

## **A DETAILED STUDY ON THE STATEMENT OF ACCUSED UNDER CRIMINAL PROCEDURE CODE, 1973**

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### **INTRODUCTION**

The statement of the accused<sup>i</sup> under Section 313<sup>ii</sup> of the Criminal Procedure Code, 1973. For the purpose of section 313 of the Criminal Procedure Code the term accused can be defined as a person under-trial and under-examination by the court. It does not include an accused over whom the court is exercising jurisdiction in another trial. The purpose of empowering the courts to examine the statement of the accused under Section 313 of the Criminal Procedure Code is to maintain or to fulfil the requirement of the Principle of Natural Justice<sup>iii</sup>, which is *audi alteram partem* which means that no person under the law shall be left unheard. This means that the accused shall be given a chance to be heard and to explain the details of the circumstance and the court shall take the explanation into consideration. This is an essential process as this allows a direct conversation between the court and the accused so that the accused can answer to all the evidences that are put against him. The statement of the accused is of great importance and is not a mere formality. The main purpose of recording the statement of the accused is to put all the denouncing evidences in front of him which in turn provides him an opportunity to explain all the denouncing evidences against him with the prosecution. The power to question the accused is completely discretionary that is the court at any point of time may ask at its discretion during the trial or the enquiry any question to the accused. Section 313 of the Criminal Procedure Code is in the interest of the accused. There are two exceptions to this section. They are:

- i. In case of a summon case the court can not only dispense the personal presence of the accused before the court of law but also dispense his examination under section 313 of the Criminal Procedure Code.

- ii. In warrant cases there is no discretion given to the court of law. In a case the court held that the accused is required to answer all the questions put to him by personally being present in the court of law and if personally being present in the court of law bears too much expenses then the court can dispense such examination which is under section 313 of the Criminal Procedure Code.

This paper will also focus on the various methods used for the recording of the statement of the accused. It will also focus on what type of questions one can put forward to the accused. It will also focus on all the landmark judgments that are given regarding the study of the statement of the accused.

## OBJECTIVES OF EXAMINING THE ACCUSED

The objective of examining the accused under Section 313 of the Code of Criminal Procedure, 1973 is to fulfill the requirements that are stated under the principles of Natural Justice i.e., no person shall be left unheard. The accused shall be given a chance to explain with regards to the charges that are made against him and the court of law shall take a note of the same. In the case of *Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan*<sup>iv</sup> the court held that “in the case of a circumstantial evidence, the same is necessary to decide whether or not the chain of circumstances is complete.”<sup>v</sup> In the case of *Cooper V/S Wandsworth Board of Works*<sup>vi</sup>, the principle was thus stated “Even God did not pass a sentence upon Adam, before he was called upon to make his defence. “Adam” says God, “where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat.”<sup>vii</sup> In the cases of *Harbans Lal V/S Commissioner*<sup>viii</sup>, *National Central Co-operative Bank V/S Ajay Kumar*<sup>ix</sup> and *Fateh Singh V/S State of Rajasthan*<sup>x</sup> the court held that “if an order is passed by the authority without providing the reasonable opportunity to be heard to the person affected by it adversely is invalid and shall be set aside.”<sup>xi</sup> The objective of Section 313 of the Code of Criminal Procedure, 1973 are:

- In order to establish a direct exchange of words between the court as stated in the case of *Sanatan Naskar and Another V/S State of West Bengal*<sup>xii</sup> that the accused shall be given a chance to put forth all the incriminating pieces before the court of law so that

he can give an explanation to all the charges that are made against him.

- In order to test the accuracy of the prosecution case. The examination of the accused has great importance and is not a mere formality. In the case of *Sanatan Naskar and Another V/S State of West Bengal*<sup>xiii</sup> the court held that the examination of the accused is important and is not a mere formality, so as to provide the accused with an opportunity to explain the incriminating circumstances which appear against him in the evidence of the prosecution.

