make a complaint to a Court of Magistrate of first class, authorising them to try the offender themselves.

The procedure in this section is an alternative to the one under Sections 340- 343 Cr.P.C. The statement of objects & reasons behind incorporating S.344 Cr.P.C. makes it clear that where the Court is of opinion that the case should be disposed of under the ordinary procedure which would be more appropriate, the Court may choose to do so [vide sub-section (3).

| Nature of perjury | Preferred procedure |
| --- | --- |
| **flagrant and unchallengeable type** | **S.344 Cr.P.C.** |
| **Obvious cases of perjury** | **S.344 Cr.P.C.** |
| **likely to raise complicated questions** | **S.340 Cr.P.C.** |
| **deserves more serious punishment** | **S.340 Cr.P.C.** |
| **is otherwise of such a nature that the ordinary procedure is more appropriate** | **S.340 Cr.P.C.** |

* + 1. **likely to raise complicated questions**

If the perjury inferable from the record of proceedings is of such a nature that the same is likely to raise complicated questions of law or fact, say it reflects involvement of more persons than the witness appearing before the Court or requires taking more evidence, documentary or oral, to take the case to its logical conclusion. More particularly, such situations may arise in the face of reply to Show Cause Notice filed by the accused, and then the preferred procedure would be the one under S.340 Cr.P.C.

If a person making false declaration or statement in pleadings (duly verified) or filing a false and fabricated document may be liable to be proceeded against under S.340 Cr.P.C. and punished in terms of S.193 IPC etc. but he cannot be proceeded against in Summary manner, prescribed U/S.344 Cr.P.C., if he has not ‘so appeared as witness in the proceeding’, which is essential requirement of S.344 Cr.P.C.

* + 1. **deserves more serious punishment**

Though the legislature has left it to the wisdom of Court of Sessions or Magistrate of First class as to whether they want to punish the witness(es), committing obvious perjury in summary manner or should make a complaint under S.340 Cr.P.C. before a Magistrate of first class having jurisdiction. However, it has to be kept in mind that the punishment for perjury in summary procedure is very small just three months, whereas, for same perjury, if regular procedure U/S.340 Cr.P.C. is adopted, it would entail a punishment of imprisonment of upto 7 years with fine.

In fact, while prescribing punishments to be awarded after trial in regular procedure on complaints filed U/S.340 Cr.P.C., the legislature has further correlated the severity of punishment for perjury with gravity of the offence under S.194 & S.195 IPC. For example, if a person commits perjury for procuring punishment to an innocent person for an offence, which entails a punishment, say, of upto 10 years imprisonment, the perjurer will also be liable for punishment for upto 10 years imprisonment and if the perjury is intended to procure punishment for life imprisonment to an innocent person, the punishment to the perjurer may also extend to life imprisonment. In 2nd para of S.194 IPC, if an innocent person actually suffers death sentence because of false evidence and is executed in consequence thereof, the perjurer may also suffer death penalty.

In author’s view, in sections 194 & 195 IPC, the severity of punishment is very high, hence it would be in consonance with the ‘object & reasons’ behind incorporating S.344 Cr.P.C. that the offenders covered in said sections should be dealt with by following procedure prescribed in S.340 Cr.P.C. and not under this section.

Thus, for such cases entailing graver punishment, the witness committing perjury should not be tried summarily, as the same would be contrary to objects & reasons behind incorporating S.344 Cr.P.C. besides, the same becomes too much leniency to the perjurer, deliberately, committing the offence of ‘heinous’ perjury, practically an injustice to the innocent, law abiding victim of perjury. Unfortunately, the cases of “***State Vs. ASI Shankar Lal etc. Misc. No. 01/09***”, decided by the Court of Sh. Atul Kumar Garg, Ld. ASJ KKD Courts, Delhi on 1 September, 2010 and that of ***“Mahila Vinod Kumari Vs State Of M.P, (Crl. Misc. Petition Nos.8515-8516 of 2008)”*** are such examples, where too lenient punishment is awarded for too ‘heinous’ perjury by adopting the summary procedure U/S.344 Cr.P.C. instead of preferring full fledged inquiry (followed by trial, if required) by making complaint under S.340 Cr.P.C.

