



## **THE PUBLIC JUSTICE AND FALSE EVIDENCE RELATED OFFENSES UNDER PENAL CODE, 1860: A PENAL DISCUSSION**

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| <b>Received:</b> June 26 <sup>th</sup> 2021<br><b>Accepted:</b> July 20 <sup>th</sup> 2021<br><b>Published:</b> August 30 <sup>th</sup> 2021 | The modern Penal Code is vast and exhaustive, one of its most essential elements is the explanation of criminal intent. The Modern Penal Code standardized mens rea, criminal participation as well as the consequences of crime along with victim identification possibly the most essential element of criminal activity evaluated in trials when establishing the nature of a crime and its reasonable punishment, into four basic phrases. Though the frame of our penal code, 1860 is a bit outdated and not concurrent in terms of global criminal laws relating to developments. The Modern Penal Code was a popular document in modern legislatures because it was practical. Such as, the Model Penal Code has had a far-reaching impact on the revision of national laws. With penal and legal specification the aim of this research paper is to identify and clarify the concept The Offenses of Public Justice and False Evidence under the Penal Code of 1860. |

**Keywords:** Public Justice, False Evidence, Penal Connection under penal code 1860, Legal constructions, Punishment.

### **INTRODUCTION:**

One of the most typical sorts of evidence uncovered at a crime scene is physical evidence. The real physical artifacts discovered at the site are referred to as tangible evidence. All materials found at a suspected crime scene are collected to determine what happened and how it happened.<sup>3</sup> This evidence is also part of constructing an inquiry that might be used to assess responsibility or guilt, allowing for arrests and proof of any suspects' involvement in criminal prosecutions. Before investigators begin collecting crime scene evidence, they make every effort to avoid contaminating the scene with unrelated material.<sup>4</sup> Even so, it's common for evidence to become muddled, especially if there's a live victim on the scene who requires medical attention. Rapid changes in weather and failing to identify a crime until certain evidence has decayed can also be obstacles to having the perfect and unspoiled scene.<sup>5</sup> Furthermore, some crimes involve multiple scenes or locations, and the regions where part of a crime was committed aren't always obvious.<sup>6</sup>

Though the subject matter of this study is related to public justice and false evidence in terms of penal discussion so this research paper focuses on this particular object or activity.

### **THE CONCEPT OF PUBLIC JUSTICE:**

Doing justice to the "republic" (from the Latin *res publica*, which means "public entity") in which all citizens partake, as well as to what people possess individually in capacities that are not politically qualified, is what public justice entails.<sup>7</sup> Furthermore, public fairness is the driving principle for government action and is made up of two elements that are interrelated. The idea of public justice recognizes that the government is not responsible for much of what leads to human flourishing.<sup>8</sup>

### **THE CONCEPT OF FALSE EVIDENCE:**

False evidence, also known as fabricated evidence, forged evidence, or contaminated evidence, is information that has been created or obtained illegally

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<sup>3</sup> Sherman, L. W., MacKenzie, D. L., Farrington, D. P., & Welsh, B. C. (Eds.). (2002). *Evidence-based crime prevention* (p. 10). London: Routledge.

<sup>4</sup> Eckert, W. G., & James, S. H. (Eds.). (1998). *Interpretation of bloodstain evidence at crime scenes*. CRC press.

<sup>5</sup> Loeffler, C. E. (2013). Does imprisonment alter the life course? Evidence on crime and employment from a natural experiment. *Criminology*, 51(1), 137-166.

<sup>6</sup> Welsh, B., & Farrington, D. (2005). Evidence-based crime prevention: Conclusions and directions for a safer society. *Canadian Journal of Criminology and Criminal Justice*, 47(2), 337-354.

<sup>7</sup> Ripstein, A. (2017). Private order and public justice: Kant and Rawls. In *Rawls and Law* (pp. 345-392). Routledge.

