

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi-Disciplinary
Peer Reviewed

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BEYOND FAULTY INVESTIGATION: CODIFYING CRIMINAL LIABILITY FOR COLOURABLE INVESTIGATIONS IN INDIA

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Abstract

The integrity of a criminal trial is contingent upon the integrity of the investigation that precedes it. Yet Indian law has no adequate response to the most corrosive form of investigative failure: the colourable investigation, where an Investigating Officer deliberately suppresses evidence, fabricates records, or steers the inquiry toward a predetermined outcome to shield the guilty or target the innocent. This paper examines the doctrinal and legislative gap that allows such conduct to persist with near-total impunity. It begins by distinguishing colourable investigations from mere investigative deficiency, drawing on Supreme Court jurisprudence to establish the former as a deliberate constitutional wrong rather than an administrative failure. It then critically evaluates the existing penal framework under the Bharatiya Nyaya Sanhita, demonstrating that its generic provisions designed for public servants at large are structurally incapable of addressing the unique evidentiary power that the Investigating Officer exercises over the foundation of a fair trial. The paper further identifies Section 218 of the Bharatiya Nagarik Suraksha Sanhita's prior sanction requirement as a structural shield that has historically insulated malicious investigative conduct from prosecution. Drawing on comparative models from the United Kingdom and Canada, it proposes a distinct statutory offence of colourable investigation, complete with a graduated sentencing framework, mandatory compensation, and a judicial gatekeeping mechanism that replaces executive discretion with independent oversight.

Keywords: Colourable Investigation, Investigating Officer, Faulty Investigation, Fair Trial, Miscarriage of Justice

I. Introduction

“A criminal trial is often described as a voyage of discovery in which truth is the quest.”¹ Yet, this voyage begins not in the courtroom, but in the chaotic reality of a police investigation. The final verdict depends entirely on the honesty of this initial inquiry. If the foundation is rotten, the entire structure of justice collapses. It is a fundamental principle of criminal jurisprudence that the integrity of the trial is bound to the integrity of the investigation. Without an honest factual matrix, the courtroom stops being a place of justice and becomes a mere theater, where legal rituals are performed but the truth is ignored.

The paradox of the modern democratic state is that while it aspires to order and tranquility, it must perpetually contend with crime. What often proves most corrosive to public peace, however, is not the commission of the crime itself, but the defective investigation that follows it². Defective investigations shake the faith of society in the justice system and creates a crisis of legitimacy that affects both the victim and the accused. For the accused, whose innocence is presumed until proven guilty, a tainted investigation directly curtails the freedoms of life and personal liberty under Article 21.³ Courts have repeatedly held that a fair investigation, being part of the guarantee under Articles 20 and 21, must be fair, transparent and judicious, and that the State cannot be permitted to conduct it in a tainted or biased manner.⁴

The investigation of a crime forms the "bedrock of a fair trial"⁵ and thus, any compromise at this stage leads inevitably to a distortion of facts and miscarriage of justice. The Investigating Officer is the kingpin of criminal justice delivery system⁶. Their duty is not to bolster a prosecution theory for the sake of a verdict, but to unearth the "real unvarnished truth."⁷ The judiciary has strictly enforced this, relying on the Gandhian precept that "means are more important than the end."⁸ To prioritize the "end" of a conviction through a flawed investigation is to weaponize the law against the citizen. When this occurs, the "heart of criminal

¹ *Ritesh Tewari v State of Uttar Pradesh* (2010) 10 SCC 677.

² Parminder Kaur, *Fair Investigation: Backbone of Criminal Justice System*, 3 Haryana Police J, https://www.haryanapolice.gov.in/policejournal/pdf/fair_investigation.pdf

³ *Nirmal Singh Kahlon vs State Of Punjab & Ors* (2009) 1 SCC 441; *Karan Singh v State of Haryana* AIR 2013 SC 2348

⁴ *Patel Babubhai Manohardas & Ors. v. State of Gujarat* (2025) INSC 322; *Manu Sharma Vs. State (NCT of Delhi)* (2010) 6 SCC 1; *Noor Aga v. State of Punjab* (2008) 16 SCC 417

⁵ *Pooja Pal v. Union of India*, (2016) 3 SCC 135.

