

UNDER THE PATRONSHIP OF
CHHATTISGARH STATE JUDICIAL ACADEMY, BILASPUR

TOPIC:

**THE PURPOSE, ADMISSIBILITY AND EVIDENTIARY VALUE OF
EXAMINATION OF ACCUSED UNDER SECTION 351 BNSS;
ADMISSIBILITY AND EVIDENTIARY VALUE OF STATEMENT UNDER
SECTION 180 BNSS AND CONFESSIONS/STATEMENTS UNDER
SECTION 183 BNSS**

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PRESENTED BY
DISTRICT AND SESSIONS COURT, KABIRDHAM AT KAWARDHA (C.G.)

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CHAPTER 1

THE PURPOSE, ADMISSIBILITY AND EVIDENTIARY VALUE OF EXAMINATION OF ACCUSED UNDER SECTION 351 BNSS (SECTION 313 Cr.P.C.)

1.1 Relevant Legal Provision

Section 313 of the Code of Criminal Procedure, 1973 (now reproduced verbatim as Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023) confers upon the court the power to examine the accused. The full text of this provision reads as follows:¹

313. 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.

(5) The Court may take help of Prosecutor and Defence Counsel in preparing relevant questions which are to be put to the accused and the

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Section 313 of the Code of Criminal Procedure, 1973 has been reproduced verbatim as Section 351 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). All references to 'Section 313 Cr.P.C.' and 'Section 351 BNSS' are used interchangeably in this paper.

Court may permit filing of written statement by the accused as sufficient compliance of this section.

It is significant to note that sub-section (5) was inserted by the Code of Criminal Procedure (Amendment) Act, 2008, with effect from 31st December, 2009.² This amendment significantly changed the practical operation of the section by enabling the court to solicit assistance from both the prosecutor and the defence counsel in formulating questions, and by permitting the accused to file a written statement in lieu of an oral examination.

1.2 Origin and Constitutional Basis

The provision has its roots in the cardinal principle of natural justice --- audi alteram partem --- meaning 'hear the other side.'³ This principle mandates that no person should be condemned or convicted without being given an opportunity to present their case. The accused, at the time of examination under Section 313 Cr.P.C., is placed in a direct dialogue with the court, making the provision an instrument not merely of procedural compliance but of substantive justice.

In *Jai Prakash Tiwari v. State of Madhya Pradesh (2022 SCC OnLine SC 966)*, the Supreme Court elevated the right under Section 313 beyond a mere statutory entitlement, holding that it constitutes a constitutional right to a fair trial guaranteed under Article 21 of the Constitution of India. It ensures that the accused is not condemned unheard, protecting the right to life and personal liberty from arbitrary deprivation.

1.3 Object and Scope of Section 313 / 351 BNSS

The primary object of Section 313 Cr.P.C. is to establish a direct dialogue between the court and the accused. It affords the accused a fair and proper opportunity to explain the circumstances appearing in the evidence against him. The questioning must be fair and intelligible enough for even an illiterate or uneducated person to comprehend and respond to, as held in *Tara Singh v. State (1951 SCC OnLine SC 49)*.

In *Sanatan Naskar & Anr. v. State of West Bengal (2010 SCC OnLine SC 710)*, the Supreme Court elaborated the scope and objective of Section 313 Cr.P.C. as twofold:

²The principle of audi alteram partem is one of the two pillars of natural justice, the other being nemo iudex in causa sua (no one should be a judge in their own case).

³Sub-section (5) was inserted by the Code of Criminal Procedure (Amendment) Act, 2008, with effect from 31st December, 2009. This amendment was a direct response to the Supreme Court's concerns about mechanical and perfunctory examinations under Section 313.

- To establish a direct dialogue between the court and the accused, by placing before the accused all incriminating pieces of evidence and inviting his explanation.
- To test the veracity of the prosecution's case, ensuring that the accused's examination is a meaningful exercise and not a hollow formality.

The mandatory nature of clause (b) of Section 313(1) is well-settled. Unlike clause (a), which gives the court discretion to put questions at any stage, clause (b) imposes a duty: after prosecution evidence is closed and before the accused is called for defence, the court must question the accused on the case. This examination is not an empty ritual --- it is the backbone of the accused's right to a fair trial.

