

THE EMERGENCE OF POLICE PERJURY IN INDIA AS A PRIME FACTOR IN DISRUPTING LAW AND ORDER

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ABTRACT

The term “PERJURY” means false evidence. In this article, you will get to know about perjury and police perjury. Police Perjury is an act where a police officer knowingly gives false or fabricated testimony which leads to discrepancies. The research moves around “The Emergence of Police Perjury in India as a Prime Factor in Disrupting Law and Order”. The author has divided this research paper into 6-7 chapters for better understanding. The author has tried to explain it in very simple and clear language without any ambiguity. In the first chapter Introduction, the meaning and background of perjury and police perjury are explained. The second chapter talks about the Indian laws and enactments for perjury. Further, chapters 3, 4 and 5 deal with police social responsibilities and police perjury is a prime factor for disrupting laws and orders. At last, chapter six and seven deals with what measures we can take against perjury and conclusion respectively. The 3 important research questions are-

1. What does police perjury means ?
2. How the emergence of police perjury in India is a prime factor for disrupting laws and orders?
3. What is the government doing for controlling this problem?

CHAPTER 1

ABOUT PERJURY

MEANING AND DEFINITION

According to Oxford Dictionary “PERJURY” means an offense of wilfully making a misrepresentation under oath.[1] It is an act where any person intentionally makes a false affirmation to say the truth. It is considered a serious offense as it is illegal and can be a reason for miscarriage of justice. Apart from India , perjury is punishable in countries such as the U.S.A, Kenya, Scotland.[2] Meaning of perjury according to the Bible - The 9th [3,4] commandment of the Ten Commandments which are like a moral imperative for Jewish and protestant scholars which means " You shall not bear false witness against your neighbor. [5]

The prefix pre in perjury is a Latin term which means harmful or 'harmfully'. Though, those witnesses or those persons who give false evidence or make false testimony or perjure on oath, do harm the truth by knowingly telling a lie. [6]

BACKGROUND

Etymologically[7], perjury[8] comes from the Anglo-French term *perjurie Parjurie*. And further comes from the Latin term *perjurium* from *perjurus* which means deliberately giving false testimony from pre- detrimental to jur - jus law. Originally the term perjury was to give false or fabricated evidence on oath but in the 19th century, the definition was expanded which consisted of giving false evidence on oath or under affirmation to all those who had the authority of law. From the traditional system of justice to the modern one, the taking or making of false testimony under Oath is punishable .

For Example- Islamic law. In Islamic law, for a criminal conviction, they rely on testimony under oath laboriously. In their holy book "Quran" clearly given that it is an injunction against the making of a false statement or giving false evidence and it also contains penalties whenever perjury occurs. [9]

ESSENTIAL POINTS OF PERJURY

A crime of lying in a court in front of judges or legislation after promising to tell the true statement is perjury which is a punishable act. And proving whether any person commits perjury or not is a very difficult task which needs experience, careful mind. As there are very thin line differences between lying and perjury. Not all lying is perjury. And every lie is not wrong and comes under the offensive act but perjury is a criminal offense. A witness or defendant may refuse to answer a question instead of committing perjury. They may do this because the answer might be an admission. And the 5 the Amendment of the Constitution of India forbids forcing a citizen to admit to being guilty of a crime.

There are various forms of perjury in this world, the very common are lying, fluffing catering documents, falsifying the evidence, etc. As per the New York law, All perjury is lying but not all lying is termed as perjury. The term perjury according to new york law is a falsely swearing of either written or testimony, for which an oath is required. Not all lying is perjury, only lying under oath is perjury. So, perjury either takes place in court, before any judge, or before any legislative body. It is an assumption that perjury is similar to lying. Generally, it is true. Both the term lying and perjury are the same in a sense as any legal notion varies from a non-legal term. For example, the legal concept of murder is distinct from the non-legal concept of the term murder. In the same way, perjury varies from lying. [10]

Here in the 1st Chapter of this research paper, the author wants to tell about perjury and its essentials. This chapter also includes some important points regarding perjury with

how we can prove that is anyone actually committed perjury or not. The next chapter is perjury-related Indian laws.

