



Scope, significance and application of power to examine the accused

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Abstract

In accordance with the title of the research paper, the paper deals about the scope, significance which is nothing but importance and the application of the Section – 313 of the Code of Criminal Procedure Code of India. Section – 313 of CrPC deals about the Power of the Indian Courts to examine the accused.

Such examination of the accused is considered to be the right of the accused which should not be violated at any cost i.e., at any circumstance. So, the researcher in this paper, after a lot of research mentioned about the importance of the mentioned right in the international arena also. The paper also deals about the nexus between the mentioned right of the accused to be examined by the courts regarding the evidences submitted by the prosecution against the accused and the principles of natural justice. One of the principles of natural justice “audi alterem partem” is also explained in a detailed manner in connection with the crux of the section -313.

It is to be noted that even this section - 313 has been misused in many circumstances same as the other principles of law. The paper also deals with such application errors committed by the concerned authorities and the accused. However, in order to such discrepancies, the highest Court of Record in India has pronounced many judgements and has made sure that the law will not be misused. Such judgements are also mentioned in the research paper in a very reasonable manner such that they appear wherever they are necessary.

The recent developments and the amendments are also mentioned in the research paper in order to make it suitable for the present day.

Keywords: amendments, mentioned, developments, research, application

1. Introduction

Power to examine the accused is dealt under Section -313 of the Code of Criminal Procedure, 1973. This section enables the accused to explain the circumstances appearing in the evidence against him. He can explain it personally. There need not be any previous intimation to the accused in order to examine him. For this examination, no oath is taken. The answers given by the accused can be taken into consideration but only to the extent of which prosecution has proved the case. Such answers would be just a corroborative pieces of evidence but not substantive.

Research question

1. Whether the statements recorded under Section – 313 can form a sole basis for conviction?
2. Whether the silence of the accused about matters he is expected to explain leads to an adverse inference against him?
3. Whether this section establishes a direct dialogue between the court and the accused in reality or practicality?

Research Objective

The objective of this research is to know the practical viability and applicability of this section and to know how far the court considers the statement under 313 and achieves the principles of audi alterem partem. And also to know the proper methodology adopted by the court in order to utilize its power under section-313.

Literature review

1. Title of the Article: Liberty and efficiency in the Criminal Process: The significance of Models

Citation: LH.Leigh, Liberty and efficiency in the Criminal Process: The significance of Models, 26 International And Comparative law quarterly 516-530 (1977)

General idea/ main body: This Article deals with the English system of criminal procedure and some of the fundamental aspects of the procedure which have been challenged. One of such fundamental aspect which came into existence while trying to derive a continental model was power to examine the accused judicially. This was considered as an ancient aspect of proceedings in solemn form.

2. Title of the Article: Nemo Tenetur Seipsum Prodere

Citation: John H. Wigmore, Nemo Tenetur Seipsum Prodere, 5(2) Harvard Law Review 71- 88(1891)

General idea / main body: This article mainly deals about the latin maxim “Nemo Tenetur Seipsum Prodere” which means “no person shall be compelled in any criminal case to give evidence against himself.” Under power to examine the accused, the courts adopt a drastic step of self- incrimination is the main concept dealt in this article. This article mainly focuses on the innocent parties who are getting imprisonment for no reason.

3. Title of the Article: Validating the accused’s confession
Citation: David Walchover, Validating the accused’s confession, 47 The Modern Law Review 535-552 (1984)

General idea/ main body: This article reviews the variety of contemporary English practice by which statements from

prospective defendants are obtained, recorded and proved, to evaluate its respective merits and limitations ad to consider its potential for development in the context of established legal principle. It also points out that the examination of the accused shall only be taken after he has been charged or informed that he may be prosecuted.

4. Title of the Article: Failure of Accused to testify

5. Citation: Failure of Accused to testify, 37 The Yale Law Journal 955-966 (1928)

General Idea/ Main body: this article mainly deals about the testification of the accused and its background. Earlier, the accused used to not have a right to testify. Later he was asked to make a statement. And the article also explains that the silence of the accused or non- use of his right to testify cannot be taken against to him as the evidence by the prosecution.

6. Title of the Article: The modernization of Criminal Procedure. Preliminary Suggestions for a report of Committee D of the American Institute of Criminal law and Criminology.

7. Citation: Robert w. Millar, The modernization of Criminal Procedure. Preliminary Suggestions for a report of Committee D of the American Institute of Criminal law and Criminology, 11 Journal of the American Institute of Criminal law and Criminology 344- 367 (1920)

General Idea/ Main body: this Article deals about the recommendations given by a committee D of the American Institute of Criminal law and Criminology for the mode of accusation and elimination of unnecessary technicality in the appeals. One of such recommendations was that a legislation to be enacted which gives to courts of review the power to examine the accused under oath and to hear the evidence of such other witnesses offered on behalf of the appellant as the court may elect.