## **METHODOLOGY FOR RECORDING THE STATEMENT OF THE ACCUSED**

In the case of *Dharnidhar V/S State of Uttar Pradesh and Others*<sup>xiv</sup> the court held that there shall be a proper method for recording the statement of the accused under Section 313 of the Code of Criminal Procedure, 1973 so that the accused can tell the court of law, as to what is the truth and what is his defense in order to prove his innocence. In the case of *Dehal Singh V/S State of Himachal Pradesh*<sup>xv</sup> the court held that the statement of the accused is administered without taking the oath and cannot be considered as an evidence under Section 3 of the Indian Evidence Act, 1872.

## **POWER TO EXAMINE THE ACCUSED**

1. The accused in order to give an explanation against the evidences that are presented by the prosecution the court may:
  - a) At any point of time ask the accused any question at any stage<sup>xvi</sup>, without previously warning the accused, as the court may consider to be necessary.
  - b) Ask the accused any general questions which the court may ask before or after the witnesses from the prosecution has been examined.

In the case of *State of Kerala V/S Rajappan Nayar*<sup>xvii</sup> the court held that the questions put forth by the court of law in clause 1(a) is discretionary whereas the questions put forth in clause 1(b) is mandatory. In the cases of *State of Maharashtra V/S Sukhdev Singh*<sup>xviii</sup>, *Basavraj R. Patil V/S State of Collector*<sup>xix</sup> and *Sanatan Naskar and Another V/S State of West Bengal*<sup>xx</sup> the court held that section 313 clause 1(b) gives the accused an opportunity to explain and defend the incriminations against him that have appeared as an evidence from the prosecution

side.

2. There shall be no oath taken by the accused if he is examined under sub-section 1.
3. The accused shall not make himself liable to punishment by refusing to answer such questions or by giving false answers.
4. The answers given by the accused shall be taken into consideration for the inquiry or trial. Such answers can also be taken into consideration for any other inquiry or trial or for any other offence that tend to show that it has been committed by the accused.
5. The court in order to prepare the questions that are supposed to be asked from the accused, can take the help of the prosecution and the defense and also the court can permit the accused to file a written statement.

***Examination more than once:***

If the accused has been examined and has described the circumstances of the case the court on its discretion call the accused again in order to explain the incrimination again. There are no implied restrictions for calling the accused again in order to answer the questions. In the case of *Rajan Dwivedi V/S CBI*<sup>xxi</sup> the court held that the power to call the accused in order to answer the question more than once, once the evidence of the prosecution has been concluded should not be done on a routine or a mechanical basis. In another case of *Emperor V/S Bhau Dharma*<sup>xxii</sup> the court held that if fresh prosecution witnesses are examined after the examination of the accused, it becomes an obligation to further examine the accused.

***Proviso to Section 313 (1) b***

**1. Summons Case:**

In the case of summons when the court has dispensed the personal attendance of the accused then it may also dispense the examination of the accused as stated under Section 313 of the Code of Criminal Procedure, 1973.

**2. Warrant Case:**

In cases of warrants there is no discretion given to the court under section 313 (1) b of the Code of Criminal Procedure, 1973. In the case of *Basavraj R. Patil V/S State of Collector*<sup>xxiii</sup> the Supreme Court was of the opinion that the accused shall answer all the questions put to him under section 313 (1) b of the Code of Criminal Procedure, 1973 by personally being present in the court of law. However, if there are huge expenses

incurred for such an examination of the accused the court can dispense such examination even in the warrant cases. In the cases of *Bhibhuti Bhushan Das V/S State of West Bengal*<sup>xxiv</sup> and *Shivaji Sahebrao Bobade V/S State of Maharashtra*<sup>xxv</sup> the court held that Section 313 of the Code of Criminal Procedure, 1973 does not allow the examination of the counsel in place of the accused.

