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## The committing of offences by public servants under Indian penal code, 1860: A critical analysis

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### Abstract

The commission of offences or crimes are committed in the society by the common person and other. The crime ratio is increasing day to day in the country. The offences are also committed by the public servant. The Chapter IX of the Indian Penal Code is related to the offences by or relating to Public Servants. This Chapter deals with offences which can be committed by public servants and the offences which related to public servants, though not committed by them. The Chapter XI is related to of false evidence and offence against public justice, which lays down the offences which obstruct the administration of justice. There are various sections in these chapters which listed the offences that provide possible instances of police, investigating agency and prosecutorial misconduct concerning an investigation, prosecution, trial and other criminal proceedings. In this paper, an attempt has been made to discuss the offences which are committed by the public servants i.e. police officers/officials. There are many instances/cases in which many police officers/officials are found involved in offences/crimes.

**Keywords:** commission, public servant, offences, disobey, injury, judge, court, punishment

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### Introduction

**Meaning of Public Servant:** The term “public servant” is very wide and several kinds of public servants are included in it. Section 21 of the IPC, 1860 defines the term public servant and there are about twelfth kinds of meaning/definitions of public servants. In this paper, we are discussing the public servant as second category which is related to that “every commissioned officer in the Military, Naval or Air Force of India. The public servant means who discharges the public duty. Here, we are discussing about the police officer who discharges his public duty and commits an offence.

**Commission of Offences by Public Servants or Offences Relating to Public Servants:** There are many sections which are related to public servants and public servants have committed the various kinds of offences. These sections are 166, 166A, 166 B, 167, 168,169, 170 and 171. These section sections are briefly discussed as follows:

**(a) Public Servant Disobeying Law, with Intent to Cause Injury to Any Person:** Section 166 requires the following contents to make an offence for public servant that (i) the offender must have done the act being a public servant; (ii) there must be a direction of law which the public servant was bound to obey; (iii) public servant knowingly disobeyed such direction; (iv) by such disobedience public servant must have intended to cause or knew it to be likely to cause injury to a person, (v) Offence hereunder is punishable with maximum imprisonment for one year with or without fine. This section has been observed to be comprehensive and generally includes several offences involving abuse of official authority. The section 166 deals with the disobedience of any direction of law in a general sense <sup>[1]</sup>.

**(b) Public Servant Disobeying Direction Under Law:** The section 166A lays down three kinds of derelictions of law by a public servant which would amount to an offence thereunder: public servant (a) knowingly disobeys any direction of law prohibiting him from requiring attendance at any place of any person for the purpose of investigation into an offence or any other matter; (b) knowingly disobeys, to the prejudice of any person, any direction of law regulating the manner in which he is to conduct such investigation; and sub-clause (c) fails to record FIR in relation to offence under certain sections specified therein <sup>[2]</sup>. The punishment provided is minimum of 6 months rigorous imprisonment and maximum of 2 years, and fine. The court in some cases said that if a public officer abuses his office either by commission or omission, and that results in an injury to any individual, an action may be maintained for an offence under Section 166(A), IPC against such an officer; when a duty is performed arbitrarily or capriciously, or the exercise of power results in harassment and agony then responsibility will be fastened upon erring officials and they be will be punished accordingly <sup>[3]</sup>.

**Public Servant Framing an Incorrect Document with Intent to Cause Injury:** The section 167 provides that whoever being a public servant and being as ( such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record) in a manner which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to upto 3 years, or fine, or with both. The section 167 deals with particular instance of a public servant assigned the duty of preparation of a document, incorrectly prepares, frames, translates such document. In *Pasupuleti Ramdoss v. Emperor*<sup>[4]</sup> case, a false entry in his diary by a Station House Officer (SHO) to support an Inspector rendered him guilty under this section of intentionally framing an incorrect public record. In *Krishna Govind Patil v. The State of Maharashtra*<sup>[5]</sup> case, the court held that to constitute a charge under section 167, it is also required that such public servant knew or believed that he was incorrectly framing or translating the document, and that he did the same with the intent or with the knowledge that it was likely that he would thereby cause injury. The intention to cause injury to any person by perversion of official duty is a requirement under the section, however, it is notable that where the act is in itself unlawful, the proof of justification or excuse lies with the defendant; and in failure thereof, the law implies criminal intent. In *State v. Saqib Rehman & Ors*<sup>[6]</sup> case, the Sessions Court, Dwarka, New Delhi, vide its order dated 2 February 2011, made a finding that the concerned police officials had framed the persons accused in a false criminal case, fabricating evidence etc., and ordered lodging of a complaint against the concerned officials under sections 166 and 167, IPC, among others. In this case, the persons accused were already in illegal custody when the police officials scripted an encounter basing it on a fake secret informer and showing an arrest of a later date.