Research methodology

The types of study adopted are descriptive, explanatory, historical and comparative studies. The type of methodology is doctrinal.

Primary sources: Code of Criminal Procedure –Section 313, related judgements.

Secondary Sources: Code of Criminal Procedure- by Ratanlal and Dhirajlal, the journals cited in literature review etc.

Mode of Citation followed is Bluebook 19th Edition

Scope of the Study: Due to the time constrain, the scope of this study would be limited to India.

Significance of the Study: through the study it can be known and observed that the study completely focuses on the power to examine the accused. So, the question whether it is achieving its object or not would be answered in this study.

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Role of principles of natural justice:

India has been following the Common Law which is based on the principles of natural justice. There are two main principles described under these principles of natural justice. They are:

1. **Nemo iudex in causa sua:** No man should be a judge of his own cause
2. **Audi alteram partem:** Hear both the sides.

If any one of these principles or constituents of Natural Justice have not been found followed then it can be considered that such principle would certainly be in violation of natural justice. Moreover, such principle would not be accepted in the international scenario or worldwide simply. Many International Conventions are found to be in existence throughout the world in concern with the fair trial such as Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, European Convention on Human Rights and etc.

We can observe that the fair trial i.e., principles of natural justice does not only apply to the victim side but also to the accused side. Even accused should be given an opportunity for a free and fair trial. The accused should not be deteriorated with the rights granted by the principles of natural justice. That is the reason why section 313 got incorporated in the code of criminal procedure ^[1]. The “Right to be heard” has been one of the main ingredients of the free and fair trial. It is nothing but the second principle of natural justice.

When would the examination process start?

Briefly speaking, this section comes after the Section- 231. Section-232 comes into picture only when the examination of the accused has been completed. Section-231 deals about the “Evidence by the Prosecution ^[2].” Under section-232, acquittal of the charges framed has been discussed ^[3]. Once the evidences have been produced by the prosecution side, and if such evidences have been satisfactorily proved then such evidences would be put in front of the accused to give his explanation regarding such proved circumstances.

Without knowing or making sure that the evidences have been proved satisfactorily, they can’t be put in front of the accused for the examination under section-313. If put, it would be very improper because the evidences which the prosecution side is not sure about and which the court is unable to admit whether happened or not also could not be explained by the accused in his examination. Even if explained and in later stages it has been proved that such circumstance has not happened instead a put up story by the prosecution then the whole explanation given by the accused in his examination would be in question. So, the

final word under this would be that the examination would be done only on the statements and circumstances which have been proved satisfactorily by the prosecution.

Scope of section-313: what does section-313 of crpc deal about?

The short title of the provision i.e. Section-313 is nothing but "Power to Examine the accused." From the short title of the provision itself it can be clearly understood that the section is for the benefit of the accused. The section briefly discusses about the following:

Firstly, according to the provision, it can be stated that the process of examining the accused would start after the examination of prosecution witnesses or completion of prosecution arguments and before the examination of the defence witnesses or the initiation of defence arguments^[4]. So, only when the accused has become aware of the witnesses and evidences pointed out against him, the accused would be able to defend his/her side. The say of the accused on the evidences against him would be necessary. The reason for such say of accused has been and would be same for many long years i.e. *audi alteram partem*.

So, this provision would enable the accused to explain any circumstances which are appearing against to him in the evidences and witnesses presented by the side of Prosecution^[5].

Secondly, it can be said that there may not be any previous warning given to the accused in order to explain his side or circumstances^[6]. So, if any such warning has been given then the accused would be prepared with his say whether true or not. However, when there has been no previous warning then, the explanation given by the accused would not be a prepared or put-up one instead might be genuine. Practically speaking, this theory would also be proved wrong. Whatever the situation may be, whether previously warned or not, the answer or the explanation given by the accused would be the same as he wanted it to be.

Thirdly, there would be no oath taken from the accused while he is explaining his say on the circumstances mentioned in the evidences^[7]. This facility has been provided to the accused in order to prevent him from self-incrimination. The explanation given by the accused at the stage of 313 i.e. examination of the accused, would not be used against to him substantially without any corroboration. It is because, they have been considered as corroborative pieces of evidences but not sole basis for conviction^[8].

Fourthly, the important point to be remembered or taken into consideration is that the explanation given by the accused in the stage of 313 while examining him with or without prior warning given to him would not be considered similar or equal to the statement or confession given by him under the Section-164. On the same line, it can also be considered that such explanation would be entirely different from the accused becoming approval.

Fifthly, if the accused choses to be silent throughout the process of examination, then accused shall not be made liable for the punishment by taking the situation of he being silent during the whole procedure as the sole basis^[9]. This right and protection for the accused has been taken care of the legislators in the manner of inserting Section-313(3).