* + 1. **“otherwise of such a nature that the ordinary procedure is more appropriate”**

The summary procedure should not be resorted to in the cases, wherein the procedure delineated in S.340 Cr.P.C. is more appropriate. The ‘abettors’ or ‘conspirators’, who may be responsible for or involved in such act of perjury but ‘have not appeared as witness’ before such Court cannot be proceeded against in this Section 344 Cr.P.C., and for them the procedure prescribed U/S. 340 Cr.P.C. shall be the appropriate procedure. Even the trial of witnesses, appearing before the Court can be bifurcated from their abettors or co-conspirators in the sense of trying the witnesses under Summary procedure in S.344 Cr.P.C., leaving the trial of their abettors or co-conspirators to be proceeded U/S.340 Cr.P.C. because in such a case all of them can be proceeded against only as per procedure outlined in S.340 Cr.P.C. Where the facts establishing the falseness of the evidence are brought to the notice of the Court, after the delivery of judgment this section cannot apply and it would be open to the Court to take proceedings under Section 340 Cr.P.C.

* + - 1. **Badullah Vs. State, AIR 1961 All 397**

Hon’ble High Court has held,

“(13) For reasons given above, I cannot but allow these applications for revision. ***I, however, entirely agree with the Sessions Judge that this was a fit case in which Imtiaz Ali at any rate should have been prosecuted for giving false statements on oath in order to falsely implicate Tasadduq and Budha Khan***. This could have been achieved if the Sessions Judge instead of launching the prosecution on the basis of these contradictory statements had picked out the false statements made on oath by Sri Imtiaz Ali (and from the judgment of the Sessions Judge I find that such statements can be picked out) and based the complaint on said statements. ***The present prosecution, however, cannot be upheld***.”

* + 1. **Distinction between S.340 Cr.P.C. and S.344 Cr.P.C.**

The power and procedure U/S.344 Cr.P.C. is different from that envisaged U/S.340 Cr.P.C. Section 340 Cr.P.C. provides procedure only for making a complaint to the Court having jurisdiction, by the Court before whom such offences (specified in S.195 Cr.P.C.) have been committed, whereas, S.344 Cr.P.C. prescribes a procedure for trying such offender straightway by the same Court provided such an offender is a witness committing “obvious” perjury (i.e., giving false evidence U/Ss. 191, 192, 196, 198 & 200 IPC as a witness) and the Court is that of Sessions or Magistrate of first class. Section 344 Cr.P.C. requires express ‘opinion’ that a person appearing as witness in such proceeding ***‘has knowingly and wilfully given false evidence in such proceeding or had fabricated false evidence with the intention that such evidence should be used in such proceeding’*** instead of formation of opinion that the offence ***‘appears to have been committed***’ required under S.340 Cr.P.C. Besides the finding U/S. 340 Cr.P.C. that ‘it is expedient in the interest of justice that an inquiry should be made into such offence’ is replaced with the finding ‘it is ***necessary & expedient in the interests of justice’*** has to be coupled with the‘satisfaction’ that ***’the offender needs to be tried summarily’*** and such ‘finding’ is to be followed by an opportunity of being heard by issuing Show-cause Notice and follow up of procedure, prescribed for Summary Trials, whereas, in the procedure prescribed by S.340 Cr.P.C. no show-cause notice is necessary and the role of Court, before whom perjury is committed, is limited to that of making a complaint and thereafter the trial will proceed normally, as a warrant trial case of other offences though with relaxations and restrictions as provided in S.343 Cr.P.C.

