

# LEGALFOXES LAW TIMES

## ABSTRACT

The laws of Manu covers everything from court procedure to the price of boat hire. Despite the fact that it is thought to represent a Brahmin ideal of “what the law should be,” and may not have been actually administered. For according to such codes there is no higher virtue than truth, and there is no greater crime than a false witness. Perjury generally is a dishonest statement made on an oath. The recurrent theme in the early rules or law codes was that the law and judicial authority was divine in origin. In all the civilizations around the globe perjury was taken to be a sin, a wrong action and has been always balanced with a mala fide intention. In India the sin has been equated to a crime against the court making concrete provisions for the same under the Code of Criminal Procedure, 1973. Every person is entitled to narrate his free will, however this cannot be said to oblige the courts of justice when the person has taken an oath. The substratum is the swearing in and this is what make the statement one which is false. The paper shall trace the journey of perjury proceedings in criminal trial, via the route of Criminal Code.

*Key Words: Perjury, Oath, Justice, Criminal Code*

## PERJURY PROCEEDINGS IN CRIMINAL TRIAL<sup>1</sup>

### INTRODUCTION

*“There is no excuse for perjury-never, never, never. There is truth, and the truth demands respect.”-*  
Kenneth Starr

Perjury is the intentional act of swearing a false oath or falsifying an affirmation to tell truth, whether spoken or in writing, concerning matters material to official proceedings.<sup>2</sup> In History, perjury has been considered as an odious crime because perjury threatens the fair and effective administration of justice.<sup>3</sup> An individual’s life, liberty and property may be at stake because of someone’s perjured

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<sup>2</sup> PERJURY- The act or an instance of a person’s deliberately making material false or misleading statements while under oath. – Also termed false swearing; false oath; (archaically forswearing. Garner, Bryan A. (1999). Black’s Law Dictionary (7th ed.). St. Paul MN: West Group. p. 1160.

<sup>3</sup> Bennett L. Gershman, THE “PERJURY TRAP”, 129 U. Pa. L. Rev. 624 (1981), <http://digitalcommons.pace.edu/lawfaculty/170/>.

testimony. It also pose as threat to public protection. Cases of bribery, corruption, extortion etc. would not be investigated and concluded due to perjured testimonies. Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative.<sup>4</sup>This ought to be fair criminal proceedings so interfered with perjury does violate the ‘*due process*’.<sup>5</sup> Moreover, perjury proceedings require oath, which is considered as an icon in law<sup>6</sup> and this makes the proceedings sacred in nature. In common law it is “the willful giving, under oath, in a judicial proceeding or course of justice, of false testimony material to the issue or the point of inquiry”.<sup>7</sup> Principles of perjury are expressed under section 209 of the Indian Penal Code and section 340 of Code of Criminal Procedure.

In *Dalip Singh v. State of U.P.*<sup>8</sup> the Hon’ble Supreme Court noted:

*“For many centuries, Indian society cherished two basic values of life i.e. Satya (truth) and Ahimsa (non-violence). In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”*

There is a further difference between perjury and false statements, where perjury connotes corruption and recalcitrance, falseswearing, usually made in a written statement while not under oath, connotes mere falsehood without moral judgment.<sup>9</sup>

### ***History of Perjury Proceedings***

An assertion which the assertor does not believe to be true while making it or on which he is ignorant, such assertion upon an oath when duly administered in a judicial proceeding before a competent court of the truth of some matter of fact, material to the question depending in that proceeding amounts to perjury.<sup>10</sup>

While analyzing the early stages of the legal history it can be seen that perjury was a non-considerate sin rather than a crime punishable by the supernatural forces with supernatural penalties. The reason for such categorization was the belief that the injury done by the wrong assertor on an oath is not a wrong just against the society but against the divine beings in whose

<sup>4</sup> United States v. Mandujano, 425 U.S. 564, 576 (1976).

<sup>5</sup> Giglio v. United States, 405 U.S. 150 (1972).

<sup>6</sup> A Reconsideration of the Sworn Testimony Requirement: Securing Truth in the Twentieth Century, 75 MICH. L. REV. 1681, 1707 (1977).

<sup>7</sup> J. BISHOP, 2 Commentaries on the Criminal Law sec. 860, 1858.

<sup>8</sup> **Dalip Singh v. State of U.P., (2010) 2 SCC 114.**

<sup>9</sup> The Language of Perjury Cases, ROGER W. SHUY, Oxford University Press.