⁶ *Amitbhai Anilchandra Shah v. CBI*, (2013) 6 SCC 348

⁷ *R.P. Kapoor Vs. State of Punjab* AIR 1960 SC 866; *Jamuna Chaudhary v State of Bihar* 1974 AIR 1822; *Mahmood v State of U.P.* 1976 1 SCC 542

⁸ *Ashrafkhan v. State of Gujarat* (2012) 11 SCC 606.

jurisprudence" stops beating, and the process shakes the very foundation of the criminal justice system⁹

In the Indian context, these foundational tremors manifest through two distinct pathologies: the "faulty investigation" and the "colourable investigation." The distinction lies in intent. While a faulty investigation is a product of systemic incompetence or a "lackadaisical approach"¹⁰, a "colourable investigation" represents a far more insidious malice. As Justice M.M. Sundresh articulated in *Arvind Kumar v. State of Rajasthan*¹¹, a colourable investigation is "brought forth by a calculated and deliberate action" involving the "conscious suppression" of material evidence to create a "false narrative". It is not a failure of capacity, but a "mental rebellion" against the rule of law, where the Investigating Officer abdicates their duty and instead weaponizes the process to modify the charge or shield the guilty.

Despite the gravity of such mala fide investigations, the law governing them remains both fragmented and under-inclusive. Culpability for investigative malpractice is currently spread across a patchwork of general provisions under the Bharatiya Nyaya Sanhita, which address individual acts such as preparing incorrect records, giving false evidence, or framing an innocent person, but do not explicitly conceptualise the offence of colourable investigation as such. These sections apply generically to public servants and fail to capture the specific nature of a colourable investigation. Furthermore, the path to accountability is frequently obstructed by Section 197 of the CrPC, which conditions prosecution on prior governmental sanction and frequently operates as a de facto immunity for investigative misconduct carried out under the colour of office.

To bridge this gap, this article proceeds in three parts. Part II examines how courts have identified and described colourable investigations, and Part III critically assesses the adequacy of existing penal provisions and public law remedies in addressing it. Part IV undertakes a comparative analysis, evaluating how other jurisdictions such as the the United Kingdom and Canada have successfully codified criminal liability for police officers who engage in malicious investigative practices. Finally, Part V proposes the insertion of a specific penal provision titled the "Offence of Colourable Investigation." Relying on the *Arvind Kumar*

⁹ *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158

¹⁰ *Gambhir Singh v. State of Uttar Pradesh* (2025) INSC 164

¹¹ *Arvind Kumar v. State of Rajasthan* 2021 INSC 764

standard, this proposal advocates for aggravated imprisonment and mandatory compensation provided by the erring officers, ensuring that the law punishes the suppression of truth as severely as the crime it seeks to fabricate.

II. Colourable v/s. Faulty Investigation

II.A. Faulty/ Defective Investigations

Defective investigations may occur due to a multitude of factors, ranging from the Investigating Officer's ignorance of the law to a crushing workload that precludes diligence. The absence of scientific aid, lack of proper training, and extraneous pressures frequently result in a perfunctory approach where the officer reaches the crime scene too late or fails to secure the most basic incriminating articles. Essential evidence like blood-stained earth or ballistic remnants often remains uncollected, and weapons of assault are frequently not sent for expert analysis. These omissions cast a shadow of doubt on the prosecution's case that even credible ocular testimony often struggles to erase.

The devastating impact of such administrative paralysis was laid bare in *State of Gujarat v. Kishanbhai*¹². The brutal rape and murder of a six-year-old child ended in an acquittal because the investigation shattered the chain of circumstantial evidence through sheer negligence. Officers failed to conduct DNA profiling on blood-stained clothes, neglected to verify the accused's thumb impression on critical pawn receipts, and failed to produce the medical officer who examined the accused. The Supreme Court expressed profound anguish that a heinous criminal escaped punishment solely because the guardians of the law failed to perform their most basic duties, leaving the prosecution's version susceptible to reasonable doubt.