<sup>8</sup> Pound, R. (1997). *Criminal justice in America*. Transaction Publishers.



in order to influence a court's decision.<sup>9</sup> Falsified evidence can be produced by either side in a case (including the police/prosecution in a criminal case) or by a third party sympathetic to either side.<sup>10</sup> Although suppression of evidence can be deemed a kind of false evidence (by omission), suppressed evidence is sometimes omitted because it cannot be proven that the accused was aware of the things discovered or their location.<sup>11</sup>

If the person performing the forensic job finds it easier to fake evidence and test results than to perform the real work, the analysis of evidence (forensic evidence) may also be falsified.<sup>12</sup> Parallel construction is a type of false evidence in which the evidence is true but the origins are untruthfully described, sometimes to avoid evidence being thrown out as inadmissible owing to unethical ways of acquisition, such as an unlawful search.<sup>13</sup>

#### **CATEGORIES OF FALSE EVIDENCE:**

The laws and legal principles that regulate the proof of facts in legal action are known as the law of evidence or the rules of evidence. These guidelines specify what evidence the trier of fact must or must not examine while making a decision. In bench trials, the trier of fact is a judge, and in jury trials, the jury. The law of evidence also addresses the quantity (amount), quality, and type of proof required to win a case. Along with this statement and structural direction of the "Evidence Act" the false evidence are classified into following class:

1. Forged evidence: an object or piece of information that has been manufactured or altered to promote a certain agenda - is not acceptable in many courts, including criminal courts in the United States.

2. Placed evidence: Placed evidence is not admissible in many courts, including U.S. criminal courts, because it is an item or information that has been relocated or planted at a scene to appear related to the accused party.<sup>14</sup>

3. Tainted evidence: information gained illegally or exposed (or traced) using evidence obtained through illegal search and/or seizure is known as "fruit of the poisonous tree" <sup>15</sup>and is not admissible in many courts, including criminal courts in the United States.

4. Parallel construction: contaminated evidence, in which the source of the evidence is misrepresented, avoiding debate about whether it was obtained legally or not.

5. Suppressed evidence: an item or piece of information that has been pronounced "inadmissible" by a court judge is not allowed to be offered in court. Evidence that was suppressed could be excluded if it was discovered concealed or locked up in places where the accused could not be demonstrated to be aware.

#### **THE PENAL CONNECTION OF PUBLIC JUSTICE AND FALSE EVIDENCE UNDER PENAL CODE:**

The penal code 1860 itself assure several process and actions to assure Public justice in Bangladesh. The direction in this regard are given below:

##### **1. Assuring public justice In support of Evidence Law and Evidential Issues<sup>16</sup>:**

- By providing false evidence (Section-191)
- By fabricating false evidence (Section- 192 and 194)
- By using false evidence<sup>17</sup> ( Section- 196)
- By issuing and signing false documents ( Section- 196, 197, and 198)
- By declaring false statement (Section- 199 and 200)

<sup>9</sup> Jubaer, Shah. (2015). Argument to Legal decisions in terms of establishing criminal justice under the criminal court system of Bangladesh. *Criminal law bulletin*.

<sup>10</sup> Woody, W. D., & Forrest, K. D. (2009). Effects of false-evidence ploys and expert testimony on jurors' verdicts, recommended sentences, and perceptions of confession evidence. *Behavioral Sciences & the Law*, 27(3), 333-360.

<sup>11</sup> Jubaer, Shah. (2018). A Plain and sample narration of the Criminology. *Criminal Justice Review*.

<sup>12</sup> Wynbrandt, K. (2016). From False Evidence Ploy to False Guilty Plea: an unjustified path to securing convictions. *Yale LJ*, 126, 545.

<sup>13</sup> Jubaer, S. M. O. F., Hoque, L., Rahman, F., Moumi, A., & Deb, B. (2021). VICTIMLESS CRIME AND

VICTIMOLOGY UNDER DIFFERENT NATIONAL LEGAL SYSTEM: A GLOBAL APPROACH.

<sup>14</sup> Jubaer, S. M. O. F. Notes on the Conflict and choice of Laws.

<sup>15</sup> Jubaer, S. (2021). THE CRIME, CRIMINAL BEHAVIOR, AND EXTENDED CRIMINOLOGY: A CRITICAL SCRUTINY. *International Journal of Engineering and Technical Research*, 8, 213-221.

<sup>16</sup> Penal Code, 1860 (Act No. XLV of 1860)

<sup>17</sup> Jubaer, Shah. (2021). THE CRIME, CRIMINAL BEHAVIOR, AND EXTENDED CRIMINOLOGY: A CRITICAL SCRUTINY. *International Journal of Engineering and Technical Research*. 08. 213-221. 10.17605/OSF.IO/62FKZ.