## TYPES OF QUESTIONS PUT IN FRONT OF THE ACCUSED

### 1. Putting separate and simple questions about each material circumstance:

It is impossible to keep a series of fact in front of the accused and ask him to give an explanation regarding the same. Hence, it becomes very important to ask the accused separately about each material circumstances. Which is intended to be used against him in the court of law. The questions so framed must be in such a manner that an illiterate and an ignorant man is able to understand. In the case of *Tara Singh V/S State of Punjab*<sup>xxvi</sup> the court held that the material circumstances shall be put simply and separately so that an illiterate man can appreciate and understand that. In another case of *Naval Kishore V/S State of Bihar*<sup>xxvii</sup> the court held that putting the entire evidence against the accused in one question is an improper way of examination as the accused may not be in a position to give a rational and an intelligent explanation. The examination of the accused which is done under section 313 of the Code of Criminal Procedure, 1973 is a part of free and fair trial, if not done in a proper manner it may result in imperfect appreciation of the evidence.<sup>xxviii</sup> In the case of *Nicolau Almeida V/S State*<sup>xxix</sup>, *Kalpna Rai V/S State*<sup>xxx</sup> and *Hyder Khan V/S State of Karnataka*<sup>xxxi</sup> the court was of the opinion that each and every questions shall be put separately in front of the accused and their answers should also be recorded separately. In another case of *State of Maharashtra V/S Goraksha Ambaji Adsul*<sup>xxxii</sup> the court observed that recording the statement of the accused and putting same set of questions to all the accused may cause prejudice to all the accused and was held to be improper. In the case of *Dada Saheb Patalu Misal V/S State of Maharashtra*<sup>xxxiii</sup> the court held that the statements shall be recorded fully and shall not be recorded in monolithic answers.

### 2. Examination of the Accused in cases of circumstantial Evidences:

The court might rely upon the statement made by the accused and may convict him

guilty on the evidences that are made by the prosecution. But in the case of *Sanatan Naskar and Another V/S State of West Bengal*<sup>xxxiv</sup> the court observed and held that the statement made under section 313 of the Code of Criminal Procedure, 1973 shall not be taken into isolation but in conjugation with the evidences so brought by the prosecution against the accused. In the case of *Sanatan Naskar and Another V/S State of West Bengal*<sup>xxxv</sup> and *Manu Sao V/S State of Bihar*<sup>xxxvi</sup> the court held that conviction cannot be merely based on the statement of the accused under section 313 of the Code of Criminal procedure, 1973 as it cannot be regarded as a substantive piece of evidence. In another case of *Rafiq Ahmad @ Rafiq V/S State of U.P.*<sup>xxxvii</sup> the court held that “It is true that the statement under section 313, Code of Criminal Procedure, 1973 cannot be the sole basis for conviction of the accused but certainly it can be a relevant consideration for the courts to examine, particularly when the prosecution has otherwise been able to establish the chain of evidence.”<sup>xxxviii</sup> There are circumstances where adverse inference can be drawn from the actions of the accused which may not be really helpful in his or her defense mechanism. In the case of *Phula Singh V/S State of Himachal Pradesh*<sup>xxxix</sup> the court held that during the examination the right to remain silent or to completely deny with the questions so asked, but this may draw an adverse inference against him. In the cases of *Ram Naresh and Others V/S State of Chhattisgarh*<sup>xl</sup>, *Munish Mubar V/S State of Haryana*<sup>xli</sup> and *Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan*<sup>xlii</sup> the court was of the opinion that it is the duty of the accused to explain anything in his defense in the statements made by him under section 313 of the Code of Criminal Procedure, 1973. It is completely upon the accused to remain silent or answer to the questions. In the case of *Sanatan Naskar and Another V/S State of West Bengal*<sup>xliii</sup> the court held that if the statement of the accused is false then the court can pass adverse orders against the accused. In another case of *Munna Kumar Upadhyay @ Munna Upadhyay V/S State of Andhra Pradesh*<sup>xliv</sup> the court was of the opinion that false denials made by the accused of the facts can be used against him. In another case of *Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan*<sup>xlv</sup> the court held that an adverse inference can only be held when the incriminating evidences are all against the accused and he is not able to establish a furnished explanation regarding the same. In the cases of bail petition the statement of the accused that is made by his counsel on his behalf cannot be considered as his admission as it