<sup>10</sup> STEPHAN, Digest of the Criminal Law, Art. 135.

name the oath was administered and wrongly taken. In Roman law, the empire hold the perjurer simply under the Divine reprobation and he was not dealt with as a criminal, except where he had been bribed to withhold truth, or give false evidence, or where the oath was by the genius of the emperor.<sup>11</sup>In England, perjury, as being a sin was originally a matter of ecclesiastical cognizance.<sup>12</sup>

### **THE INVENTION OF A COMMON LAW CRIME: PERJURY AND THE ELIZABETHAN COURTS**

The accepted opinion of the Perjury Statute is that of a “great landmark” (the phrase is Plucknett's)<sup>13</sup> in that it made perjury by witnesses a crime punishable at the common law. Previous to this legislation, the only perjury punishable at the common law was that of jurors; otherwise, to quote Maitland, “our ancestors perjured themselves with impunity.” This opinion seems to have been first arrived at in its modern form by the nineteenth-century jurist Sir James Fitzjames Stephen<sup>14</sup>and has been accepted, with only minor modifications, by modern scholars. In this view, the delay in formulating a common law crime of perjury was the result of the slow evolution of the jury from functioning as witness to functioning as judge and the corresponding delay in formulating procedures dealing with witnesses.

Accordingly, other than the attain of a perjured jury, the only perjuries punishable before the Statute of 1563 were those punishable either by ecclesiastical courts<sup>15</sup> or by conciliar courts, in particular by the Court of Star Chamber.<sup>16</sup>This rather deplorable situation was remedied by the Perjury Statute which set penalties for perjury and the subornation of perjury and established a procedure for compelling the attendance of witnesses. The statute saved the pre-existing jurisdictions of the ecclesiastical and conciliar courts and added a new one, that of the common law courts.<sup>17</sup>Early in the nineteenth century, James Endell Tyler concluded his examination of the topic with some frustration<sup>18</sup>:

The history of Perjury, considered as a crime *against the state*, and therefore to be *punished by the civil magistrate*, is full of interest. It is however, at the same time, surrounded by many difficulties, and involved in much doubt. For that punishments have been, in various ages and countries, enacted against perjury, and have been actually inflicted, there can, I conceive, be no question: and yet, against the clear evidence of history, we are repeatedly told, not in learned dissertations only, but on the

<sup>11</sup> R.H. UNDERWOOD, *False Witness: A Lawyer's History of the Law of the Perjury*, 1993.

<sup>12</sup> *Ibid.*

<sup>13</sup> T. F. T. PLUCKNETT, *A Concise History of the Common Law* (5th ed. 1956).

<sup>14</sup> J. F. STEPHEN, *A History of the Criminal Law of England 240-50* (1883). Stephen, himself, was very interested in the crime of perjury; see L. Radzinowicz, *Sir James Fitzjames Stephen (/829-/894) and his Contribution to the Development of Criminal Law* 25, 27 (1957).

<sup>15</sup> W. HOLDSWORTH, *A History of English Law*, (3rd ed. 1945).

<sup>16</sup> *Supra*, note 12.

<sup>17</sup> A good summary of the statute is in Holdsworth Report.

<sup>18</sup> JAMES ENDELL TYLER, *Oaths: their Origin, Nature and History*, 1834.

testimony of practical men, that the false-swearer and perjurer was left in former days entirely to the vengeance of the Deity, whose majesty he had insulted, and whose anger he had invoked.<sup>19</sup>

The context within which perjury had developed during the middle Ages continued to surround perjury after the Statute of 1563. Perjury continued to be regarded as a crime which was, at least in part, ecclesiastical. The rules that perjury must be in judicial proceedings and in matters of substance were articulated by King's Bench<sup>20</sup> and Common Pleas<sup>21</sup> respectively.

### **WHETHER PERJURY PROCEEDINGS BE AT PAR WITH HOMICIDE**

In the case of *Emperor v. Purushottam Ishvar Amin*<sup>22</sup> it was argued that false evidence in a Police investigation and false evidence in a judicial proceeding do not form a series of acts and cannot be linked together in the alternative charges. If a false evidence during a commitment inquiry can be leveled as same with one given in the trial. The same analogy does permit the consideration of false evidence in a Police investigation to be taken as alternative. The only and must requirement is that the act must form series.

The only factor that makes them a series is that each one of acts lead to an inference as to the guilt of the accused. There may be a number of acts apparently distinct and even occurring in different transactions but when they form a chain of circumstantial evidence pointing to the guilt of the accused they become a series.<sup>23</sup> This circumstantial evidence may prove the accused's connection with a murder. These acts and the murder are the *corpus delicti* and the accused may be charged in the alternative with murder or abetment of murder. So with contradictory statements the connection is that taken together they lead to an inference of the accused's guilt. It can be seen that in this way, if through the means of perjury false evidence is established and ultimately if the conviction takes place or accused is found guilty then it is inferred that the perjury proceeding is at par with homicide.