**Offences of False Evidence and Offences Against Public Justice:** In addition to the Chapter IX, there is Chapter XI also deals with section 218-220 with disobedience on the part of public servants in respect of official duty. Section 218 is on the same lines as section 167 and criminalises intentional preparation of a false/incorrect record by a public servant with the intent to cause or knowing it to be likely to cause loss or injury to any person. It is wider in scope compared to section 167 because it includes within its purview incorrect preparation or framing with the intention of saving any person from legal punishment or saving some property from forfeiture or other charge. An offence under section 218 is punishable with a maximum imprisonment of 3 years of either description, or with fine, or with both. In *Ashfaq Ahmed*<sup>[7]</sup> case, an Assistant Sub-Inspector making incorrect entries in the general diary was held guilty of offence under section 218 of IPC. In *Maulad Ahmed v. State of Uttar Pradesh*<sup>[8]</sup> case, the Supreme Court observed that if a police officer manipulates the record such as police diary etc., it will be the end of honest investigation; and, such offences shall receive deterrent punishment<sup>[9]</sup>.

**Public Servant in Judicial Proceeding Corruptly Making Report, etc Contrary to Law:** The Section 219 deals with corrupt or malicious exercise of power by public servants engaged in the discharge of judicial function; criminalising corrupt or malicious making or pronouncing of any report, order, verdict etc. by a public servant in a judicial proceeding knowing it to be contrary to law. An offence under this section is punishable with a maximum imprisonment of 7 years of either description, or fine, or with both. This section is invoked only with respect to judicial proceedings. Further, there must the judicial proceeding actually commenced or pending, wherein a party claims relief against another and seeks the decision of the court in regard thereto, and there must be the making of real report or a real pronouncement of an order, verdict or decision<sup>[10]</sup>. In some cases, the court, where a report was submitted by the police before any order under sections 112 or 145, CrPC was made, held that the report did not fall within the scope of section 219, IPC even if the same was corruptly or maliciously furnished<sup>[11]</sup>.

The section 219 criminalises corrupt or malicious commitment for trial or confinement of any person by such an officer knowing that in so doing he is acting contrary to law. An offence under this section is punishable by a maximum imprisonment of 7 years of either description, or fine, or with both. Knowledge that confinement is contrary to law" is a question of fact and not of law, and it must be proved in order to satisfy the requirement of section 220, IPC<sup>[12]</sup>. This section addresses executive abuses in intentionally illegally confining innocent persons. It is aimed at preventing abuse of power by officers with the power to commit persons to trial or confinement. One such instance, also relevant to the issue under discussion, would be the power of police under section 41, CrPC to arrest a person without warrant in certain cases, subject to the requirement under Article 22(2) of the Constitution i.e. to produce the person arrested before the magistrate within 24 hours. A failure on the part of the police to comply with the foregoing requirement without a reasonable cause would come under the purview of this section, making the concerned officer liable for punishment thereunder.

**The Commitment for Trial or Confinement by Person having Authority Who Knows that He is Acting Contrary to Law:** The court said in some cases, that purpose of section 220, unlawful commitment to confinement will not of itself warrant the legal inference of malice; it needs to be alleged and proved that the concerned officer corruptly and maliciously confined a person wrongfully. Confining a person on suspicion but with the knowledge that it is contrary to law invokes section 220<sup>[13]</sup>. If the confinement of a person is itself contrary to law, regardless of the legal authority of the officer to confine, it would be an offence under section 220<sup>[14]</sup>. Excess of his legal powers of arrest by a police officer invokes the requirements of acting corruptly or

maliciously or the knowledge that he was acting contrary to law under section 220, IPC. However, where the arrest is legal, there can be no guilty knowledge “superadded to an illegal act”, such as it is necessary to establish against the accused to justify a conviction under section 220, IPC <sup>[15]</sup>. Interpreting the expression „maliciously“ as it appears in section 220, IPC, the Court observed that unlawful confinement to put pressure on the person confined to come to terms with a person in whom the accused is interested amounts to malice <sup>[16]</sup>. The expression corruptly and maliciously was also interpreted to include wrongful confinement for the purpose of extortion <sup>[17]</sup>.

**False Evidence and Offences Against Public Justice:** The Chapter XI of IPC has 44 sections including sections 218-220. The sections 191 to 200 are related to giving and fabricating of false evidence and sections 201 to 229 are related to offences against public justice. Not specific to public servants, sections 191 and 192, IPC deal with the offence of giving or fabricating false evidence, where section 191 defines what amounts to giving false evidence. To make a statement false evidence within the meaning of section 191, IPC, it must be established that the accused was legally bound by an oath or an express provision of law to state the truth or to make a declaration upon any subject. And, the statement made by the accused must be a false statement and he must know or believe it to be false or must not believe it to be true. The essence of the section lies in intentional making of a false statement. In *Ranjit Singh v. State of Pepsu* <sup>[18]</sup> case, a matter concerning illegal detention of a person by the police, the accused, a police officer when called upon to make a statement against an application under Article 226 of the Constitution for a writ of habeas corpus, filed a false affidavit denying that the man was ever arrested by the police or was in his custody. The Court held that the accused had committed the offence of giving false evidence under section 191, IPC.