was not put in the statement of the accused under section 313 of the Code of Criminal Procedure, 1973 as stated in the case of *Randhir Singh V/S State*.<sup>xlvi</sup> The statement given by the co-accused cannot be used as an evidence against the accused the reason being that the accused is not given an opportunity to cross-examine the accused. In the case of *Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan*<sup>xlvii</sup> the court held that no matter how weak the evidences of the prosecution are, the accused still stands liable to be examined in front of the court and explain the incriminating pieces. The court also observed that all the circumstances which are not put to the accused during his examination under section 313 of the Code of Criminal Procedure, 1973 cannot be used against him and cannot be considered. In the case of *Nagaraj V/S State*<sup>xlviii</sup> the court held the statement of the accused to be evasive and untrustworthy and hence, this is another factor for declaring him to be guilty. In another case of *Parsuram Pandey V/S State of Bihar*<sup>xlix</sup> the court held that section 313 of the Code of Criminal Procedure, 1973 is made for benefitting the accused and also in order to comply with the fundamental principles of Natural Justice i.e., *audi alteram partem* which has been explained in the case of *Asraf Ali V/S State of Assam*.<sup>1</sup>

## CONCLUSION AND SUGGESTIONS

Conclusively I would like to state that the examination of the statement of the accused under section 313 of the Code of Criminal Procedure is an important aspect in order to provide justice to all. As the principle of Natural Justice (*audi alteram partem*) provides that everybody shall be given an equal opportunity to be heard before the court of law, no one shall be left unheard. According to Article 14 of the Constitution of India everyone is equal before the court of law and so the accused shall be given a chance to give an explanation regarding the incriminating circumstances. The accused shall be given a chance to explain the circumstances but should not deny the facts or should not falsely give his statements, as this would go against him. The accused also has a right to remain silent and not answer the questions so put forward, but at times this would go against the accused and hence, he in my opinion should answer every question truthfully so that the chances of him being proved as not guilty may increase. This section not only provides the accused to be heard fairly but also helps to give a second chance to the suspect who is not proven guilty to prove his innocence. Hence, section 313 of the Code of Criminal Procedure, 1973 is an integral part of the criminal law in India.

## REFERENCES

<sup>i</sup> For the purpose of Section 313 of the Code of Criminal Procedure, 1973 accused is a person under-trial or under-examination by the court and does not include a person over whom the court is exercising jurisdiction in another trial, Karamalli Gulamalli, (1938) 40 Bom. LR 1092 (1939).

<sup>ii</sup> Power to examine the accused.

1. *In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court-*
  - a) *may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary;*
  - b) *shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons- case, where the Court has dispensed with the personal attendance of the accused, it may also dispense with his examination under clause (b).*
2. *No oath shall be administered to the accused when he is examined under sub- section (1).*
3. *The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them.*
4. *The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.*

<sup>iii</sup> Natural Justice is an essence of fair adjudication, deeply rooted in tradition and conscience, to be ranked as fundamental, Article 14 and 21 of the Constitution of India.

<sup>iv</sup> Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan, AIR 2013 SC 3150.

<sup>v</sup> Scope and Significance of examination of the Accused under section 313 of Cr. P.C., Ali Mehboob, Page no. 1, Retrieved from: [ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf](http://ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf)

<sup>vi</sup> Cooper V/S Wandsworth Board of Works, (1863) 143 ER 414.

<sup>vii</sup> Principles of Natural Justice, Retrieved from:

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<sup>viii</sup> Harbans Lal V/S Commissioner, AIR 1994 SC 39.

<sup>ix</sup> National Central Co-operative Bank V/S Ajay Kumar, AIR 1995 Raj. (15) 35.

<sup>x</sup> Fateh Singh V/S State of Rajasthan, (1968) SC [C.A. 132/ 67 dt. 16. (J2. 1968) 39.

