

PERJURY

IPO 191: Giving false evidence.

Whoever, being legally bound by an oath or any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, makes any statement which is false, or does not believe to be true, is said to be giving false evidence.

ESSENTIAL CONDITIONS FOR PROSECUTION OF PERJURY

1. Legal obligation to state the truth
2. The making of a false statement
3. Belief in its falsity.

Criteria for establishing offense:

- (a) The statement is false
- (b) The person making the statement knew or believed it to be false or did not believe it to be true.
- (c) The statement was made intentionally.

All three criteria must be proved for conviction. Intention is most important.

False evidence is said to be given intentionally, if, the person making the statement is aware or has knowledge that it is false and has deliberately used such evidence in a judicial proceeding with the intention of deceiving the court.

ELEMENTS OF PERJURY:

1. False statement made by a person

Who is --

2. bound by an oath
3. By an express provision of law
4. A declaration which a person is bound by law to make on any subject
5. Which statement or declaration is false and which he either knows or believes to be false or does not believe to be true.

2. Oath must be administered by a person of competent authority.

The authority must be competent to administer the oath.

The proceedings where oath is administered must be sanctioned by law.

3. Express provisions of law include—Plaints, Written Statements, and other pleadings.

CPC casts a legal duty to speak the truth.

Verification of pleadings is a legal obligation.

4. Affidavits are declaration made under oath.

5. A statement could be verbal or otherwise.

Statement that he believes a thing which he does not believe.

Statement that he knows a thing which he does not know.

Statement that he knows to be false or does not believe to be true

Statement need not be on a point material to the proceedings.

Related sections of IPC

IPO 191: Giving false evidence, judicial perjury

IPO 192: Fabricating false evidence

IPO 193: punishment for offenses u/s 191 & 192 IPO

IPO 194 & 195: Aggravated forms of offenses u/s 191 & 192 IPO

IPO 196 to 200: Offenses punishable in the same way as giving or fabricating false evidence

IPO 201 to 229: Offenses against public justice

OFFENCES U/S 195 CrPC:

(a) IPO 172 to IPO 188

relate to contempts of the lawful authority of public servants and also of attempt to commit or conspiracy to commit such offense or abatement thereof.

(b) IPO 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offense is alleged to have been committed in, or in relation to, any proceeding in any court.

CrPC 195:

Generally any person can lodge complaint of an offence and set the law in motion. Exception to this rule is offenses specified u/s 195 CrPC.

Section 195 lays down rules to be followed by the court to take cognizance of an offence specified under it.

Court has full discretion in deciding whether any prosecution is necessary or not.

Considerations for sanctioning prosecution:

Administration of justice is not hampered

Not to be used as a means for wreaking vengeance by people

Every incorrect or false statement does not make it incumbent upon the court to order prosecution.

Judicial discretion to order prosecution only in the larger interest of administration of justice.

When police finds that complaint was false and case is cancelled u/s 173 CrPC, the police can start proceeding u/s 211 IPO against person who lodged false complaint.

CrPC 340:

Section 340 CrPC lays down directions for the guidance of the court which desires to initiate prosecution in respect of an offence covered under IPO 195.

Court can take action and make a complaint to concerned magistrate u/s 340 either *suo motu* or on an application made to it on that behalf.

Sanction of the public servant court is a must for offenses in (a).

Sanction of the court is a must for offenses in (b).

Any Civil, Revenue or criminal court can proceed under this section.

Person against who proceedings are initiated has no right to participate in preliminary Inquiry.

The trial for the offence will be held by the magistrate based on complaint by the court acting u/s 340 sanctioning prosecution.

The order is appealable only once and no second appeal or revision lies.

Requirements for starting prosecution:

The court is not bound to start prosecution.

Only if it is expedient in the interest of justice and affects administration of justice.

Contradictory evidence is not enough for prosecution.

Offence must have been committed intentionally.

Perjury should appear to be deliberate and conscious.

Conviction is reasonable probable or likely.

Reasonable foundation for the charge must exist.

Statement given by complainant in FIR u/s 154 cannot be basis of prosecution u/s 340.

Statements given to police u/s 161 are not evidence.

PROCEDURE:

Receive application or suo motu – application can be filed by a person not party to the proceedings in relation to which the offense is committed.

The court where application is filed only decides if inquiry should be made

Hold preliminary inquiry (not essential in law)

Record findings

Make a complaint in writing - include offence, facts on which it is based and evidence available for proving it. The judge has to sign the complaint himself.

Forward it to a first class Magistrate having jurisdiction.

IPC 192:

No condition to be bound by oath.

Reasonable prospect of proceedings and intention to use the fabricated evidence in such proceedings. Proceedings need not be in progress.

Material omission is made in an entry or a statement

Affidavit- making a document containing false statement to be used as evidence in a judicial proceeding.

Criteria:

Particular Intention that false document so made should appear in evidence in a judicial proceeding.

Reasonable prospect of using the document is sufficient to establish offence.

Should be material to the result of the proceedings- Judge is made to entertain an erroneous opinion touching nay point material to the result of such proceeding based on such fabricated evidence.

IPO 199:

False statement made in declaration which is by law receivable as evidence.

IPO 200:

Using as true such declaration knowing it to be false