Sixthly, it has been the discretion of the court or the judge who has the power to examine the accused to consider the answers given by the accused during this particular examination or not. Such answers may be used against him

in the further inquiries or trial procedure but purely in the discretion of the judge or court^[10]. However, such answers given by the accused would not be used directly against him. It can be explained in the following manner, if the accused has committed an offence 'A' and under Section-313 he has not accepted it but such offence has been proved by the prosecution beyond any reasonable doubts then such answer would not be considered directly for the trial or inquiry related to such 'A' offence instead it can be used to prove the commission of the offence 'B.' this situation can be used by the prosecution in any other trial by saying that as he has made a false statement in his previous examination, this statement in this trial might also be wrong or false and thus could not be taken into consideration.

Seventhly, it can be observed from the sub-clause 5 of the section 313, that any type of help can be taken from the prosecution and the defence counsels in order to frame the questions for the examination of the accused in this stage. Moreover, the court may also allow the accused to file the written statement in order to comply with this section or provision^[11]. This facility has been provided through the Amendment to the Code of Criminal Procedure^[12] in the year of 2008.

The above six points can be considered as the brief explanation of the section-313.

The Object, Purpose and Significance of the Section-313

Every section or provision of law or legislation or rule or regulation, whatever it is, an object or the purpose would be present behind enacting it. So, the section 313 has also been inserted for a purpose and this provision has also an object to achieve. Such purpose or the object can be observed in the opening lines of the section. "...for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him^[13]."

This can be understood through the maxim *audi alteram partem* which is nothing but no person can be punished or convicted or condemned unheard. In this circumstance, the researcher would like to put on an illustration through which it has been thought that the concept of examination of accused has come into existence. This illustration may show case the significance of the provision for the examination of the accused.

The illustration can be explained in this manner, a woman has been accused of the murder of her husband and also been charged accordingly. All the evidences have shown her as the person who murdered the deceased through stabbing satisfactorily. Due to this, the court has not even given one hearing to her and has not allowed her to explain the circumstances from her point of view. However, after the repeated requests made by the woman, the court allowed to explain her point of view on the circumstances mentioned in the evidences.

After she explaining her side or her view, there has been an entire change in the way the courts looked at the scenario. The thing which she stated is nothing but, the deceased husband used to torture her very frequently. Even then, she used to tolerate all the acts committed by the deceased against her. However, in one of the instances she could not tolerate. Such instance has been the deceased attempting to have a sexual intercourse with their daughter. This instance has broken all her limits of tolerance and in order to stop that act against her daughter, to protect her daughter from such beast, she grabbed a knife and stabbed her husband.

These instances have also been satisfactorily proved by the woman and this allowed her to live peacefully here after without any conviction given. She got acquitted from the charges filed against her.

This justice has happened only because the courts have taken some time out to listen to the side of accused / woman. From this illustration, it can be clearly understood that even the accused has his/her point of view for committing such offence. Always, the reason would not be his passion without any purpose. In most of the cases, the mitigating factor of committing such offence would be caused by the victim or deceased without his knowledge. If such side or point of view of the accused is not heard and the judgment is delivered under such circumstances, then it would be gross injustice to the accused.

This object and purpose has been discussed by the courts in the case of *Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan* [14]. In this case, it has been stated that the section is introduced to incorporate the idea of audi alteram partem in the Code of Criminal Procedure [15] because it has been one of the principles of natural justice. It has also been stated that in cases of circumstantial evidences it is mandatory to hear the explanation of the accused because circumstances might be proved either ways but the thing is which side has proven it satisfactorily. Even if the prosecution side has established weak evidences, those evidences must be put before the accused. It has also been stated in the judgment that the explanation given by the accused should not be used against him and also should not be taken into consideration in any manner in the same trial [16].

In the case of *Sanatan Naskar v. State of West Bengal* [17], the object of the provision of the examination of the accused has been clearly explained. It has been stated that the main object of the incorporation of this provision is nothing but to enable a dialogue between the accused and the court. To make the court know about the position of the accused and also to make the court realize the situation of the accused whose thoughts, views and statements have been unheard by many. In this case, it has also been stated that the accused can bring or submit any other evidence which he feels like submitting. Court would accept it if it has that substantial value of being accepted as the piece of evidence which is needed to be considered while deciding the case. Moreover, the statements given by the accused in his examination if felt can be used for his conviction after getting corroborated can be used by the courts but only when it has been informed to the accused before examining him.

From the above case, the object and purpose can be clearly observed.

When does section-313 come into picture?

Section -313 i.e. power to examine the accused has been for the benefit of the accused but the power is given to the Court. There has been no particular authority under this section specially to examine the accused. However, the person who examines the accused can be called as the Presiding Officer. The application of this section can be observed in two stages.

1. The first kind would be the discretion of the court. The court may at any time in between the trial or inquiry, with or without the previous warning can examine the accused about the evidences placed against him/her.
2. The second kind can be considered as the mandatory

duty of the court to give a chance of hearing to the accused. This can be observed after the completion of the completion of the examination of the prosecution side.

