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PERJURY IN INDIA

INTRODUCTION:-

Perjury is a crime that blurs the lines between substantive and Procedural law, posing a challenge to the judicial administration system. The term “Perjury” is nowhere defined in either in the penal code or for that matter referred in the CRPC. However the Supreme Court in a judgment has elaborated the meaning of Perjury as “Perjury is an obstruction to justice. Deliberately making false statement which are material to the case and that under oath amounts the crime of perjury. Thus perjury should always be seen as a cause of concern in the judicial system. It strikes at the root of the system itself and disturbs the accuracy of the findings recorded by the court. Therefore, any person found guilty of causing perjury, has to be dealt with seriously as it is necessary for the working of court as well as the benefit for public at large.”

In India, like in many other nation’s perjury possess a significant threat to the integrity of the judicial system. To uphold the principles of truth and justice, there is a compelling argument for banning perjury outright and impose harsh punishments to the ones who’s found guilty of this crime. Perjury inflicts very harm to the judicial process and the society as whole. It distorts the truth seeking function of the legal system, leading to wrongful convictions, miscarriages of justice, and erosion of public trust. In a democratic country like India, Perjury undermines the credibility of the judiciary and compromises the rights of the innocent individual.

ADVOCATING BAN ON PERJURY:-

Banning perjury outright is essential to safeguard the integrity of judicial process. By prohibiting false testimony and ensuring truthful disclosure under oath, the legal system can better serve its purpose upholding justice and protecting the rights of the individual. A ban on perjury can help the clear message to all civilians that dishonesty in legal proceeding will not be tolerated and reinforces the importance of honesty and integrity in pursuit to justice. In addition to the ban on Perjury there is also a pressing need for rigorous punishments to deter criminals committing such type of offences and also fair trial will be ensured. These punishments should deterrent to its offence and should be served with keeping check on the seriousness of crimes so people repent from giving false testimony under oath. To effectively ban perjury and impose rigorous punishments, the legal framework governing perjury laws in India must be strengthend

. This includes enacting comprehensive legislation that clearly defines perjury, establishes strict penalties for offenders and outlines procedure for prosecuting perjury cases.

Section 193 of Indian Penal Code deals with the punishment for perjury; the giving of false evidence in the judicial proceeding or fabricating false evidence for the purpose of being used in the judicial proceeding is an offence against public justice and is punishable with imprisonment of either description of seven years and fine. It has been stated that perjury has of late greatly increased. The sanctity of the oath has almost disappeared and persons seem readily to make false statements on oath in the courts of law.

Procedure of prosecution;-

Section 195 of the Criminal Procedural Code provides that no court shall take cognizance of the offence of giving false evidence. When such an offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate".

The procedure for laying a complaint is prescribed by **section 476** of the Code. When a court is of opinion that it is expedient in the interests of justice that an enquiry should be made into any offence referred to in **section 195(1)(b)** (this includes the offence of giving false evidence), "which appears to have been committed in or in relation to a proceeding in that Court, such Court may, after such preliminary enquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding officer of the Court, and shall forward the same to a Magistrate of the first class having jurisdiction.".

This section, accordingly, contemplates that when a court, whether **Suo Moto** or on an application made to it, feels that it is necessary to prosecute the offender, it may hold a preliminary enquiry and if it comes to the conclusion that it is necessary in the interests of justice that the offence should be enquired into, it shall thereafter make a complaint to a magistrate having jurisdiction. The preliminary enquiry which the court may make is generally undertaken after the close of the case in which the offence is alleged to have been committed. In such an enquiry, it is usual to give the person concerned an opportunity to show cause why a complaint should not be laid against him. The enquiry extends to the court satisfying itself that an offence appears to have been committed and that the interests of justice require that proceedings should be initiated against the person concerned. On the court laying a complaint before a first class magistrate having jurisdiction, the latter takes up the matter and proceeds to hear the case. The steps prescribed naturally result in proceedings of this character being greatly delayed. Firstly, the court before which the offence appears to have been committed holds an enquiry; secondly, the magistrate before whom the complaint is made has to hear the case in accordance with the procedure relating to the trial of warrant cases.