In *Indrakunwar v. The State of Chhattisgarh (2023 SCC OnLine SC 1364)*, the Supreme Court enumerated the guiding principles governing Section 313 Cr.P.C., which apply with equal force to Section 351 BNSS:

- The object is to enable the accused to personally explain any circumstances appearing in the evidence against them.
- The intent is to establish a dialogue between the court and the accused --- a process that benefits the accused and assists the court in arriving at the final verdict.
- The process is not a procedural formality; it is based on the cardinal principle of audi alteram partem.
- The ultimate test is whether the accused received a genuine opportunity to state his case.
- The accused may admit, deny, or explain; or may offer an alternative version of events.
- The right to remain silent shall not be used to his detriment as the sole basis for conviction.
- The statement under Section 313 cannot form the sole basis of conviction and is neither a substantive nor a substitute piece of evidence.
- The statement must be read as a whole; no part can be read in isolation.
- Circumstances not put to the accused must be excluded from consideration.
- The court is obligated to put all incriminating circumstances in the form of specific questions to the accused.
- Non-compliance with this section may cause prejudice and impede the process of arriving at a fair decision.

Regarding the two types of examination --- under clauses (a) and (b) --- *the Supreme Court in Nar Singh v. State of Haryana ((2015) 1 SCC 496)* clarified: the examination

under clause (a) is particular and optional; the examination under clause (b) is general and mandatory. The examination under clause (b) is the more critical safeguard, as it brings the substance of the entire prosecution case to the accused's knowledge before he is asked to lead a defence.

1.4 Model Questions under Section 313 Cr.P.C.

A recurring problem in Indian criminal courts is the mechanical recording of section 313 statements, which renders the exercise futile. In ***Sajjan Sharma v. State of Bihar ((2011) 2 SCC 206)***, the Supreme Court deplored this practice:

“We are constrained to say that this is not an isolated case but it is almost a stereotype. It is our experience that in criminal trials in Bihar no proper attention is paid to the framing of charges and the examination of the accused under Section 313 of the Code of Criminal Procedure... The framing of the charge and the examination of the accused are mostly done in the most unmindful and mechanical manner.”

A model question under Section 313 should specifically, distinctly, and separately incorporate each material piece of incriminating evidence put before the court. For example:

“PW-6 deposed that you are neighbours and on 3.4.2020 both of you were conversing at 9 P.M. and suddenly you pounced upon him and caused injury with a knife on his left limb. What do you say?”

The accused must be given the opportunity to separately admit, deny, or explain each component of such a question. Since a composite question blends multiple factual elements (neighbourly relationship, time of meeting, assault, weapon), the accused cannot respond with a single ‘yes’ or ‘no’. Therefore, questions must be carefully separated to allow a meaningful and legally valid answer.

The amendment inserting sub-section (5) was aimed at addressing this problem. As observed by ***the Supreme Court in Premchand v. State of Maharashtra (2023 SCC OnLine SC 218)***, the court must scan prosecution evidence after it closes, trace all incriminating circumstances, and frame relevant questions --- ideally with the assistance of both the Public Prosecutor and the Defence Counsel. A written statement filed by the accused under sub-section (5) must be treated as part of the accused's statement and considered in its entirety.

On the question of personal attendance, in ***K. Anbazhagan v. Supdt. of Police (2003 SCC OnLine SC 1280)***, the court held that personal attendance of the accused during examination under Section 313 is the general rule, and departure therefrom is permissible only in exceptional circumstances. In ***Basvaraj R Patil and Ors. v. State of Karnataka***

(2000 SCC OnLine SC 1412), it was clarified that where personal attendance is to be dispensed with, the accused must file a supporting affidavit narrating his real difficulties and undertaking not to raise any grievance on the score of his examination.

1.5 Evidentiary Value of Statement under Section 313 / 351 BNS

The statement of an accused under Section 313 Cr.P.C. is not substantive evidence in the strict sense, for two fundamental reasons: (i) it is not recorded on oath, and (ii) the prosecution has no right to cross-examine the accused on his answers. Nevertheless, it is not to be entirely ignored.