- By causing Disappearing Evidence and information's (Section- 201)
- 2. Assuring public justice in terms of obstructive and preventive measures<sup>18</sup>:**
  - By hiding obligatory information's ( Section 202 and 203)
  - By doing or producing destructive acts or directions (Section- 202 and 204)
  - By acting false personation (Section- 205)
  - By intentional omission or act of negligence by a public servant (Section-221,222,223 and 225A)
- 3. Assuring public justice in terms of civil procedural system or civil laws<sup>19</sup>:**
  - By false personating in civil proceedings or civil suits ( Section-205)
  - By fraudulent removal or concealment of property ( Section-206)
  - By prevention in property-related execution ( Section-207)
  - By deceitfully and dishonestly suffering award or compensation ( Section-208)
- 4. Assuring public justice by playing role in the court system<sup>20</sup>:**
  - By making a false claim in court (Section-209)
  - By obtaining decree [misusing of law] (Section-210)
  - By issuing false charge [misusing of law]<sup>21</sup> (Section-211)
  - By corrupting in judicial service or system (Section- 219)
  - By committing confinement before or acting contrary<sup>22</sup> (Section-220)
  - By violation of conditions of punishment or condition of remission of punishment (Section-227)
  - By personation of a juror or assessor (Section-229)

**5. Assuring public justice in terms of prevention of offensive or criminal acts<sup>23</sup>:**

- By harboring or supporting offenders (Section-212, 216, and 216A)
- By taking or offering gifts, money, or any other gratifications ( Section-213 and 214)
- By disobeying laws or the direction of laws (Section-217)
- By maintaining or framing incorrect public records or valuable records<sup>24</sup> ( Section-218)
- By the act of negligence<sup>25</sup> ( Section-223)
- By the act of resistance or obstruction (Section-224 and 225B)

**RELEVANT LEGAL DISCUSSION UNDER THE PENAL CODE 1860:**

Under Section 191 of the Penal Code, 1860: Whoever, while legally obligated to tell the truth by an oath or an express provision of law, or while legally obligated to make a declaration on any subject, makes any false statement, which he either knows or thinks to be untrue or does not believe to be true, is said to give false evidence.<sup>26</sup> Whether expressed verbally or in writing, a statement falls within the scope of this section. A person may be guilty of delivering false evidence if he states that he believes something he doesn't believe or that he knows something he doesn't know. Additionally, Section 196 specifies that Whoever corruptly uses or attempts to use as true or genuine evidence any evidence that he knows to be false or fabricated is subject to the same penalties as if he gave or produced false evidence.<sup>27</sup>

Whoever issues or signs any certificate required by law to be given or signed, or relates to any truth for which such certificate is legally admissible in evidence, knowing or believing that such certificate is false in any significant point, must be punished as if he submitted false evidence (Section-197). Section 198 also states that anyone who corruptly uses or seeks to use any

<sup>18</sup> Penal Code, 1860 (Act No. XLV of 1860)

<sup>19</sup> Penal Code, 1860 (Act No. XLV of 1860)

<sup>20</sup> Penal Code, 1860 (Act No. XLV of 1860)

<sup>21</sup> Jubaer, Shah. (2018). Public Interest Litigation and availability of justice in Bangladesh: A legal overview.

<sup>22</sup> Jubaer, Shah. (2019). A conceptual introduction of Crime: Systematic observations.. 10.13140/RG.2.2.21779.81443.

<sup>23</sup>Penal Code, 1860 (Act No. XLV of 1860)

<sup>24</sup> Jubaer, Shah. (2019). The method of findings the Criminal Intention and the consequential outcome of a

crime: A basic Guideline towards criminal law practitioners.

<sup>25</sup> Jubaer, Shah. (2021). The Criminal Justice and Forensic Criminology: A Basic Rule. 10.13140/RG.2.2.20534.63049.

<sup>26</sup> Jubaer, S. M. O. F., & Ahmed, J. " DEFICIENCY IN EVIDENCE LAW OF EVIDENCE LAW CONCERNING TECHNOLOGICAL SUPPORT AND EXPERT SUPPORT.