Whether the first kind of examination happens or not, the second kind of the examination has to happen because it is the right of the accused to get his hearing done. To know the say of the accused on the evidences incriminating him has been the right of the accused. The usage of the word “may” and “shall” show the intention of the legislators that discretionary and mandatory on the part of the courts respectively.

Mode of examination- procedure to be followed

The Code of Criminal Procedure [18] itself speaks about the procedure to be followed while the case which is of criminal nature is going on. In the similar manner, the examination of the accused is also the procedure to be followed during the trial is going on. Examination of the Accused has taken a very small yet an important part in the trial procedure. So, there should be some steps to be taken into consideration while examining the accused under section-313 so that there would be no miscarriage of the justice taken place.

It should be noted that, an accused, in most of the cases, would be an illiterate and uneducated. Such persons would not understand the language of the court in certain circumstances. So, at such times, instead of making him taste the language of law, it would be better if the questions are asked in the language which he has been comfortable in.

From the language of the provision, it can be observed that the nature of examination has been under the discretion of the court. It is because, a particular nature has not been mentioned, which (if mentioned) should be followed. Such nature would mostly be a question and answer type one. The reasoning would be explained in this manner.

The word evidence has not been defined in the Code of Criminal Procedure [19]. However, the word evidence has been used in this provision. So, such definition can be taken from the Indian Evidence Act where Section-3 of IEA has defined the term evidence. From the definition it can be understood that the evidence would be in the form of “statements” which are allowed by the court of law.

Such statements would obviously be incriminating in nature. Moreover, such evidences in its general character, whether strong or weak, would be against the accused. So, the fundamental principle is that in the examination of the accused, all the statements i.e. evidences incriminating him would be placed before him for his explanation.

Placing before him doesn't mean asking him to read the records and explain his point of view. It is the duty of the court to make sure that the accused has been able to understand what the court wanted to ask him and wanted him to answer. To make sure that this situation arises, the court should itself explain the accused about each and every statement which has been incriminating the accused.

It is not a good and acceptable method to ask the accused in a very casual and leisure manner without even speaking out the statements and evidences given by the witnesses or the circumstantial evidences [20]. The best method which can be followed by the court or the presiding officer would be the “question and answer method [21].” The explanation of the accused can be derived from the answers given by the accused to the questions asked by the court.

It is to be noted that there has been no limit in the number of questions to be asked. However, such questions should be limited to the case which they have been dealing with. Such questions should be framed in a very simple language where the accused would be able to understand and answer them in a proper manner^[22].

Every statement given by the witnesses in their evidence shall be put as a question to the accused^[23]. However, such statements should be in the nature where they would be incriminating the accused. The accused should be given a chance to explain about all the material evidences which have been shown against to the accused by the prosecution.

It is not necessary that each and every statement should be asked as separate question. Two or three questions can be clubbed into one question by the presiding officer according to the convenience. But, the essence of the statement should not be vanished while clubbing them together. However, this doesn't mean that all the statement can be clubbed together and made into one or two questions^[24]. The nature of the questions should be in such a way that all the evidences should be understood in a due manner.

If any evidence or statement which has been incriminating the accused is not asked for the explanation by the accused in his examination process and is used for the conviction of such accused, then such situation would be considered as gross miscarriage of justice. But, due to this small issue, the whole trial process cannot be vitiated unless and until the accused proves any prejudice caused to him because of this.^[25]

As already stated, no oath shall be taken by the accused in order to explain his point of view^[26]. He has the right to speak truth or false. Moreover, he has the right to remain silent also. His silence during the period of examination cannot be taken into consideration or used against him in any manner in the further trial process. The conviction of the accused shall not be solely based on his examination^[27].

However, according to the sub-section-4 of Section 313, the court may consider the answers given by the accused in any other trials or offences. Some contradiction can be observed from the above two statements. The harmonious construction between these two ideas would be in the following manner. The statements given by the accused cannot be substantial pieces of the evidences but they can be used as corroborative pieces of evidences. Their statements can be used or considered in the further trial procedure but cannot be used for conviction without any corroboration.

The point to be remembered while following the above mentioned thing i.e. considering the statements given by the accused in his examination process further in any other trial procedure, the accused has to be informed about this duly. This has meant that before the initiation of examination of the accused itself, the accused should be explained about the consequences which may happen with those explanations given by him. The usage of those statements in the any other trials or offences should be clearly informed to the accused. If this previous information has not been given to the accused then this would amount to injustice and perjury to the accused^[28].

It should also be noted that the evidences which have been put in front of the accused should be against him mandatorily. Only the evidences which are incriminating the accused would be placed in front of him for the examination^[29]. Each and every material evidences shall be put in front of the accused separately through different questions^[30].

The accused should be able to appreciate all the material evidences and he should be in a position to answer or explain that particular circumstance.