The legal position, as synthesized in multiple decisions of the Supreme Court, may be summarized as follows:

- The statement under Section 313 Cr.P.C. cannot form the sole basis for conviction (*Balaji Gunthu Dhule v. State of Maharashtra, (2012) 11 SCC 685; Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722*).
- It is taken into consideration to appreciate the truthfulness of the prosecution's case and to provide the court with the accused's explanation of incriminating circumstances.
- Answers given by the accused can be used to draw adverse inferences if he chooses to remain silent or offers an implausible explanation regarding facts within his special knowledge (*Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722; Prahlad v. State of Rajasthan, 2018 SCC OnLine SC 2548*).
- Where the statement of the accused is in line with the prosecution's case, it reduces the burden of the prosecution to prove its case beyond reasonable doubt (*Brajendra Singh v. State of M.P., (2012) 4 SCC 289*).
- The statement must be read as a whole; courts cannot rely on the inculpatory portions while ignoring the exculpatory portions (*Premchand v. State of Maharashtra, 2023 SCC OnLine SC 218*).
- A statement under Section 313 cannot be used to convict a co-accused. It can only be used against the accused who made it (*Nareshkumar Harmanbhai Brahmhatt v. State of Gujarat, (1996) 2 GCD 248*).
- Non-consideration of a defence taken under Section 313 Cr.P.C. may vitiate the conviction (*Reena Hazarika v. State of Assam, (2019) 13 SCC 289*).

1.6 Judicial Precedents on Section 313 Cr.P.C.

Mukesh Kumar v. State of Jharkhand, 2010 (4) JLJR 321

Issue: Whether a conviction can be based solely on the statement recorded under Section 313 Cr.P.C.

The Jharkhand High Court held that while the answers given by the accused under Section 313 Cr.P.C. may be taken into consideration under sub-section (4), the statement is not strictly evidence because no oath is administered. However, if the accused confesses to the commission of the offence while responding to questions under Section 313, the court may, relying on that confession along with other prosecution evidence, proceed to convict him. The court further held that a voluntary admission of guilt during Section 313 examination, confirmed also by conduct before jail authorities, is a sufficient basis for conviction.

Nar Singh v. State of Haryana, (2015) 1 SCC 496

Issue: Whether defective examination under Section 313 vitiates the trial; courses available to the appellate court.

The Supreme Court reaffirmed that Section 313(1)(b) Cr.P.C. is general and mandatory. The Court held that any omission to put incriminating circumstances to the accused does not ipso facto vitiate the trial unless material prejudice is shown. The Court laid down the courses available to an appellate court when such objection is raised: (i) examine the convict or his counsel and consider the answers; (ii) decide on merits if no prejudice is established; (iii) direct retrial from the stage of Section 313 examination if prejudice is evident; or (iv) decide the appeal on merits if remand is not warranted due to time spent and sentence already undergone.

Balaji Gunthu Dhule v. State of Maharashtra, (2012) 11 SCC 685

Issue: Whether the Section 313 statement alone can be the basis of conviction.

The Apex Court held that the statement of the accused recorded under Section 313 cannot stand alone as the basis for conviction. The courts may rely on a portion of the statement in conjunction with other prosecution evidence, but the statement should never be considered in isolation. Conviction based solely on a Section 313 statement is impermissible.

Raj Kumar Singh v. State of Rajasthan, (2013) 5 SCC 722

Issue: Consequences of an accused remaining silent under Section 313.

The Court held that an accused may maintain silence or remain in complete denial during his Section 313 examination. However, in such cases, the court is entitled to draw adverse inferences including those permissible in law. The statement is not a substantive piece of evidence; it is a tool for appreciating prosecution evidence and cannot substitute for it. An adverse inference can be drawn only when incriminating material is fully established and the accused furnishes no explanation.

Reena Hazarika v. State of Assam, (2019) 13 SCC 289

Issue: Whether complete non-consideration of Section 313 statement vitiates the trial.

The Supreme Court held that Section 313 Cr.P.C. is not merely an audi alteram partem provision --- it is a constitutional right to a fair trial under Article 21. A solemn duty is cast on the court to consider the defence taken by the accused under Section 313, and either accept or reject it in writing. Complete non-consideration of such a defence --- especially when it cannot be dismissed as irrelevant or fanciful --- vitiates the conviction. In this case, since neither the trial court nor the High Court considered the defence, the conviction was set aside.

Chanderdeo Gope and Another v. State of Bihar, 2023 SCC OnLine Jhar 185

Issue: Non-putting of question about extra-judicial confession under Section 313.

The Jharkhand High Court held that where no question was put to the accused about confessions allegedly made before prosecution witnesses, serious prejudice was caused to the accused. The Court reiterated the settled principle from Sharad Birdhichand Sarda v. State of Maharashtra ((1984) 4 SCC 116) that any circumstance not put to the accused in his Section 313 examination cannot be used against him and must be completely excluded from consideration.