This culture of apathy was starkly visible in *Gambhir Singh v. State of Uttar Pradesh*¹³. In a massacre involving six family members, the inquiry failed due to an "utter lackadaisical approach" that left the prosecution's case full of unmendable holes. The Investigating Officer neglected fundamental protocols, failing to examine even a single neighbor to verify the accused's presence or to place any documentary evidence of the alleged land dispute on record. The procedural rot extended to the recovery of weapons, where the officer failed to secure the chain of custody or even sign the recovery memos. The Supreme Court identified this as a defective investigation because the "casual and negligent" manner of the probe failed to prove

¹² State of Gujarat v. Kishanbhai (2014) AIR SCW 557

¹³ Gambhir Singh v. State of Uttar Pradesh 2025 INSC 164

a single incriminating circumstance. The investigation collapsed not under the weight of conflicting evidence, but due to the sheer incompetence of the state machinery which forced the acquittal of the accused in a case of blind murder.

Several key factors commonly contribute to defective or incomplete criminal investigations. Investigating officers often make critical errors that undermine the process. The main reasons include the following¹⁴:

1. **Ignorance of investigation laws:** Officers frequently lack clear understanding of relevant legal provisions governing probes.
2. **Inadequate training:** Many investigators receive insufficient preparation for handling complex cases effectively.
3. **No scientific support:** Lack of forensic tools and technical experts hampers evidence collection and analysis.
4. **Excessive workload:** Overburdened officers cannot devote proper time or attention to individual cases.
5. **Unprofessional attitude:** A casual or superficial approach leads to sloppy documentation and missed leads.
6. **Delayed crime scene access:** Late arrival allows evidence degradation or tampering.
7. **Frequent officer changes:** Transfers mid-investigation disrupt continuity and institutional knowledge.
8. **Poor equipment:** Basic tools and resources remain unavailable in many jurisdictions.
9. **No accountability for failures:** Officers face little consequence when cases collapse due to investigative lapses.
10. **External pressures:** Political or other influences compromise objectivity and thoroughness.

II.B. Colourable Investigations

On the other hand, colourable investigations cross into deliberate misconduct, where officers suppress key facts or fabricate narratives to shield the guilty or target the innocent. The Supreme Court crystallized this distinction in the *Aravind Kumar* judgment, emphasizing that a fair probe turns colourable through conscious suppression of motive, injuries, or evidence that alters the charge, thereby creating a false narrative.

¹⁴ S.S. Upadhyay, *Laches in the Investigation of Crimes*, Law Helpline (2024), https://lawhelpline.in/wp-content/uploads/2024/01/INVESTIGATION_OF_CRIMES.pdf

*Dayal Singh & Ors. v. State of Uttarakhand*¹⁵ serves as a perfect illustration for understanding what a colourable investigation is. What began as a petty 1985 boundary dispute in Salwati village, Uttarakhand, erupted into deadly violence when Dayal Singh and his sons ambushed Pyara Singh with lathis as he tilled his field alongside his wife and son, inflicting fatal blows confirmed by multiple eyewitnesses and a prompt FIR. Yet Investigating Officer SI Kartar Singh, in collusion with Dr. C.N. Tewari orchestrated a cover-up. The post-mortem declared no external or internal injuries, directly contradicting the inquest report's documentation of three wounds. Viscera duly collected during autopsy mysteriously vanished and was never forwarded for forensic scrutiny, or if sent, its report never surfaced in court. The Supreme Court declared it as not merely a faulty investigation simpliciter but one coloured with motivation, which was a designedly defective ploy to derail justice and exonerate the killers. Investigating Officer, SI Kartar Singh, faced disciplinary action mandated by the Court on grounds that his conduct amounted to “deliberate dereliction of duty” due to his failure to record reasons for inconsistencies in the post-mortem report, neglect in sending vital viscera for forensic examination, and a general approach described as “callous and irresponsible.” The Court directed the highest state police authorities to initiate and expeditiously complete departmental disciplinary proceedings against him, regardless of whether he was still in service or retired, with possible penalties including reduction or stoppage of pension. The Court made it clear that no limitation period would bar such inquiry since it was under its direct command. Further, Dr. C.N. Tewari, who prepared a false post-mortem report, was also ordered to face disciplinary proceedings for “deliberate dereliction of duty” and preparing a report that was “ex facie incorrect.”