A considerable interval of time elapses between the commission of the offence and the eventual conviction of the offender. The essence of penal law is that punishment should follow the offence as speedily as possible, if the preventive ends of the punitive law are to be achieved. Delay is also often caused as the law provides for an appeal against an order of the court laying the complaint

after the proceeding under **section 476**. A great deal of the effect of the prosecution is thus lost by the enormous delay in bringing the offender to book.

New procedure: section 479A (Defects).-

The recent amendment to the Code has introduced a new provision, **section 479A**, to deal with certain cases of giving false evidence. It says that where "a 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.", 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 " This finding has to be recorded at the time of the delivery of judgment.

The court "may", if it so thinks fit, after giving the person an opportunity of being heard make a complaint in writing and forward it to a magistrate of the first class having jurisdiction. It will be noticed that the recording of the finding of the court has to be made contemporaneously with the delivery of the judgment and cannot be postponed as under the procedure outlined in **section 476**. Yet the court itself is not empowered to take action in the matter but has to lay the complaint before a magistrate. Another innovation introduced by **Section 479A** is that there is no right of appeal from any finding recorded and from an order laying a complaint.

Sub-section (6) of section 479A provides that if in respect of the prosecution of a person, proceedings can be taken under the section but are not in fact adopted, proceedings under sections **476 to 479** will be barred. If, therefore, the court either through oversight or through indifference neglects to take any steps for launching a prosecution against a witness who has given false evidence, the court cannot later act under **section 476** and start proceedings after the close of the case. But an appellate court to which an appeal has been preferred from the decision of the lower court may take such action.

4. No doubt, one of the purposes of introducing **section 479A** into the Code was to ensure an examination of the question of expediency of prosecution of the person who had given false evidence at the time of delivery of judgment in the judicial proceeding. That purpose has been achieved. But the main evil, namely, the time lag between the commission of the offence and the punishment of the offender has not been remedied by the amendment.

The Challenge of Perjury in India:

Perjury undermines the truth-seeking function of the judiciary and can lead to wrongful convictions, miscarriages of justice, and erosion of public trust in the legal system. In India, perjury presents several specific challenges:

- 1. Lack of Prosecution:** One of the primary challenges in combating perjury in India is the lack of effective prosecution. Due to the burden of proof and the lengthy legal processes involved, perjury cases are often difficult to prosecute, leading to impunity for those who commit perjury.

2. **Witness Intimidation and Threats:** Witnesses may be hesitant to testify truthfully due to fear of retaliation or intimidation from powerful individuals or criminal elements. This intimidation can prevent witnesses from coming forward or compel them to provide false testimony, contributing to the prevalence of perjury.
3. **Overburdened Judiciary:** India's judiciary is already burdened with a high volume of cases and lengthy legal proceedings. Detecting and prosecuting instances of perjury further strain an already overburdened system, leading to delays and inefficiencies in the administration of justice.
4. **Cultural and Social factors:** Cultural and social factors may also contribute to the prevalence of perjury in India. Social norms, fear of social stigma, and pressure from community or family members can influence individuals to provide false testimony or withhold information.

Perjury possess a significant drawback on the Indian judicial system, undermining the search for truth and justice. Addressing this issue requires concerted efforts from policy makers, legal professionals, law enforcement agencies, and civil society organization. By implementing legal reforms enhancing investigative mechanisms and promoting a culture of truthfulness and accountability. Perjury is a scourge on the Indian Judicial system, undermining the pursuit of truth and justice. by banning perjury and imposing rigorous punishments for offenders, India can reaffirm its commitment to upholding the rule of law and protecting the rights of its citizens.