In author’s view, S.193 and S.344 cannot be invoked simultaneously nor the two can be referred interchangeably because of various distinctions including the quantum of sentence in the two sections and the entirely different procedure to be followed in two sections viz. S.193 IPC and S.344 Cr.P.C. before reaching the stage of punishment. S.193 IPC requires the route initiated by lodging a complaint under S.340 Cr.P.C. (by the Court concerned) before a first-class Magistrate, following the procedure prescribed in S.343 Cr.P.C., which is more close to Warrant-trial procedure. Whereas, S.344 Cr.P.C. is a self-contained procedure, stipulating specific minor punishment and the procedure to be followed has to be the one prescribed for Summary Trials. The right to move the Court by an application is expressly provided in S.340 Cr.P.C. (together with a right to move superior Court (under S.340(2) Cr.P.C.) in case of inaction and by way of appeal (under S.341 Cr.P.C.) in case of dissatisfaction with any order on application U/S.340 Cr.P.C., whereas, in S.344 Cr.P.C. to take up an application for consideration is entirely discretionary. As a matter of practice, the Courts have been accepting applications under S.344 Cr.P.C. and even the superior Courts have been accepting Revision or petitions under S.482 Cr.P.C. against order passed on such applications.

The author has cited cases in this chapter that demonstrate that the Ld. Judges are, often, not aware about these distinctions between the two punishments i.e., the one under S.193 IPC and the other under S.344 Cr.P.C.

***Author felt the need of bringing out these distinctions between procedures and punishment factors in S.340 Cr.P.C. on one hand and S.344 Cr.P.C. on the other.***