Similarly, one can understand colourable investigations through the case of *Khursheed Ahmad Chohan v. Union Territory of Jammu & Kashmir*¹⁶. On 17 February 2023, Police Constable Khursheed Ahmad Chohan arrived at Kupwara's Joint Interrogation Centre for routine narcotics questioning, only to endure six days of unspeakable custodial torture involving electric shocks searing his palms and soles, pepper spray burning his genitals, blunt-force fractures, rectal violation with vegetative matter, culminating in a 10 cm x 5 cm scrotal laceration that necessitated surgical removal of both testicles. Discovered comatose and rushed between hospitals, Chohan became the target of grotesque inversion wherein no FIR was registered against his tormentors, but rather a counter-FIR was filed against him under Section

¹⁵ *Dayal Singh & Ors. v. State of Uttarakhand* (2012) 8 SCC 263

¹⁶ *Khursheed Ahmad Chohan v. Union Territory of Jammu & Kashmir* (2025) INSC 876

309 of the Indian Penal Code. Additionally, his wife's desperate complaints were dismissed as the inquiry was assigned to the very implicated officers. The Supreme Court unanimously condemned the inquiry as a colourable investigation. It held that the counter-FIR “is a classic example of institutional abuse and perversion of criminal justice machinery to shield the real perpetrators of the crime of custodial torture”. The bench described the police conduct as an “institutional cover-up orchestrated by local police machinery,” amounting to “deliberate dereliction of duty” in a “callous and irresponsible manner”. The authorities were found to have orchestrated an institutional cover-up by fabricating a suicide theory explicitly to invert the roles of victim and offender. To remedy these abuses, the Supreme Court directed an immediate CBI takeover, ordering the registration of an RC within seven days and constitution of a Special Investigation Team under a CBI Superintendent of Police; the arrest of the implicated officers within one month; the quashing of FIR as mala fide; the award of ₹50 lakh interim compensation to Chohan, recoverable from any guilty officers; and the initiation of departmental proceedings against all officers involved, including the stoppage or reduction of pension where appropriate.

*Anant Thanur Karmuse v. State of Maharashtra*¹⁷ illustrates colourable investigation through deliberate political shielding. Karmuse posted a satirical meme targeting Minister Jitendra Awhad on Facebook in April 2020. Police soon arrived at his home, took him to Awhad's bungalow, and oversaw his severe beating, forced video apology, and post deletion, leaving him hospitalized with grievous injuries. The initial FIR omitted the Minister's name entirely. Investigating officers ignored essential evidence, including call detail records, bungalow CCTV footage, and mobile devices. Further, medical reports downplayed injuries as "simple" despite photographic proof; and a retaliatory FIR was registered targeting Karmuse himself. The Supreme Court characterized the probe as "tainted/biased" and conducted in a sham and casual manner, eroding Article 21 fair investigation rights. It ordered a CrPC Section 173(8) supplementary inquiry, adding the Minister as an accused only after two years of judicial pressure. While strongly condemning initial investigative deficiencies, the Supreme Court refrained from imposing direct punitive sanctions such as contempt proceedings or penalties against the investigating officers or state officials. Instead, it focused on empowering investigative and prosecutorial agencies to rectify defects via an impartial, court-supervised inquiry. Disciplinary or criminal accountability for the flawed investigation was deferred

¹⁷Anant Thanur Karmuse v. State of Maharashtra (2023) SCC OnLine SC 168

pending the outcome of this renewed and rigorous process.