New Procedure Section 479A (Defects) :

The recent amendment to the code has introduced new provisions **Section 479A** to deal with certain cases of **false evidences**. It says that where “a court is of opinion that every person appearing before it as a witness has intentionally giving false evidence for the purpose of being use it during the course of judicial proceeding. And that for the eradications of the evils of perjury and fabrication of false evidences and in the interest of justice, it is evident that such witness shall be prosecuted and apart from imposing high fine it should be imposed with tough punishments.”

No doubt one of the purpose of introducing **Section 479A** into the code was to ensure the examination of the question of expediency of prosecution of the person who had given false evidence at the time of the delivery of judgment in the judicial proceeding. But the main evil mainly the time lag between the commission of the offence and the punishment of the offender has not be remedies by the amendment.

Speedy punishments is necessary to serve justice on time:

The evil of perjury can be dealt with effectively only if measures devised to punish the offender immediately. No doubt perjury is as frequent in civil proceedings, it cannot be detected so easily. We may, therefore, for this purpose to be dealt with criminal cases alone and consider how far the punishment of perjury can be made a quicker in criminal cases. In cases which are triable in the court of session , there is preliminary enquiry of some description by a court different from the one which ultimately tried the case there is, accordingly an opportunity for a witness, if he is so minded to alter his evidence in the trial court. The experiment of innocent persons being brought to trial in courts of session on the basis of false evidence given by witnesses in the committal courts or of guilty persons being acquitted on the basis of similar testimony in the courts of session is not frequent.

In a number of these cases the witness has deliberately altered his version in the latter court. Even in such cases, the law at present requires the court hearing the case to record its finding under **Section 479A** and to make a complaint to a first class magistrate. It may well be that there are two statements on oath, one contradicting the other, so that the commission of an offence of perjury is not in doubt. Yet the conviction and the punishment to have be delayed, what is even more important the court making the complaint is often in a far better position to judge whether an offence has been committed and to measure its gravity in relation to the articular facts of the case. It seems to us that in such cases it very desirable that the court before which the judicial proceeding has taken place and which has recorded the finding should itself be given the power to deal with the offender if that the court has such a power, a person appearing and giving evidence before it would be very careful being aware of the risk that he runs. The swiftness with which the punishment will follow the offence will, we believe, have a deterrent effect on him and will lead to a deadline in the incidence of this evil.

Objection:

The suggestion that the court should be given these summary powers didn't get to meet with the approval of a few witnesses. It was said that illiterate persons who might have given false version under pressure, would face the risk of conviction for perjury even if they come out with the truth in the trial court. No one's is inclined for the agreement. The trial court would be in possession of the entire evidence, it should certainly be in a position to be able to assess the contradicting statements made in the light of the other evidence and to decide whether either or any of the statements were made voluntarily or under pressure.

While a different court would have nothing more than the two contradictory statements to go upon, the trial court would have the advantage of a knowledge of the entire background of the statements and would be able to deal with the accused more justly. Some don't believe that any court would act in a mechanical manner and straightaway proceed to a conviction solely on the proof of two contradictory statements made. In most cases, it will only be the superior courts that will be called upon to exercise these powers and they can be trusted to administer the law properly.

Criticisms made were:

The nature of this criticism can be illustrated by reference to an extract from a publication headed by "**Law v/s Justice**"¹

"the current philosophy underlying the criminal procedure is epitomized in the dictum; 'let a hundred guilty men escape but let no single innocent man suffer' it seems to overlook the fact that there cannot be a single guilty person without at least one innocent person having suffered already, and let to a hundred guilty persons is to let a hundred innocent persons suffer. It may be law, but hardly justice is being served. In the pursuit of this philosophy, the accused is deliberately and invariably advised to plead not guilty and the onus is thrown to the prosecution to prove conclusively the guilt of the accused and the benefit of every doubt is given to the

accused, resulting often in the acquittal of the guilty, injury to the innocent and defeat of justice by law, it promote the manufacturer of extra evidence, which is more helpful than truthful.”

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