<sup>xi</sup> Scope and Significance of examination of the Accused under section 313 of Cr. P.C., Ali Mehboob, Retrieved from: [ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf](http://ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf).

<sup>xii</sup> Sanatan Naskar and Another V/S State of West Bengal, AIR 2010 SC 3507.

<sup>xiii</sup> Ibid.

<sup>xiv</sup> Dharnidhar V/S State of Uttar Pradesh and Others, 2010 AIR SCW 5658.

<sup>xv</sup> Dehal Singh V/S State of Himachal Pradesh, AIR 2010 SC 3594.

<sup>xvi</sup> Emperor V/S Genu Gopal, (1929) 31 Bom LR 1134.

<sup>xvii</sup> State of Kerala V/S Rajappan Nayar, 1987 Cri.L.J. 1256.

<sup>xviii</sup> State of Maharashtra V/S Sukhdev Singh, AIR 1992 SC 2100.

<sup>xix</sup> Basavraj R. Patil V/S State of Collector, AIR 200 SC 3214.

<sup>xx</sup> Supra 12.

<sup>xxi</sup> Rajan Dwivedi V/S CBI, 2008 Cri.L.J., 1440 (1447) DEL.

<sup>xxii</sup> Emperor V/S Bhau Dharma, (1928) 30 Bom. LR 105.

<sup>xxiii</sup> Basavraj R. Patil V/S State of Collector, AIR 2000 SC 3214.

<sup>xxiv</sup> Bhibhuti Bhushan Das V/S State of West Bengal, AIR 1969 SC 381.



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- xxv Shivaji Sahebrao Bobade V/S State of Maharashtra, (1973) 2 SCC 793.
- xxvi Tara Singh V/S State of Punjab, AIR 1951 SC 44.
- xxvii Naval Kishore V/S State of Bihar, (2004) 7 SCC 502.
- xxviii *Ibid.*
- xxix Nicolau Almeida V/S State, 1988 (2) Crimes 774.
- xxx Kalpnath Rai V/S State, AIR 1998 SC 201.
- xxxi Hyder Khan V/S State of Karnataka, 2006 Cri.L.J. 3134 (3145).
- xxxii State of Maharashtra V/S Goraksha Ambaji Adsul, 2006 Cri.L.J. (NOC) 45.
- xxxiii Dada Saheb Patalu Misal V/S State of Maharashtra, 1987 Cri.L.J. (1512) Bom. (DB).
- xxxiv *Supra* 12.
- xxxv *Supra* 12.
- xxxvi Manu Sao V/S State of Bihar, (2001) SCC (Cri.) 370.
- xxxvii Rafiq Ahmad @ Rafiq V/S State of U.P., AIR 2011 SC 3114.
- xxxviii Scope and Significance of examination of the Accused under section 313 of Cr. P.C., Ali Mehboob, Page no. 7, Retrieved from: [ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf](http://ijtr.nic.in/SCOPE%20and%20Significance%20313%20Cr.P.C.pdf).
- xxxix Phula Singh V/S State of Himachal Pradesh, AIR 2014 SC 1256.
- xl Ram Naresh and Others V/S State of Chhattisgarh, AIR 2012 SC 1357.
- xli Munish Mubar V/S State of Haryana, AIR 2013 SC 912.
- xlii Raj Kumar Singh @ Raju @ Batya V/S State of Rajasthan, AIR 2013 SC 3150.
- xliii *Supra* 12.
- xliv Munna Kumar Upadhyay @ Munna Upadhyay V/S State of Andhra Pradesh, AIR 2012 SC 2470.
- xlv *Supra* 42.
- xlvi Randhir Singh V/S State, 1980 Cri.L.J. 1397 (Del-DB).
- xlvii *Supra* 42.
- xlviii Nagaraj V/S State, (2015) 4 SCC 739.
- lix Parsuram Pandey V/S State of Bihar, (2004) 13 SCC 18.
- <sup>1</sup> Asraf Ali V/S State of Assam, (2008) 16 SCC 328.