III. The Current Framework's Inadequacy

The principal legislative instruments available to prosecute an Investigating Officer (IO) who has conducted a colourable investigation are drawn from the chapter on *False Evidence and Offences Against Public Justice* under the Bharatiya Nyaya Sanhita, 2023 (BNS), and the chapter on *Offences by or Relating to Public Servants*. The traditional mechanism for prosecuting errant officials lies within the substantive provisions of the newly enacted Bharatiya Nyaya Sanhita, 2023 (BNS). To understand the current framework, one must map the IPC equivalents of Sections 193, 217, 218, and 219. Under the BNS, these offences relate to giving or fabricating false evidence, a public servant disobeying the direction of law with the intent to save a person from punishment, framing an incorrect record, and making a report or order contrary to law. Yet a careful examination of each provision reveals a framework misaligned with the gravity of colourable investigation as a distinct category of wrongdoing. Section 229 of the BNS¹⁸ (formerly IPC Section 193) penalises the intentional giving or fabrication of false evidence. Where such fabrication occurs in a judicial proceeding, the maximum sentence extends to seven years; where it occurs outside a judicial proceeding, the ceiling drops to three years with a fine. The investigative stage where an IO suppresses a witness statement, plants material, or fabricates a charge-sheet is not a "judicial proceeding" in the technical sense and thus attracts only the lesser three-year offence.

Section 256 of the BNS¹⁹ (formerly IPC Section 218) addresses the public servant who frames an incorrect record or writing with intent to save a person from legal punishment or to cause loss or injury to any person. The maximum punishment is three years' imprisonment, and the offence is classified as bailable. The intent requirement under this section is also particularly exacting: the prosecution must establish either a specific intent to save from punishment or a specific intent to cause loss, meaning that the deliberate suppression of exculpatory evidence or the framing of counter-FIRs must be brought within a narrow purposive frame that the provision was never designed to accommodate. Section 254²⁰ of the BNS (IPC Section 217) likewise criminalises a public servant who knowingly disobeys any direction of law with intent to save a person from legal punishment, capping punishment at a mere two years.

¹⁸ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 229 (India)

¹⁹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 256 (India)

²⁰ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 254 (India)

The primary defect across all these provisions is one of design universality. Each section applies generically to any public servant: a revenue officer, a municipal clerk, a veterinarian employed by the state; there is no distinction whatsoever for the IO, who alone holds a unique and formidable power over the evidentiary aspect of a criminal trial. An officer who falsifies a land revenue entry and an officer who fabricates an FIR to frame an innocent man for murder are triable under identical provisions, attracting identical maximum sentences. There is no aggravation for the investigative context, no recognition of the IO's unique power over the evidentiary foundation of a trial, and no element calibrated to the fact that the act of investigative perversion directly threatens the constitutional guarantee of a fair trial under Articles 20 and 21. Only Section 257 of the BNS²¹ (IPC Section 219), which targets a public servant who corruptly or maliciously makes any report or decision contrary to law, provides a seven-year ceiling. However, this section is expressly confined to judicial proceedings and has been interpreted to apply primarily to judicial officers and magistrates, not investigative police officers acting at the pre-trial stage.

To add to this, the path to actual prosecution of an erring IO is further obstructed by Section 218 BNSS²² (formerly Section 197 of the CrPC) which provides that where an act was alleged to have been done by a public servant "in the discharge of his official duty," no court could take cognisance of the offence except with the prior sanction of the Central or State Government. The Supreme Court has consistently held that the sanction requirement under Section 197 CrPC is not a mere technicality but a substantive safeguard: it operates as a jurisdictional bar, and any prosecution launched without it is void ab initio.

It would be a mistake, however, to read Section 218 of the BNSS as affording blanket immunity to every act committed by a public servant in an official capacity. The Supreme Court in *Matajog Dobey v. H.C. Bhari*²³ was explicit that the protection operates only where there exists a reasonable connection between the act and the discharge of official duty, and that the accused must be able to lay a reasonable, but not a pretended or fanciful claim that the act was done in the course of performance of duty. In *B. Saha v. M.S. Kochar*²⁴, the Court refined this further, holding that the sine qua non of the provision is that the offence must have been committed "in his official capacity or under colour of the office held by him," not merely under the garb of it.