CHAPTER 2

PERJURY AND INDIAN LAW

“Witnesses are the eyes and ear of justice” ----- JEREMY BENTHAM

According to the golden words of Jeremy Bentham - witnesses are like eyes and ears for the court for serving justice. But In India, sometimes witnesses face torture in our Criminal justice system.[11] These unnecessary adjournments for recording the statement in the court causes harassment, torture. They get traumatized by this system. In some cases, witnesses turn hostile because of the threat given by some influential people.[12]

In general words, perjury is an offense of lying under the oath. Section 191 of Chapter XI of India Penal Code,1860 defines Perjury i.e., Giving False Evidence. According to section 193 of IPC[13] ,Anyone who gives false evidence or fabricates it intentionally at any stage of court proceedings ,he/she shall be punished with either description of imprisonment which may be extended to 7 years and also liable for fine ;or if this offense is commits in any other case then they shall be punished 3years of imprisonment or more, and a fine. According to Section 340 of the CRPC , All materials & documents that are produced before the court, they have to make a prima facie case for making a complaint about an inquiry as given under Section 195 (1)(b)(i) of the Criminal Procedure Code. Another condition is that an inquiry should as per the interest of the justice .

The fact that a person made contradictory statements in judicial proceedings is not always sufficient in itself to justify prosecution but it must prove that the defendant deliberately provided false statements during the judicial process, or fabricated false evidence. More specifically, it is mentioned in section 340(1) taking into account the overall fact mold and the possible consequences of such prosecution. Section 340 Of the CRPC[14] tells us where an application was made to it or otherwise. With the court's opinion, the inquiry shall be instituted before the First class judicial magistrate.

Under two categories, perjury cases can be instituted first is that an application made by the parties or second is after the court deems fit as per the interest of the justice as per section 2 clause (c) of the contempt of courts Act,1971.

PUNISHMENT FOR PERJURY

Witnesses play a vital role in the justice system if they were corrupt then definitely, the

justice system becomes blind and deaf. Perjury[15] is an offense of serious nature and it is punishable in all parts of the world.

According to section 193 of IPC ,Anyone who gives false or fabricates the false evidence during of Judicial proceedings, then he/she shall be liable with the imprisonment, which may be extended to 7 years and fine [16]; or Anyone who makes false evidence or tries to fabricate the false evidence intentionally, in any case, he/she shall be liable with imprisonment, which may be extended to 3years, and a fine. There are other sections of the penal code of India under chapter 11 191 to 211. And section 181 of the same code also deals with the punishment which may differ as per the facts or circumstances.

So with this chapter, we all have learned about Indian laws made by legislatures for fabricating evidence or giving false evidence by witnesses, or even by the police. The next chapter is going to talk about police and their social responsibilities.

CHAPTER 3

SOCIAL RESPONSIBILITIES OF POLICE

The term 'police' originates from Middle French police which in turn comes from the Latin word 'politia' and the Greek word 'politeia' which means citizenship, administration, civil polity. The term is derived from 'polis' which means "city".

The police department is a very important part of our society and one of the integral parts of administration for any state or the center.[17] A police organization is mainly for maintaining the law and order of any country as well as for safeguarding the public. Their duty also includes social responsibility towards the special sections of any country. They are responsible for women, Children, arrested persons, transgender, dead bodies, and other important sections of the society. Police are also working for the protection or prevention of crime and the welfare of society. [18]

Who is the police ?

The Police is that branch of the administration which has a charge to preserve public order as well as to prevent or promote public health & safety.[19] One of the vital duties of the police is the prevention, detection, and punishment for committing crimes. [20] The term police is defined as an instrument whose objective is to prevent and detain the crime.

As we all know that the very first step, any person will take if there's any case of crime or wrong that to approach Police personals. Police are the one who has the power to register (F.I.R)First Information Report.[21]

Just like advocates and Judges follow the provisions of the bare acts for dealing with any case, the police system has to follow some rules and regulations which are maintained and written in some Acts just like 1. The Police Act, 1861, 2. The “Delhi Special Police Administration Act, 1946”, 3. The Model Police Act, etc.

If we look at the nature and work of police officers, it is a really tough job. They have immense power. but now the citizens had no faith in our country’s police system.

CHAPTER 4

EMERGENCE OF POLICE PERJURY IN INDIA

How to handle misconduct by police in India?

There are many provisions through which people can tackle the misconduct of the Indian Police. Some laws which every person should know. 1. As per section 29 of the Indian Police Act, 1861 if any police officer misbehaves with any person due to omission of his duty then that officer can be punished with up to 3 months of imprisonment and penalty with up to 3 months of his salary. Only female officers have a right to arrest any accused women. In case of any serious crimes, a written order from the magistrate can permit a male officer to arrest any women accused. 3. If any police officer lodges an FIR, then that officer can be punished with the sentence for the imprisonment of up to 6 months to 1 year. And any police officer cannot add or omit any extra point. And only after filing an FIR, the officer can initiate the investigation.