Some of the points to be remembered by the Court or the officer who would be examining the accused about the evidence given by the prosecution have been:

1. Whether the accused is present in the scene of occurrence?
2. Whether the accused has committed the offence which has been alleged to be committed?
3. If yes, what has been the part of the accused in committing the offence?
4. Whether there is any motive present behind committing such offence?
5. Whether the accused has been negligent while performing his duties?
6. Whether the accused has been using any objects or instrument in committing such offence? If so, whether such objects or instruments have been collected from the scene of occurrence?
7. Whether such objects or instruments recovered have been incriminating the accused?
8. Whether there is any confession made by the accused before the police officer or judicial magistrate?
9. Whether there has been any extra-judicial confession made by the accused?
10. Whether there has been any dishonest intention in the minds of prosecution or the witnesses to drag the accused into this whirlpool of offences?
11. Whether the accused has knowledge or intention in committing such offence?
12. Whether there has been any dying declaration made which is incriminating the accused?

Some of the above questions can be asked by the court while examining the accused if any such circumstances have been found in the evidence submitted by the prosecution.

It has been very important to remember that the court or the officer who is authorized by the court that the questions asked to the accused in his examination process would be only limited to the evidences submitted by the prosecution and such evidences shall be proved before court of law, be it weak or strong.

If there has been any questionnaire made by the court or the presiding officer so that the accused may fill it with his answers and explanations then, the court must be very conscious enough that every question in the questionnaire is understood by the accused so that he may not claim any prejudice later on. The court or the prejudicing officer should make sure that there has been a signature taken from the accused after the filling of the questionnaire with his answers or statements or explanations. It would be a better step taken by the court or the presiding officer if they have asked those questions directly to the accused and filling it by themselves instead of making the accused fill it.

The accused may also send some written statements to the court or the presiding officer if the court permits him to do so.

Argumentum ad hominum: This maxim should be remembered by the court or the presiding officer while examining the accused. This explains that while making an argument or a discussion, the maker of such argument should be very conscious enough that the character or any other attributes of the accused shall not be attacked. Even

the accused has the right to be respectful in this society. So, his character and morale should not be affected in the process of examination.

Whether a pleader can be examined under this section?

In the case of *Bibhuti Bhushan Das Gupta v. State of West Bengal* ^[31] it was held that under this section the examination should be done only to the accused but not to any other person.

However, in this whole case, the accused will appear before the Court of Law only through his pleader. On behalf of the accused, the pleader would argue the case. Due to this, in most of the cases, the accused would take the steps as suggested to him by his pleader. That is the reason why, he sometimes also wants his pleader to get examined on behalf of him.

On contrary to this view, the Courts would never allow a pleader to get examined in the place of accused. The reason is nothing but the examination under the section-313 has been the right of the accused. Even if he wants to, no one can violate his right. The rights cannot be shifted from one person to other person. Moreover, the only requirement of circumstances being explained more clearly is to be present in the scene of occurrence of such circumstance but not knowing the provisions of law relating to such circumstance.

On this platform, even the Supreme Court has accepted the job of the pleader being so wider than that of the accused because he even does many jobs on behalf of the accused also. The court appreciates this matter. However, it doesn't accept the pleader getting examined on behalf of the accused under this particular provision ^[32].

In the case of, *Usha K. Pillai v. Raj K. Shrinivas* ^[33] the advocate took a long step and got examined under section 313 instead of the accused himself. However, the Supreme Court has not accepted it and due to this, it set aside the order passed by the concerned magistrate on whose purview this all happened. In addition to this, Supreme Court also directed the Magistrate to conduct the examination of the accused in a proper manner as mentioned in the statute book following the procedure laid down in the Code of Criminal Procedure ^[34]. The most important thing has been that the examination should be made on the accused personally but not to any representative of the accused.

However, the Supreme Court has made the job easier to the courts. The scope has been broadened by the Supreme Court in some of the cases. In such cases, the pleaders are allowed to answer on behalf of the accused. In the case of *Chandu Lal v. Puran Mal* ^[35] the accused has pleaded the concerned Magistrate to allow his pleader to answer on his behalf. According to the facts, the accused has been asked to appear before the Magistrate personally after the conclusion of the trial under section-205 of Code of Criminal Procedure ^[36] in order to examine the accused under section-313. However, the Magistrate rejected the request of the accused. On appeal, Supreme Court has allowed the accused to get examined through his council only on the condition that he would not plead the prejudice or miscarriage of justice basing upon this circumstance in the further process.

In the case of *Basavaraj R. Patil v. State of Karnataka* ^[37] the court allowed the accused to get examined through their counsel only because they were in the US at the time of this examination and unable to come to India. However, an application with a sworn affidavit shall be made by the

accused in order to get this exemption from the personal appearance.

From the above circumstances, it can be clearly observed that even if the parliamentarians have thought one thing, it can be interpreted by the courts according to the circumstances and if permitted they may loosen the system instead of being it more stricter and causing inconvenience to the accused.