²¹ Bharatiya Nyaya Sanhita, No. 45 of 2023, § 257 (India)

²² Bharatiya Nyaya Sanhita, No. 45 of 2023, § 218 (India)

²³ *Matajog Dobey v. H.C. Bhari*, AIR 1956 SC 44, (1955) 2 SCR 925

²⁴ *B. Saha v. M.S. Kochar*, (1979) 4 SCC 177, AIR 1979 SC 1841

This doctrinal position was recently and emphatically reaffirmed in *Om Prakash Yadav v. Niranjan Kumar Upadhyay*²⁵, where the Supreme Court held categorically that "it can be no part of the official duty of a public official to lodge a bogus case and fabricate evidence or documents," and that the mere fact that the opportunity to commit misconduct was furnished by official duty does not bring the act within Section 197's protection.

Om Prakash Yadav is instructive not only for its doctrinal contribution but for its facts. Police officers in that case had fabricated a false case under the Excise Act against an accused in a murder trial, not because he had committed any excise offence, but to manufacture a paper alibi to shield him from the murder charge. Witnesses had heard the officer directly tell the accused that they would create a false plea of alibi, and the addresses of supporting witnesses were found to be entirely fictitious. The Madhya Pradesh High Court nonetheless quashed the criminal proceedings against the police officers for want of Section 197 CrPc sanction (now 218 BNSS). It took a Supreme Court intervention in December 2024 to restore the trial, seventeen years after the original FIR was filed in 2007. The case is a documented instance of precisely the conduct this paper addresses: the weaponisation of investigative power to pervert the course of justice, protected for nearly two decades by the sanction shield successfully invoked at the High Court level.

Doctrinally, a colourable investigation ought to fall entirely outside Section 197's protection. An officer who fabricates a counter-FIR, plants evidence, or suppresses the motive for a killing cannot, in any honest application of the Matajog Dobey test, claim that he acted in the legitimate discharge of his investigative function. The act is the antithesis of official duty, not an exercise of it. Yet the doctrinal clarity of *Om Prakash Yadav* has not produced consistent results at the High Court level. As recently as June 2025, the Patna High Court in *Abhay Narayan Singh v. State of Bihar*²⁶ quashed a complaint against a police officer accused of forced entry, assault, and illegal detention, holding that "a mere excess or overreach in the performance of official duty does not, by itself, disentitle a public servant from the statutory protection" of Section 197 CrPc. Decided six months after *Om Prakash Yadav*, the judgment does not engage with that ruling at all, instead relying on the older reasonable nexus standard from *G.C. Manjunath v. Seetaram*²⁷. An IO conducting a colourable investigation will always

²⁵ *Om Prakash Yadav v. Niranjan Kumar Upadhyay* 2024 INSC 979

²⁶ *Abhay Narayan Singh v. State of Bihar*, CrI. Misc. No. 52434 of 2024 (Patna H.C. June 2025)

²⁷ *G.C. Manjunath v. Seetaram* (2025) 5 SCC 390

be able to frame his misconduct as an excess of investigative function rather than an abandonment of it, and under the G.C. Manjunath line, that framing may be sufficient. The boundary between "excess of official duty," which attracts Section 197, and "act outside official duty," which does not, remains genuinely contested in practice, and the same interpretive latitude that protects the overzealous officer equally insulates the deliberately malicious one.

IV. Public Justice Offences Abroad

IV.A. The United Kingdom: Perverting the Course of Justice

In the United Kingdom, the legal framework does not treat the fabrication of evidence or the suppression of investigative material by police as a mere falsification of records. Instead, such conduct is prosecuted under the common law offence of "perverting the course of justice."²⁸ This offence is committed when a person engages in a course of conduct that has a tendency to, and is intended to, pervert the administration of public justice.²⁹ Crucially, because it is recognized as a direct assault on the integrity of the legal system, the offence is treated with utmost severity and carries a maximum penalty of life imprisonment.³⁰ The UK framework also heavily relies on the common law offence of "misconduct in public office," which directly targets public officials who wilfully neglect their duties or engage in misconduct to such a degree that it amounts to an abuse of the public's trust.³¹ When police officers manipulate investigations, the Crown Prosecution Service (CPS) actively utilizes these distinct public justice offences, ensuring the punishment reflects the betrayal involved, without the need for prior executive sanction.³²