### **PROCEDURES REQUIRED TO BE FOLLOWED IN TRIAL/PROCEEDINGS IN ASSOCIATION WITH IPC & CRPC**

Lying under an oath in India is a crime. Section 340 of the Criminal Procedure Code 1973 contains the procedure that needs to be followed in perjury proceedings. Under such provision of the law the court has been vested with the power to initiate the *suo moto* perjury proceedings. Further section 344 of the CrPC provides for the courts power to invoke action against the witness appearing in such proceedings and who has knowingly or willfully given false evidence or had fabricated false evidence with the intention to adduce false evidences that is to be used against the interest of either victim or accused. There are various provisions under the Indian

<sup>19</sup> *Ibid.*

<sup>20</sup> *Stanhope v. Blith*, 4 Co. Rep. 15a-15b (27 Eliz.). See also *Wilde v. Cookeman*, Noy 34.

<sup>21</sup> *Brown v. Mich.-I*, Noy 37 (37 Eliz.).

<sup>22</sup> *Emperor v Purushottam Ishvar Amin* (1921) 23 BOMLR 1.

<sup>23</sup> Ratanlal & Dhirajlal, the Indian Penal Code (35th ed. 2015).

Penal Code 1860 that cater to the definition and punishment for various perjuries of opposite parties and other public servants. Section 340 provides procedure in cases mentioned in section 195 upon an application or *suo moto* but the only requirement is, Court must be of the opinion that it is expedient in the interest of justice that an enquiry should be made.

### **SUPREME COURT ON PERJURY PROCEEDINGS**

In the case of *Mahila Vinod Kumari v. State of Madhya Pradesh*<sup>24</sup>, Hon'ble Supreme Court has held that "the evil of perjury has assumed alarming proportions in cases depending on oral evidence and in order to deal with the menace effectively, it is desirable for the courts to use the provision more effectively and frequently than it is presently done."<sup>25</sup>

In yet another case of *Pritish v. State of Maharashtra*<sup>26</sup> it was held that the stage envisaged in section 340 is not deciding the guilt or innocence of the party against whom proceedings are to be taken before the magistrates. In contrary at this stage the court only considers the upliftment of interest of justice and an order as to the enquiry is passed after such considerations.<sup>27</sup>

The presence or absence of accused does not form a requirement in deciding the expediency question. Moreover, the person against whom the perjury proceedings are instituted does not have any right to participation in the preliminary enquiry.

### **CONCLUSION**

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<sup>24</sup> Mahila Vinod Kumari v. State of Madhya Pradesh AIR 2008 SC 2965.

<sup>25</sup> *Ibid.*

<sup>26</sup> Pritish v. State of Maharashtra AIR 2002 SC 236.

<sup>27</sup> *Ibid.*

Manu Samhita Stanza 14 reads as-

*'TaratDharmoAdharmathsatthamtaratranruten cha  
HanthaneParekshamananamHatastatamSabhasad'*

Above stated stanza of from the Manu Samhita glorifies the essence of *dharma* and was being quoted by the Hon'ble Supreme Court of India in *Zahira Sheikh v. State of Gujarat*<sup>28</sup> meaning thereby,

*"Where in the presence of judges dharma is overcome by adharma and truth by unfounded false at that place they (judges) are destroyed by sin."* Further, stanza 18 reads that *"in the adharmafollowing from decision, in a court of law, one fourth each is attributed to the person committing adharma, witness, judges and the ruler."*<sup>29</sup>

Jurist Bentham realising the importance of witness and the role that they impart in meeting the ends of justice has pronounced;

*'Witnesses are eyes and ears of justice, hence importance and primary of quality of trial process. However, if witness is incapacitated from acting as ears and eyes of justice, trial gets putrefied and paralyzed and it no longer can be a fair trial.'*

The country is governed and is under the control of the mandate of Rule of Law, offences against public justice has been held to strike at the very root of the said concept having regard to the system upon which the government is based. The duty is cast upon the court not only to see that no innocent person shall be punished but also to see that no guilty person shall escape on the basis of false or fabricated evidence. The provisions contained in Chapter XI of the Indian Penal Code 1862 are the tools in the hands of the courts to perform its duty swiftly.

In order to ensure a fair trial so that no innocent could get punished and the person found guilty should be made to undergone punishments so that the administration of justice is carried out in an effective manner, the substantive law in the IPC along with the procedural law helps in administering the process of justice.

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<sup>28</sup> *Zahira Sheikh v. State of Gujarat* (2004) 4 SCC 158.

<sup>29</sup> *Ibid.*