Necessity of the examination of the accused

Every provision which has been incorporated by the law makers in this Code of Criminal Procedure ^[38] has been very important part of the procedure established. Without any one of such things incorporated, the procedure would look incomplete and some type of injustice may happen. However, the whole trial process would not be vitiated unless and until any prejudice has been proved by the one who have been claiming such thing.

In the same manner, the provision of the examination of the accused also plays a very important role and there has been some or the other necessity involved with this section. One of such necessities has been discussed in the case of *State of Maharashtra v. Sukhdeo Singh*. ^[39] In the mentioned case, the accused made a confessional statement about murdering one General Vaidhya. Even then, the court has been in a doubt that whether the so called accused has committed the offence or not. However, in the examination of the accused also, the accused has accepted that he has committed such offence. And due to this court confirmed it and point to be remembered is that the statements given by the accused have been corroborated by the other evidences presented by the prosecution also. Court acted upon their plea of guilt using this statement given by the accused in his examination under 313.

In this manner, the necessity may arise in some or the other way. Such necessities can be taken care of by the provision of examination of accused in most of the circumstances. This section should not only be seen as a right of the accused which should be fulfilled in order to go with the principles of natural justice but also as an important step in the procedure to be followed.

Last chance of the accused

This stage has been considered as the last stage of the accused to put his views before the court of law. If the accused wants to put any of the statements regarding the prosecution witnesses or the evidences placed and proved satisfactorily by the prosecution then this stage of section-313 would be the last opportunity of the accused. At this stage only, he would have the opportunity to disregard the evidence placed by the prosecution through his explanation. If he chooses to be silent in this stage, then after this stage he could not place his view or the explanation regarding those evidences which may be used for his conviction before the court of law. In many cases, the court rejected to consider the statement of the accused which he wanted to place after the stage of section-313.

Record of the examination of the accused

The Code of Criminal Procedure ^[40] provides a procedure to record the examination of the accused. However, such procedure would not be applied to summarily-triable cases ^[41]. The procedure to record the examination of the accused has been dealt by the Section- 281 of Code of Criminal

Procedure^[42]. The examination can be conducted by any Magistrate. However, if such examination is conducted by the Metropolitan Magistrate then such Magistrate shall make a Memorandum of Substance of the examination which has been conducted by him. Such memorandum shall be in the language of the Court. Such memorandum shall also be signed by the Magistrate who has conducted the examination of the accused^[43].

If the examination has been conducted by the magistrate other than Metropolitan Magistrate, then the whole of such proceeding or the examination shall be recorded by such magistrate personally, and if he/she is suffering with any of the physical incapacities then under his direction any officer of the court can record such examination on his behalf^[44]. The record of the examination of the accused shall be in the language in which the accused has been examined. If such thing has been found impracticable then the language of the court can be used^[45].

The record shall be understood by the accused upon showing to him or reading to him. After such thing, the accused has been at liberty to add anything to his answers. However, the provision does not permit the accused to delete anything which he has spoken or explained during his examination^[46].

Such record shall be signed by both the Magistrate and the accused so that they may accept it as true to their knowledge and also contains full and true account of the statements given by the accused in his examination before the Magistrate^[47].

Finally, this has been the process of recording the statements given by the accused in his examination to the Magistrate.

What amounts to serious prejudice to the accused?

When the accused has not been questioned about the material evidences or the evidences which have been used for his conviction, then the accused would be treated as the person on whom prejudice has happened.

It has been very important to hear the side of the accused about the circumstances or the evidences which are incriminating him and are being used for his conviction. It has been considered to be a right of the accused in knowing and getting heard about the circumstances which lead to his conviction.

There have been many situations and circumstances where, the accused might feel prejudiced. However, under this section, the non-informing part of the prosecution or the court about the evidences playing active part in his conviction would be treated as the prejudice caused to the accused.

In the case of *Rajendra v. State of Rajasthan*^[48], the HC of Rajasthan has squashed the conviction of the accused only because the Trial Court has erred in the process of examining the accused under section-313 of Code of Criminal Procedure^[49]. The court also held that such non-disclosure amounted to substantial and material prejudice to the accused.

Even if the accused has not understood any part of the examination, it would be the duty of the court or the presiding officer (It is not mandatory that the examination should be conducted by the court itself) to explain such circumstance or part of the examination to the accused so that it may not amount to prejudice to the accused.

The evidences of the prosecution should be clearly

explained to the accused in the form of questions or etc. whichever has been comfortable to the accused and the court so that the accused may clearly explain his point regarding such evidence or the circumstance which has been satisfactorily proved by the prosecution.

The language used by the court while examining the accused shall be in the manner which is understood by the accused and can be communicated or spoken by the accused. Later the recording of such examination can be done in the language of the court if the language in which the accused has been examined is found to be not practicable. However, the accused should be explained about what has been recorded.

If the statement or the explanation given by the accused has been found opposite to the thing which has been recorded by the magistrate or the officer of the Court on the direction of the magistrate, then it would be considered as a serious prejudice to the accused.