The Section 192, IPC criminalises fabrication of false evidence done with an intention that such evidence appear in a judicial proceeding, and cause an erroneous opinion touching any point material to the result of such proceeding. The essence of the offence lies in either making a false entry in any book/record or making a document or electronic containing a false statement so as to cause a judge, a public servant or an arbitrator to entertain an erroneous opinion upon any material point <sup>[19]</sup>. In *Ashiq Mohamed* and some other cases, the court held that it is the duty of the police officers as well as government officials to allow a case to come before the court without fabrication or padding; prosecution not to determine the guilt of an accused in advance and deceive the court in to giving a verdict based on false evidence <sup>[20]</sup>. It is to be noted that under both sections 191 and 192, IPC, mens rea is an essential element, making punishable intentional giving or intentional fabrication of false evidence.

**Punishment for the Giving and Fabricating of False Evidence Including with the Intent to Procure Conviction for Offence:** The sections 193 to 195 lay down the punishment for the giving and fabricating of false evidence including with the intent to procure conviction for offence punishable with capital punishment and life imprisonment. In *Darshan Singh* <sup>[21]</sup> case, an investigating officer who was found to be concocting false evidence framing an accused for murder – was found to be guilty under section 194, IPC.

**False Charge of Offence made with Intend to Injure:** Section 211 contains the words “with intent to cause injury to any person, it institutes any criminal proceedings knowing that there is no just or lawful ground” has been held to be parallel to the foundation for an action for malicious prosecution – without any reasonable or probable cause. Under this section it is an offence if a person with the intention to cause injury to another, either (i) institutes criminal proceedings against such person; or (ii) falsely charges him of having committed an offence, knowing that there is no just or lawful ground for such proceedings or charge. In a case, the Court observed that the term false charge is not giving of false evidence by a prosecution witness against an accused during the course of a criminal trial, it refers to a criminal accusation that sets in motion the process of a criminal investigation. In *Rhedoy Nath Biswas* <sup>[22]</sup> case, a false report by a head constable to superiors, leading to prosecution of an accused who was later acquitted, made the constable liable under section 211, IPC. In *Thakur Tewary* <sup>[23]</sup> case, where the report by the police officer was found to be false by the Magistrate after hearing the evidence, but not resulting in criminal proceedings against the accused, the police officer was held not to be liable under section 211, IPC; thereby emphasising the element of institution of criminal proceedings for establishing an offence under section 211, IPC. In *Boaler* case interpreting the expression “institutes or causes to be instituted any criminal proceeding”, the Court held that just the laying of information before a Magistrate constitutes institution of a criminal proceeding <sup>[24]</sup>. In *Nanhkoo Mahton v. Emperor* <sup>[25]</sup> case, the court held that providing information to a police officer which he has power to investigate and/or causing the officer to investigate the information amounts to institution of criminal proceedings.

**Some Highlights of Report of Jamia Teachers’ Solidarity Association:** A report of the Jamia Teachers’ Solidarity Association highlights of such cases where the accused persons were charged with offences of planning and causing bomb blasts, criminal conspiracy, collection of arms, training of terrorists etc., but later acquitted for the reasons of shoddy investigation and flimsy evidence, or that the prosecution’s case was doubtful and lacked credibility, or that there were procedural lapses and the investigating agency violated established legal norms, lacking transparency <sup>[26]</sup>. The report also noted a certain pattern of procedural lapses and misconducts in investigations and prosecutions/proceedings of the cases discussed as: (i) Illegal detention, where the time and date of the actual picking up of the accused, as revealed during the trial, is earlier than that alleged

in the police's case. (ii) Secret information, often central to the police's case leading them to the accused cannot be verified or disclosed. (iii) Public and independent witnesses are rarely joined in the actual operation, even in cases where the accused were apprehended in public places with people around. (iv) Private vehicles used in the operation doing away with the need of maintaining logs, making it difficult to verify the information about the operation. (v) Delayed seizure memos – not made at the time of actual seizure – made later in the police station, often found to be in the same handwriting and ink as the FIR <sup>[27]</sup>.

### Conclusion

From the above evident, it is clear that the many offences are committed by the public servant while performing their official duty. Many were found guilty of making the false evidence and fabricating the false cases against the innocent person. Many were found in making of shoddy investigation. The public servant should perform their duty as per law and honestly.

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