IV.B Canada: Statutory Offences Against the Administration of Law

Part IV of the Criminal Code of Canada is explicitly dedicated to "Offences Against the Administration of Law and Justice."³³ Within this distinct category, Section 139 criminalizes the act of willfully attempting in any manner to obstruct, pervert, or defeat the course of justice.³⁴ The Canadian Code goes a step further by distinctly penalizing the fabrication of evidence under Section 137, which explicitly targets anyone who fabricates anything with the

²⁸ Crown Prosecution Service, *Public Justice Offences Incorporating the Charging Standard*, Legal Guidance (2023)

²⁹ R v. Vreones, [1891] 1 QB 360

³⁰ R v. Rimmington, [2005] UKHL 63, [2006] 1 A.C. 459

³¹ *Attorney General's Reference (No. 3 of 2003)*, [2004] EWCA Crim 868 (Eng.)

³² R v. Dytham, [1979] QB 722 (Eng.)

³³ Criminal Code, R.S.C. 1985, c. C-46, pt. IV (Can.)

³⁴ *Id.* § 139(2)

intent that it shall be used as evidence in existing or proposed judicial proceedings.³⁵ Recognizing the profound harm these acts cause to the bedrock of a fair trial, both obstructing justice and fabricating evidence are treated as indictable offences carrying maximum penalties of up to fourteen years of imprisonment.³⁶

V. Proposal: A Distinct Offence with Enhanced Punishment

V.A Core Elements of the Proposed Offence

The proposed offence, which may be titled “Colourable Investigation by an Investigating Officer,” should be structured around five core elements, each calibrated to the specific pathology it targets.

Person. The offence should apply to any police officer designated as an Investigating Officer in a criminal case, or any officer in charge of a police station exercising investigative functions under the Bharatiya Nagarik Suraksha Sanhita. The deliberate restriction to investigative actors is essential: the offence is not designed to capture every species of official misconduct but the specific abuse of the evidentiary power that defines the investigative role. Superior officers who direct, authorise, or knowingly facilitate the colourable conduct of a subordinate IO should be liable as abettors under the general provisions of the BNS.

Context. The offence must arise in the context of a criminal investigation, whether under the BNSS or any special enactment. This temporal and functional limitation ensures that the provision targets conduct at the investigative stage i.e. before the judicial proceeding commences, which is precisely the stage that existing provisions most inadequately address. Acts committed after cognisance is taken by a court would continue to be governed by provisions addressing contempt or perjury.

Conduct. The offence should criminalise four categories of conduct, each of which recurs across the cases examined in Part I of this paper. First, the knowing falsification, fabrication, or suppression of any document, record, statement, forensic material, or digital evidence that forms or is intended to form part of the investigative record. Second, the deliberate omission to collect, preserve, or forward evidence that the IO knows to be material. Third, the registration of a false or counter-FIR against a person with knowledge of its falsity. Fourth, the deliberate assignment of an investigation to an officer with a known conflict of interest, or the deliberate obstruction of a parallel or superior investigative authority. Each category targets a distinct operational method of colourable investigation while remaining anchored in the *Arvind Kumar*

³⁵ *Id.* § 137

³⁶ *Id.* §§ 137, 139

standard of conscious suppression and deliberate action.

Purpose. The prosecution must establish that the conduct was undertaken with the purpose of shielding a guilty person from legal punishment, targeting an innocent person for prosecution, or steering the investigative outcome toward a predetermined result irrespective of the evidence. This purposive element should focus on the inquiry on the IO's investigative aim rather than requiring proof of a specific animus against a named individual. The evidentiary burden remains on the prosecution, but the object of that burden is the direction of the investigation rather than the state of mind of the officer toward a particular victim.

Effect. The offence should require proof that the conduct created a real risk of wrongful conviction or acquittal, or materially impaired the right to a fair trial under Articles 20 and 21. This threshold prevents the provision from operating as a catch-all for every investigative deficiency and limits criminal liability to conduct that poses a genuine threat to the constitutional guarantee of a fair trial. The risk need not have materialised; a wrongful conviction need not have been entered, but the conduct must have been of a kind that, objectively assessed, was capable of producing one.