In the cases related to oath, if the accused has been made to take the oath before giving any explanations or making any statements then if the accused is able to prove that there has been some serious prejudice happened to the accused due to this act of the court or the presiding officer. Such serious prejudice can be explained in many ways. One of such ways have been using his explanations or the statements against him without informing the accused before-hand and using those for his conviction only because he has made an oath before stating them or explaining them.

Even if the examination of the accused has not even happened then this would not only be the prejudice to the accused but also the violation of the right of the accused guaranteed by the Code of Criminal Procedure and the principles of natural justice.

If the court treats the silence of the accused, which has been maintained by the accused during his examination, as the consent given by him *ipso facto* then the accused would be considered as a prejudice caused to the accused. The reason for this has been that the accused has to remain silent during the examination and it has also been the right of the accused in not considering his statements for the conviction of the accused. However, in the case of *Ramnaresh v. State of Chhattisgarh*^[50], it has been stated that if the accused makes any statement or gives any explanation which explicitly supports the evidence proved satisfactorily by the prosecution then such statement or the explanation can be used against the accused and also for the conviction of the accused. However, it has to be confirmed about whether such prosecution evidence has been informed clearly to the accused so that he after understanding it clearly and fully made such statement or gave such explanation.

In the case of *Gyan Chand and Others v. State of Haryana*^[51] the plea of non-compliance with the provisions of the examination of the accused as stated in the provisions of section-313 of the Code of Criminal Procedure has been put before the Supreme Court of India for the first time. However, the accused persons were unable to prove the prejudice caused to them because of the non-compliance of the provisions of section-313 by the trial court while conducting their trial. So, the Supreme Court stopped itself from vitiating the whole trial procedure in this case.

Unless and until the court has adopted an unacceptable way which would be different from the actually followed and prescribed way in the name of conducting the examination of the accused under section-313, the court may not

consider the accused to be prejudiced^[52].

The above all and many more might be considered to be serious prejudices, which may also sometimes vitiate the trial proceedings, to the accused. However, these circumstances or instances might not be considered as the prejudices to the accused if he is unable to prove it before the court of law. Court of law would come into the words of the accused only when the accused has been in the position to satisfactorily prove the prejudice caused to him.

Examination of the accused through electronic video linkage

As the world has been changing to the digital era, the process of conducting examination may also get amended. If we look into the recent amendments to the Indian Evidence Act and Indian Penal Code we might realize one thing that the criminal justice system is also encouraging the electronic evidences.

Due to these recent changes, it would not be wrong if we now think about conducting the examination of the accused through the usage of the electronic video linkages. We have seen some of the circumstances where the courts have allowed the pleaders to get examined on behalf of the accused only because the accused are not in a position to reach to the court in a reasonable period of time.

However, the object of the section-313 of the Code of Criminal Procedure clearly mentions that it has been the right of the accused to get examined under this section and this right cannot be transferred. So, the right of the accused even after the accused's consent could not be given to any other person. There might be many problems involved in such circumstances where another person has got examined instead of the accused himself.

A solution for this problem might be found if the problem is looked into through the medium of the recent developments in the world and the so called digital era. The solution which we might see would be the medium of the electronic video linkages such as video calls through skype, whats app etc.

The distance between two people would be reduced in a few seconds using the methods of electronic video linkage. Through the usage of electronic video linkages, the accused can be quite easily get examined by the courts or the presiding officers even if both of them have been in two different places.

This has not been recognized by the legislators even to the present date. This part of using the medium of the electronic video linkages has not been introduced in the Code of Criminal Procedure. However, the states in India have the liberty of amending the provisions in the Code of Criminal Procedure through the assent of the President and such amendment would only be applicable to the limits of such state itself.

This liberty of amending the provisions of the Code of Criminal Procedure by the states and introducing the new techniques has been used by the State of Jharkhand in this particular section. The State of Jharkhand has inserted the words "in person or through the medium of electronic video linkage" after the words "enabling the accused" in the actual provision which has been prevailing all over India^[53].

Through this amendment, it can be said that the only place in India where the accused can be examined through the usage of electronic video linkages has been the state of Jharkhand. However, the courts in the state might have

taken proper care and caution while inserting the words which have not been prevalent in all over the country till such time.

When is it unnecessary to conduct the examination of the accused?

In the cases of non-availability of the material evidences which might be used for the conviction of the accused, the examination can be dispensed with. The reason for this would be that there would be nothing in the hands of the courts or the presiding officer regarding which they might examine or question the accused.

If the prosecution has not proved any evidence satisfactorily in front of the courts, there would not be any need to examine the accused because the accused would be acquitted by the court in the benefit of the doubt unless and until the prosecution has got any other witness on which the courts can rely upon in order to convict the accused.

If the accused has pleaded guilty in front of the court, then the examination of the accused would not be needed and in such circumstances the examination of the accused can be dispensed with by the courts.