| Code of Criminal Procedure, 1973 | |  |
| --- | --- | --- |
|  | **S.340 Cr.P.C.** | **S.344 Cr.P.C.** |
| **Applicable to Offences** | U/Ss.191,192, 193, 194 to 196, 199 & 200, 205 to 211 & 218 IPC and also to sections referred in clause of (1)(b)(ii) of S.195 Cr.P.C., i.e., S.463, or punishable under S.471, S. 475 or S.476, IPC, if applicable in the limited sense of such documents being ‘***custodia legis***’. | Only applicable to offences U/Ss. 191, 192, 196, 198, 199 & 200 IPC |
| **The persons against whom the procedure can be invoked** | Whoever’ being party to a proceeding or witness, even the abettors or conspirators for these offences are amenable | Only against the ‘witnesses, appearing before the Court of Sessions or Magistrate’ for giving evidence or ‘producing a document’ as a witness |
| **Which Court can Act** | By Courts conducting judicial proceeding of judicial nature i.e., ‘Courts’ or proceedings ‘declared by law’ to be Court proceeding for the purpose of S.195 Cr.P.C. | Only a Court of Session or Magistrate. |
| **Who can move the Court** | Under S.340 the action may proceed suo-moto or on an application. | Under S.344 Cr.P.C. application is not expressly contemplated |
| **“finding” to be recorded before proceeding** | is of ‘opinion’ that an offence specified in S.195(1)(b) appears to have been committed and it is expedient in the interest of justice that an inquiry should be made into the offence, such Court may, after such preliminary inquiry, if any, as it thinks necessary -  (a) record a finding to that effect | The Court has to record its ***satisfaction*** & ‘***finding***’ that it is **necessary** and ***expedient in the interest of justice that*** **the witness *should be tried summarily*** for giving or fabricating, as the case may be, false evidence |
| **Preliminary inquiry** | Court may hold a preliminary enquiry | There is no need of holding any preliminary enquiry in S.344 Cr.P.C., in fact, this section applies only at the final stage of order/judgment disposing of the judicial proceeding, i.e., the judge is seize-in of complete record of proceeding before it after concluding the trial. |
| **Expediency in the interest of justice** | Court should pass an order, expressing opinion that “it is expedient in the interest of justice to lodge a complaint” | Court has to pass an order, recording a ‘finding’ in the judgment or final order ***“that the person appearing before it as a witness has ‘knowingly and willingly’ given false evidence or has ‘intentionally’ fabricated false evidence and it is necessary and expedient in the interest of justice to try the witness summarily”***.  The word **‘necessary’** has been added before the phrase ‘expedient in the interest of justice’, indicating thereby that S.344 Cr.P.C. can be invoked only when the Court is satisfied that it is ‘**necessary**’ to try the accused ‘**summarily**’ besides the same being ‘expedient in the interest of justice’. |
| **Show Cause Notice** | No Show-cause notice is required to be given to the proposed offender before lodging a complaint and it has been so held by Supreme Court in “***Pritish Vs. State of Maharashtra (supra)***”. | Show Cause Notice is mandatory.  The offender is required to be given a reasonable opportunity of showing cause. |
| **Restriction as to at what stage the Court can act** | Section does not impose any restriction as to at what stage the power to make complaint should be invoked nor that the power should be invoked only at the culmination of trial or at the stage of passing final order. Instead, ***clause (2) of S.340 predicates prompt action and empowers Superior Courts to take care of any inaction vis-a-vis exercising power under S.340 Cr.P.C.*** | The section, specifically, provides, “…***at the time of delivery of any judgment or final order disposing of any judicial proceeding*** …” |
| **Taking cognizance** | Such Court may, after recording a finding to that effect may make a complaint thereof in writing and send it to a Magistrate of the first-class having jurisdiction, who may take cognizance and try the offender as per procedure prescribed in S.343 Cr.P.C. i.e., the Court concerned cannot itself take cognizance of the offence. | There is no requirement of making a complaint in writing to a Magistrate of the first-class having jurisdiction, instead the Court of Session or Magistrate of the first class (before whom any witness appearing in such proceeding had knowingly or wilfully **given false evidence** or had **fabricated false evidence** with the requisite intention) can itself take cognizance of the offence and try such offender following the Summary procedure prescribed in Chapter XXI of the Code. |
| **Trial procedure to be followed** | In terms of S.343(1) Cr.P.C., a Magistrate to whom a complaint is made under S.340 or S.341 shall, notwithstanding anything contained in Chapter XV, proceed, as far as may be, to deal with the case as if it were instituted on a police report. | the Court shall follow, as nearly as may be practicable, the procedure prescribed for summary trials in Chapter XXI Cr.P.C. (r/w Chapter XX, if applicable). |
| **Sentence** | Separate punishments are provided for offences, prescribed in various sections, specified in S.195(1)(b) Cr.P.C.  The offences of ‘giving false evidence (defined in S.191 IPC r/w Ss.196, 197, 198, 199 & 200 IPC)’ and of ‘fabricating false evidence (defined in S.192 IPC r/w S.196 IPC)’ are punishable in Section 193 IPC and carry a punishment of 7 years and more severe punishments U/S.194 or S.195 IPC even upto death penalty and in cases specified in Ss.205 to 211 IPC, punishments as prescribed in said sections. | This procedure is applicable only to ‘judicial proceeding’ of criminal Courts viz. the Sessions Court and the Court of Magistrate of first class and sentence is drastically reduced viz. imprisonment for a term which may extend to three months only, or to fine which may extend to five hundred rupees, or with both, apparently because of summary nature of trial. |
| **Effect of Appeal or revision** | Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived in the judicial proceeding out of which the matter has arisen, ***he may, if he thinks fit***, at any stage, adjourn the hearing of the case until such appeal is decided i.e., ***it is not made mandatory to such Magistrate to abide by the result of the appeal***. | If an appeal or an application for revision has been preferred or filed against the judgment or order in which the opinion referred to in that sub-section has been expressed, it or ***he shall stay further proceedings***of the trial until the disposal of the appeal or the application for revision, as the case may be, and thereupon the further proceedings of the trial ***shall abide by the results of the appeal or application for revision.*** |

In Author’s view, following cases decided by Hon’ble High Courts of Delhi, Bombay & Gujarat are among the curious examples to appreciate the distinction between the two procedures viz. the one under S.340 Cr.P.C. and the other under S.344 Cr.P.C.