The emergence of police perjury in India is a factor in disrupting the laws and order of society. There are so many incidents that depict the evil side of police officers. One of the real-life incidents that happened before where we can see how police officers can misuse their power and contempt the code of behavior.

One such incident happened in Tamil Nadu, where a man suffered from a serious head injury. The head injury was caused when a police officer stopped "Murthy and Shankar" who were on a bike while the police officer was doing the regular checking. Shanker was sitting behind Murthy. After halting, Murthy allegedly moved his bike a little further, one officer hit Shankar on his head as they felt that they were trying to escape the checking. This shocking incident took place in Tamil Nadu. [22]

This is not the first incident, there are many more examples where police used their lathis while regular checking or in any case.

Due to these reasons, people started losing faith in the Indian police system. [23]

As we know that lodging an FIR is the very first step to file a case and only the police office can lodge that. And they can't add or remove anything in that FIR. They can't even force anyone to tell a false story. But this FIR leads to the emergence of police perjury. As the FIR is the foundation of any case. If the foundation is weak or starts with false materials or evidence then the justice system automatically gets weak. [24]

Chapter 5 leads to the emergence of police perjury which is a prime factor for disrupting laws and orders of society.

CHAPTER 5

POLICE PERJURY-A PRIME FACTOR OF DISRUPTING LAWS AND ORDER

The misconduct or misuse of their power by police officers is increasing, as we can see in the above chapter how they behave and commit perjury[25] also. The lying[26] by the police officer at any time of the cases, either after or before arresting or at time of recording evidence or while investigation. The increasing of the limits on the police system through the guidelines by the courts undermines their effective performance due to which the relationship of police with the citizen is getting affected.

This offense of committing perjury may occur before any activity of officers. As the police may force the defendant to tell a lie in affidavits which works as important documents for an arrest warrant. This can happen before arresting. The Perjury can also be committed during the arrest process by the police officials which may include paperwork or may in testimony in any stage of the Justice. This may be repeated at any time of the prosecution. Whether while submitting affidavits, granting jury, or even while pretrial and trial testimony.

The reality of the police system is that at the time of testifying, there's a big difference in the cases as compared to the total number of arrests. Now the question arises here, why do they do so? This is particularly because they think that the Judicial or legislative interpretation of the Constitutional limits of the police system is wrong. As they believe that the state-made laws and orders are wrong for police practice as they interfere in their job. Due to this, they arrest innocent people. By doing this wrong, the police personnel themselves know that they are guilty as they are arresting innocent people.

As we also know about the condition and status of police. There is a big difference in the nature of the post and the reality they face in terms of low income and the kind of thing for which they are bound by the law. They are doing this to get a huge amount of money. This poor negative ego identity forced them to do this kind of serious offense. [27]

We have to take some measures to deal with this serious crime like perjury. Let's see what we can do to control this offense. The next chapter is dealing with the measures only.

CHAPTER 6

MEASURES OR STEPS TOWARDS PERJURY

By Looking at the above situation, perjury or police perjury is like a termite for the Criminal Justice System[28], we have to take measures to control this offense.[29] In my opinion, the court itself has to play a proactive role during court trials. As per the Section 165 of Indian Evidence Act court has wide power to obtain all the important related materials for the particular case by playing a vital role while recording evidence. An investigation officer also has immense power. During the Evidence recording process, they should record before the magistrate. Unfortunately, this power is executed only in sexual offense by the police authority where the complainants or victim is a minor.

For controlling this police perjury[30], legislation needs to make a more proper framework for the protection of witnesses. Legislators can't keep their eyes shut from ground situations. For controlling this offensive act the authority may amend the sections 344(4) [31]of the code. This trial for giving false evidence shall continue by challenge order or judgment or shall not be executed till appeal or revision.

CHAPTER 7

CONCLUSION

Through this research work, we get to know about one of the common offenses like perjury or how police officers misuse their power. After reading this article you will also know about how we, as a citizen, can tackle the misconduct of police. Law has given the power to lawyers, advocates, judges, or even all the authoritative persons involved in that case.

So, the court has to deal with each and every piece of evidence or any testimony with due care ..

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