In the above stated circumstances and many more if relevant the examination of the accused might be felt unnecessary and it would be needed also. However, it might be better if the examination is done so that there would not be any claim by the accused that there has been some or the other prejudice caused even though courts would not accept such claim.

Conclusion

Section-313 has been considered as the right of the accused which cannot be violated and even if violated may not vitiate the trial proceedings unless and until the accused proves the prejudice caused to him. Through many case laws and judgements, the scope, significance and the application of the section-313 of the code of criminal procedure i.e. power to examine the accused have been explained in a detailed manner. It can be understood that the section explicitly gives power to the courts and implicitly benefits the accused by talking about the rights of the accused. So, generally, it can be said that the section has been stating about the limitations imposed on the courts by the legislators in the name of rights of the accused on their power to examine the accused. So, such power shall be used consciously so that the trial proceedings would not get vitiated and the rights of the accused are also not violated.

Reference

1. Act No. 2 of, 1974.
2. Section-231 of Code of Criminal Procedure: Act No. 2 of, 1974.
3. Section-232 of the Code of Criminal Procedure: Act No. 2 of, 1974.
4. Section-313(1) (b) of Code of Criminal Procedure: Act No. 2 of, 1974.
5. Section-313(1) of the Code of Criminal Procedure: Act No. 2 of, 1974.
6. Section-313(1)(a) of the Code of Criminal Procedure: Act No. 2 of, 1974.
7. Section-313(2) of the Code of Criminal Procedure: Act No. 2 of, 1974.

8. Sanatan Naskar v. State of West Bengal: AIR, 2010, SC 3570.
9. Section-313(3) of the Code of Criminal Procedure: Act No. 2 of, 1974.
10. Section-313(4) of the Code of Criminal Procedure: Act No. 2 of, 1974.
11. Section-313(5) of the Code of Criminal Procedure: Act No. 2 of, 1974.
12. Act No. 2 of, 1974.
13. Section-313 of the Code of Criminal Procedure: Act No. 2 of, 1974.
14. Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan: AIR, 2013, SC 3150.
15. Act No. 2 of, 1974.
16. ibid
17. Sanatan Naskar v. State of West Bengal: AIR, 2010, SC 3570.
18. Act No. 2 of, 1974.
19. Act No. 2 of, 1974.
20. Ajmer Singh v. State of Punjab, 1953, CriLJ 521.
21. Ajmer Singh v. State of Punjab, 1953, CriLJ 521.
22. Ajmer Singh v. State of Punjab, 1953, CriLJ 521.
23. Ajmer Singh v. State of Punjab, 1953, CriLJ 521.
24. Ajmer Singh v. State of Punjab, 1953, CriLJ 521.
25. Ajit Kumar Chowdhary v. State of Bihar: AIR, 1972 SC 2058.
26. Dehal Singh v. State of Himachal Pradesh: AIR, 2010 SC 3594.
27. Raj Kumar Singh @ Raju @ Batya v. State of Rajasthan: AIR, 2013, SC 3150.
28. Laxman @Laxmayya Gangaram Zinna v. State of Maharashtra, 2012, BomCR(Cri) 1.
29. Tara Singh v. The State: AIR, 1951, SC 441.
30. ibid
31. Bibhuti Bhushan Das Gupta v. State of West Bengal: AIR, 1969, SC 381.
32. Ibid
33. Usha K. Pillai v. Raj K. Shrinivas: AIR, 1993, SC 2090.
34. Act No. 2 of, 1974.
35. Chandu Lal v. Puran Mal: AIR, 1988, SC 2163.
36. Act No. 2 of, 1974.
37. Basavaraj R. Patil v. State of Karnataka, 2000. 8 SCC 740.
38. Act No. 2 of, 1974.
39. State of Maharashtra v. Sukhdeo Singh: AIR, 1992, SC 2100.
40. Act No. 2 of, 1974.
41. Section- 281(6) of Code of Criminal Procedure: Act No. 2 of, 1974.
42. ibid
43. Section- 281(1) of Code of Criminal Procedure: Act No. 2 of, 1974.
44. Section-281(2) of Code of Criminal Procedure: Act No. 2 of, 1974.
45. Section-281(3) of Code of Criminal Procedure: Act No. 2 of, 1974.
46. Section-281(4) of Code of Criminal Procedure: Act No. 2 of, 1974.
47. Section-281(5) of Code of Criminal Procedure: Act No. 2 of, 1974.
48. Rajendra v. State of Rajasthan, 1996, Cr LJ 340 (Raj)
49. Act No. 2 of, 1974.
50. Ramnaresh v. State of Chhattisgarh: AIR, 2012, SC 1357.
51. Gyan Chand & Ors v. State of Haryana: AIR, 2013, SC 3395.
52. SC Bahri v. State of Bihar: Air, 1994, SC 2420.
53. Section-4 of Jharkhand Act 2 of, 2016.