* + - 1. **Rajeev Choudhary @ Rajeev Kumar Vs. State Crl. Rev. No. 1068 of 2018**

In this case, as per Trial Court’s order (impugned before High Court),

“12. … After perusing the material on record and evidence of PW3 Dr. Vishwajeet Singh as well as of PW11 Inspector Yashvir Tyagi, it appears to me that Inspector Yashvir Tyagi knowingly for causing disappearance of the evidence, fabricated the false evidence by mentioning that he requested for taking handwash of the deceased vide Ex.PW11/E and in fact he did not do so and asked the doctor not to preserve the handwash of the deceased as appearing in post-mortem report Ex.PW3/B in conspiracy with the accused to help him. Section 319 Cr.P.C empowers the Court that if during trial it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed. After considering the evidence of PW3 Dr. Vishwajeet Singh and PW11 Inspector Yashvir Tyagi, as well as documents Ex.PW3/B, Ex.PW3/C and Ex.PW11/E, prima facie, it appears that Inspector Yashvir Tyagi has committed an offence punishable u/s. 201/192/120B IPC. Therefore, Inspector Yashvir Tyagi is summoned as an accused u/s. 319 Cr. P.C for offence punishable u/s. 201/192/120B IPC. He be summoned accordingly.

……

“45. Section 195 read with Section 340 Cr. P.C. shows that cognizance of an offence under any of the section mentioned in Section 195 Cr.P.C. can be taken by a court only after it has received a complaint in writing from the concerned court or from a court to which such a court is subordinate. A complaint can be made by a court after following the procedure prescribed under section 340 Cr.P.C.

46. Further, the precondition for exercising powers under Section 340 Cr.P.C. is that the Court has to form an opinion that it is expedient and in the interest of justice, ***that an inquiry of such a nature is to be made***. The Court would form an opinion as to expediency based on the material that comes before it at trial.

48. ***In this case, no such enquiry under Section 195 read with Section 340 Cr. P.C. has been made by the Trial Court***. There is no finding recorded by the Trial Court, as is prescribed by Section 340 Cr. P.C., that it is expedient and in the interest of justice that an enquiry should be made and ***further the trial court has not made any complaint in writing and sent it to the Magistrate of first class having jurisdiction but has straight away sought to summon Inspector Yashvir Singh Tyagi, which is not permissible*** and as such the impugned order to that extent is also not sustainable and is liable to be quashed.”

“50. In the present case, since the trial is at the fag end and most of the evidence has already been recorded, it would be expedient for the Trial Court to form such an opinion, as required by Section 340 Cr. P.C., only after the trial is concluded and final arguments are advanced.

51. In case, the Trial Court is satisfied, at that stage, that it is expedient and in the interest of justice, that such an inquiry should be made against Inspector Yashvir Singh Tyagi for allegedly committing an offence under Section 192 IPC, it would be open to the Trial Court to make such an order and follow the course prescribed by Section 340 Cr. P.C.” (*Emphasis supplied*)

In author’s view, the Trial Court committed an error of exercising options. Firstly, In this case the offence of the police official, according to the Trial Court, was under S.192 IPC for fabricating false evidence in the sense of ‘causing a circumstance to exist, intending that such circumstance may appear in evidence in a judicial proceeding and that such circumstance, so appearing in evidence, may cause the Judge, 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’. Now, there were two options open to the Trial Court, first the Trial Court should have waited till the stage of passing ‘final order/judgment’ in the case and try them summarily under S.344 Cr.P.C. following the procedure prescribed for Summary Trials, as envisaged in S.344 Cr.P.C. These two persons could not fall in the category of persons, who could be tried together, whereas, S.319 Cr.P.C. empowers the Court to try such person(s) (not being the accused before the Court) who could be tried together. The proceedings could continue in respect of S.201 IPC (r/w S.319 Cr.P.C.) as that section has not been included in bar of S.195 Cr.P.C. However, Hon’ble High Court has given its reasons as to why S.201 IPC could not be made out. The other option available to the Court was as observed by Hon’ble High Court i.e., to form an opinion that it is expedient and in the interest of justice, that an inquiry of such a nature is to be made and make a complaint in writing to a Magistrate of first class having jurisdiction, as envisaged under S.340 Cr.P.C.