<sup>27</sup> Jubaer, Shah. (2015). Argument to Legal decisions in terms of establishing criminal justice under the criminal court system of Bangladesh. Criminal law bulletin.



such certificate as a true certificate while knowing it to be false in any significant point will be penalized in the same way as if he supplied false evidence. Whoever, in any declaration made or subscribed by him, which declaration any Court of Justice, any public servant, or other persons is bound or authorized by law to receive as evidence of any fact, makes any statement that is false, and which he either knows or believes to be false or does not believe to be true, touching any point material to the object for which the declaration is made or usurped, is guilty of perjury. Whoever corruptly uses or attempts to use as true any such declaration while knowing it to be false in any significant point would be penalized as if he had given false evidence.<sup>28</sup>

#### **RELEVANT PENAL DISCUSSION UNDER PENAL CODE 1860:**

The main goal of the punitive instructions, among other things, is to ensure that the accused's rights are not jeopardized or that they are not unfairly favored.<sup>29</sup> Furthermore, their presence at the trial is crucial to guarantee that the judge concerned hears all parties who are relevant to the trial. As a rigid construction, it aids the court in ensuring that criminal reliefs are granted.<sup>30</sup>

#### **COMMON PUNISHMENT ON FALSE EVIDENCE TO ASSURE PUBLIC JUSTICE:**

There are two common frame of punishment regarding giving or fabrication of false evidence (Section-193 and 195)

1. In judicial proceedings: Intentionally giving false evidence or fabricating false evidence in any stage of a court procedure is punishable by imprisonment of either kind for a time that may amount to seven years, as well as a fine.
2. In general practice: Whoever willfully gives false evidence or fabricates false evidence in any form must be punished by imprisonment of either sort for a duration up to three years, as well as a fine.

#### **FIRST DEGREE OFFENSES AND PUNISHMENT FOR FALSE EVIDENCES TO ASSURE PUBLIC JUSTICE:**

Here application of false evidence is apply in two different persons in procedural format one is to involve

general (offender) persons and another is involving innocent persons. And the provisions relating to these persons:

1. If someone gives or fabricates false evidence with the intent of causing, or knowing that it will cause, someone to be convicted of a crime that is punishable by death under any current law. He or she will be sentenced to life in prison or to rigorous imprisonment for a term of up to ten years, as well as a fine.
2. If an innocent person is found guilty and sentenced to death as a result of such false evidence, the person who provided the false evidence will be sentenced to death or the punishment indicated above.

#### **PENAL INSTRUCTIVE EXTENSION:**

Sections 201, 212, 213, and 214 of the Punitive Code 1860 include two or three extended penal instructions. "Causing the disappearance of evidence of the offense, or giving false information to screen offender- if a capital offense; if punishable with imprisonment for life; if punishable with less than ten years' imprisonment," "Harbouring offender- if a capital offense; if punishable with imprisonment for life, or with imprisonment," "Taking gift, etc. to screen an offender" and "Offering a gift or restitution of property in exchange for screening offender- if a capital offense; if sentenced by life imprisonment or imprisonment for some time".

Whoever, knowing or having reason to think that a crime has been committed, destroys any evidence of the commission of that act to shield the perpetrator from a legal penalty, or supplies any information about the offense that he knows or believes to be false, is guilty of perjury.<sup>31</sup> Whenever an infraction is committed, whoever harbors or conceals a person who he knows or has cause to suspect is the perpetrator to protect him from legal punishment is guilty of a crime (Section-212), Whoever accepts or attempts to obtain, or agrees to accept, any gratification or restitution of property for himself or another person in exchange for concealing an offense, screening any person from legal punishment for any offense, or not proceeding against any person to bring him to legal punishment (Section-213), according to section 214, anyone who gives or causes, or offers or agrees to give or cause, any

<sup>28</sup> Jubaer, Shah. (2015). Logical relevancy, admissibility and the Relevancy of Fact: A procedural evaluation.

<sup>29</sup> Jubaer, S. M. O. F. Biological and Biochemical Theories in Criminology: An earlier approach to modern application.

<sup>30</sup> Jubaer, Shah. (2013). A historical overview of The Judicial system of Bangladesh.