V.B Sentencing Framework and Safeguards

The sentencing architecture of the proposed offence must reflect the gradation of harm that colourable investigations actually produce. A uniform ceiling is insufficient: the officer who suppresses a single witness statement is not equally culpable with the officer who orchestrates a systematic cover-up of custodial torture or who fabricates an alibi to shield a suspect in a homicide case. Accordingly, the offence should carry a base maximum of **seven years** rigorous imprisonment with fine, applicable to the standard case of knowing falsification or suppression. An aggravated form of the offence, attracting a maximum of **ten to fourteen years**, should apply where the colourable investigation is conducted in connection with an offence punishable with death or life imprisonment; where it is designed to conceal custodial torture, enforced disappearance, or extrajudicial killing; or where it involves a systemic or coordinated perversion across multiple cases or by multiple officers acting in concert. The aggravated form mirrors the approach adopted in Canada under Sections 137 and 139 of the Criminal Code, where the fourteen-year maximum reflects Parliament's judgment that the fabrication of evidence is a crime of the first order against the administration of justice.

The proposed offence should also carry a mandatory direction for compensation, payable by the erring officer personally and not by the state, in cases where the colourable investigation

resulted in the wrongful detention, conviction, or prosecution of an innocent person. The Supreme Court has already moved in this direction in *Khursheed Ahmad Chohan*, directing ₹50 lakh as interim compensation recoverable from the guilty officers. Statutory codification of this remedy would transform it from an exceptional judicial intervention into a predictable legal consequence.

Two safeguards are essential to prevent the provision from being weaponised against officers who make honest errors under conditions of resource scarcity and operational pressure. First, the offence should require, as a condition precedent to cognisance, a prior judicial or independent finding whether by a Sessions Court, a High Court, or a court-appointed inquiry committee that the investigation in question was conducted in a colourable manner. This threshold replicates, in a modified form, the protective logic of the sanction requirement under Section 218 BNSS, while transferring the gatekeeping function from the politically accountable executive to an independent judicial authority. Second, the provision should contain an explicit exclusion clause stating that no prosecution shall lie where the conduct complained of is attributable solely to negligence, inadequate training, resource constraints, or the good-faith exercise of investigative judgment.

VI. Conclusion

The argument advanced in this paper is, at its core, a simple one. The Investigating Officer is the single most powerful actor in the criminal justice system at the stage when that power is most consequential and least supervised. The evidence matrix that reaches the courtroom is shaped entirely by the choices the IO makes; what to collect, what to record, what to forward, and what to ignore. When those choices are made honestly and diligently, the trial has a fair foundation. When they are made deliberately to falsify that foundation, the trial becomes mere theater, where legal rituals are performed but truth is the first casualty.

The cases examined in this paper are the predictable output of a legal framework that responds to the deliberate perversion of the investigative process with the same provisions it uses to address a clerk's administrative lapse. So long as the law treats these wrongs as equivalent, the system will continue to produce outcomes that reward the fabricator and abandon the innocent. The comparative analysis demonstrates that this is not an inevitable feature of criminal law. The United Kingdom prosecutes the same conduct as a direct assault on the administration of justice, with an unlimited custodial sentence at common law. Canada has codified the

fabrication of evidence as an indictable offence carrying fourteen years. Both jurisdictions proceed without requiring prior executive sanction because both recognise that conduct which is antithetical to official duty cannot, by definition, be protected by official immunity. India has the doctrinal tools to reach the same conclusion, but doctrine alone has not produced consistent results, and it will not, so long as the legislature leaves the field to be contested case by case.

The proposed offence of colourable investigation fills that gap. It names the wrong with precision, calibrates the punishment to the gravity of the harm, protects the honest officer through a judicial gatekeeping mechanism, and closes the sanction loophole by statutory design rather than judicial interpretation. It does not demand perfection from the investigator. It demands only that the investigator not weaponize the process. That demand is the minimum that a constitutional democracy owes to every person who passes through the gates of its criminal justice system.

The Investigating Officer is the kingpin of criminal justice delivery. When that kingpin turns against the system it was appointed to serve, the law must be capable of saying so plainly, and of punishing it swiftly.