But the observation of Hon’ble High Court also seems to miss the provision of S.344 Cr.P.C. when it observes, ***“Section 195 read with Section 340 Cr. P.C. shows that cognizance of an offence under any of the section mentioned in Section 195 Cr. P.C. can be taken by a court only after it has received a complaint in writing from the concerned court”***. The legislature has kept the Court of Magistrate & Sessions on a different footing by so framing the present Section 344 Cr.P.C. because they being criminal courts having jurisdictional competency could prefer not to send the complaint to any Magistrate but then the procedure to be followed was as prescribed under S.344 Cr.P.C.

High Court’s being oblivious of the distinction as to the stage of action U/S.340 Cr.P.C. or under S.344 Cr.P.C. becomes clearer from the observations made in paras 50 & 51 of its order, quashing the order of Trial Court, as ***these two paragraphs give the impression that Ld. Trial Court was supposed to wait till the conclusion of trial for making a complaint under S.340 Cr.P.C. whereas, such a stage of ‘final order or judgment’ restriction finds mention only in S.344 Cr.P.C and not in S.340 Cr.P.C.***

More curious to note in this regard, is the case decided by Hon’ble Gujarat High Court. Some paragraphs/ observations of the judgment showing apparent ignorance on the part of the Court about the above-referred distinction are reproduced below.

* + - 1. **Sanjay Vs. State of Maharashtra, Crl. App. No. 307/2016**

Hon’ble High Court of Bombay has held,

"Only for the reason that witness has deposed certain facts in examination in chief and during the cross examination given certain admission contrary to the facts deposed by him in the examination in chief itself not sufficient to term the act of such person as giving false evidence. If we read Section 344 of Cr.P.C. as well as Section 193 IPC then mere giving inconsistent statement in examination in chief and cross examination itself not amount to act of giving false evidence. ***In order to invoke the provisions of Section 344 of Cr.P.C. to convict the person u/s Section 193 of IPC, there must be a case of deliberate act to depose falsely on the part of witness***. There must be ***intention*** on the part of the accused to depose falsely so as to use such evidence in judicial proceeding. Only in the event the person is proved to have ***intentionally*** given false evidence liable to be punished u/s 193 of IPC.” (*Emphasis supplied*)

The author is in full agreement with first part of this para but the observation of the Court, “*In order to make ……. 193 IPC.”,* show lack of understanding of these provision as also the ingredients of ‘giving false evidence’ under S.191 IPC on the part of the Court.

The highlighted portion ***”In order to invoke the provisions of Section 344 of Cr.P.C. to convict the person u/s Section 193 of IPC”*** of this judgment shows utter ignorance on the part of the Ld. Judge about the fact that S.344 Cr.P.C. carries its own punishment structure and when this procedure is invoked the person cannot be convicted under S.193 IPC, for which the Court has to follow the procedure prescribed in S.340 Cr.P.C. and the distinction between the punishment under S.344 Cr.P.C. (imprisonment upto three months only) and under S.193 IPC (imprisonment upto 7 years).

In Author’s view, Hon'ble High Court, in above judgment, is erroneously mixing up two things viz. the invocation of S.344 C.PC. and conviction under S.193 IPC. By invoking S.344 Summary Procedure, the conviction cannot be under S.193 IPC because S.344 Cr.P.C. itself provides punishment, which cannot exceed 3 months. If the Court thinks the case is for higher punishment, it should exercise discretion for making a complaint under S.340 Cr.P.C. instead of resorting to the summary procedure under S.344 Cr.P.C. The other error in the observation lies in the use of the word ‘intentionally’ in reference to ‘giving false evidence’. Hon’ble Court is ignoring that ‘intention’ is not necessary ingredient for completing the offence of ‘giving false evidence’, knowledge (separated by ‘or’ from ‘wilfully’) about falsity or even belief of falsity of evidence is sufficient to such person liable for punishment, however, the other intention in respect of ‘fabricated evidence’ i.e., that ‘such evidence should be used in such proceeding’ must be proved.