<sup>31</sup> Ahmed, S. S. Crime and Criminal observation: A research review on Shah Jubaer's Research.



gratification to any person, or restores or causes the restoration of any property to any person, in exchange for that person concealing an offense, screening any person from legal punishment for any offense, or not prosecuting any person for the purpose of bringing him to justice, is guilty.<sup>32</sup>

If the offense is punishable by death, the penalty shall include imprisonment of any kind for a term up to seven years, as well as a fine; if the offense is punishable by death, the punishment shall include imprisonment of any kind for a term up to seven years, as well as a fine; and if the offense is punishable by life imprisonment or a term of imprisonment up to ten years, shall be punished by either type of imprisonment for a duration up to three years, and shall also be liable to a fine; If the offense is punishable by imprisonment for a period not exceeding one year, but not more than ten years, the offender shall be punished by imprisonment of the description provided for the offense for a term not exceeding one-fourth of the longest term of imprisonment provided for the offense, or by fine, or by both.

**The punishment with imprisonment of either description for a term which may extend to six months, or with fine:** In cases not otherwise provided for, the intentionally offers any resistance or illegal obstruction to lawful apprehension, or escapes or attempts to escape from any custody in which he is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained, or rescues or attempts to rescue any other person from any custody in which that person is lawfully detained shall be punished by a term of imprisonment of either sort, which may amount to six months, a fine, or both. (Section-225B). Additionally, under section 228, Whoever, when a public servant is sitting in any stage of a judicial action, knowingly insults or causes an interruption to such public servant shall be punished with simple imprisonment for a term of up to six months, or a fine of up to one thousand taka, or both.

**The punishment with imprisonment of either description for a term which may extend to two years, or with fine, or with both for the offenses:**

1. Giving false information respecting an offence committed (S-203)
2. Destruction of document to prevent its production as evidence (S-204)

3. Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution(S-206)
4. Fraudulent claim to property to prevent its seizure as forfeited or in execution (S-207)
5. Fraudulently suffering decree for sum not due (S-208)
6. Dishonestly making false claim in Court(S-209)
7. Fraudulently obtaining decree for sum not due (S-210)
8. Taking gift to help to recover stolen property, etc. (S-215)
9. Escape from confinement or custody negligently suffered by public servant (S-223)
10. Resistance or obstruction by a person to his lawful apprehension (S-224)
11. Failure on the part of a public official to arrest or allow an escape in instances when it is not otherwise allowed for (225 A)
12. Personation of a juror or assessor(S-229)

#### **CONCLUDING REMARK:**

Incorporating procedural fairness into the legal system benefits the law in a variety of ways. If the doer has faith in the government's policymaking and dispute resolution mechanisms, they are more likely to stay committed to the institutions. It does, however, put pressure on the government to create policies that reflect procedural justice.<sup>33</sup> This means that the government's response will be uniform, regardless of a person's position, age, education, training, or gender. For example, if an institution has a stringent policy against repeat defaulters who report to work late, everyone, including executives, must face the same punishment. On the other hand, current criminal legislation restricts the use of discretion in sentencing. This shift in attitude arises in part from the belief that discretion jeopardizes the benefits of the legality principle: When discretion is employed, disparate sanctions for similar criminals doing similar actions are more likely. The possibility of a biased decision-maker exploiting the system is increased by discretion. Predictability is damaged by discretion, which is required for both effective deterrent and fair notice. Finally, discretion transfers criminalization and punishment decisions from the legislative branch to the court and executive branches, which are less democratic.<sup>34</sup>

<sup>32</sup> Jubaer, S. M. O. F. The Criminal Justice and Forensic Criminology: A Basic Rule.

<sup>33</sup> Santulli, G., & Iaccarino, G. (2013). Pinpointing beta adrenergic receptor in ageing pathophysiology: victim

or executioner? Evidence from crime scenes. *Immunity & Ageing*, 10(1), 1-13.

<sup>34</sup> Akçomak, İ. S., & Ter Weel, B. (2012). The impact of social capital on crime: Evidence from the



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15. The word "imprisonment" was substituted for the word transportation by the penal code (Amendment) Ordinance, 1985 (Ordinance No. XLI of 1985) Section 13
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