Premchand v. State of Maharashtra, 2023 SCC OnLine SC 218

Issue: Comprehensive restatement of principles; written statements under Section 313(5).

The Supreme Court provided a comprehensive synthesis of all principles governing Section 313 Cr.P.C., emphasizing that the exercise must be realistic rather than ritualistic. Once a written statement is filed under sub-section (5) and marked as an exhibit, it must be treated as part of the accused's statement under sub-sections (1) and (4). The Court noted that such written statements often contain both inculpatory admissions and exculpatory circumstances and must be read in their entirety.

CHAPTER 2

ADMISSIBILITY AND EVIDENTIARY VALUE OF STATEMENT UNDER SECTION 180 BNSS (SECTION 161 Cr.P.C.)

2.1 Relevant Provision and Scope

Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) corresponds to Section 161 of the Code of Criminal Procedure, 1973 (Cr.P.C.), titled “Examination of witnesses by police.”⁴ It authorises the investigating officer to orally examine any person acquainted with the facts and circumstances of the case. The provision is the primary tool through which witness statements are collected during the investigation phase of a criminal case.

Sub-section (1) of Section 180 BNSS empowers the investigating officer to question any person in the course of investigation. As held by the *Privy Council in Pakala Narayana Swami v. Emperor (1939 SCC OnLine PC 1)*, the phrase “any person” includes a person who may be accused of the crime as well as suspects.

Sub-section (2) requires the person being questioned to answer all questions honestly, except those that may tend to incriminate him or expose him to a criminal charge. This protection is reinforced by Article 20(3) of the Constitution of India,⁵ which guarantees that no accused person can be compelled to be a witness against himself. In *Nandini Satpathy v. P.L. Dani (1978 SCC OnLine SC 122)*, the Supreme Court held that even if the investigation is not about a specific charge, the witness retains the right to refuse to answer if the answers might realistically expose him to guilt in some other case, actual or imminent.

Sub-section (3) governs the mode of recording. Witness remarks under Section 180 should be in the first person and not in the form of indirect speech. No oath or affirmation is required during such examination. Although the investigating officer need not reduce the statement to writing, if a statement is recorded, it must be recorded exactly as made. The section also permits audio-video recording of such statements. Statements of a female witness must be recorded by a female police officer or any woman officer.

⁴Section 161 Cr.P.C. corresponds to Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). References to both provisions are used interchangeably.

⁵Article 20(3) of the Constitution of India provides: ‘No person accused of any offence shall be compelled to be a witness against himself.’ This right against self-incrimination is a fundamental right and cannot be waived under compulsion.

2.2 Evidentiary Value of Statements under Section 180 BNSS

The overriding principle governing police statements under Section 180 BNSS is that they are not substantive evidence. They cannot be used to prove the truth of the contents stated therein. The following rules govern their use in court proceedings:

- Statements recorded under Section 180 BNSS are not admissible as evidence in court (*Sewaki v. State of Himachal Pradesh, 1981 SCC OnLine HP 5; M.P. Sharma v. Satish Chandra, 1954 SCC OnLine SC 164*).
- They can be used only to contradict the witness during trial, as permitted under Section 181 BNSS read with Section 148 of the Bharatiya Sakshya Adhiniyam, 2023.
- They cannot be used for corroboration or for proving the truth of the contents of the statement.
- When a prosecution witness turns hostile, the Public Prosecutor can cross-examine that witness with court permission, using the Section 180 statements to establish contradiction.
- Statements under Section 180 BNSS which fall within the ambit of Section 23(3) or Section 30 of the Bharatiya Sakshya Adhiniyam (corresponding to Sections 27 and 32 of the Indian Evidence Act) may, in certain circumstances, be used by the prosecution.
- A statement recorded as a dying declaration where the person subsequently survived is treated as a Section 180 statement. If, however, the person subsequently dies, the same statement may be considered a dying declaration.

In *Ravikant Sharma v. State of NCT of Delhi (2007 SCC OnLine SC 194)*, the Supreme Court explained that any direction to supply a 'gist' of such statements is unsustainable because such statements of witnesses do not contain the investigation officer's interpretation or any authorised summary.

2.3 Section 181 BNSS – Use of Police Statements in Court Proceedings

Section 181 BNSS (corresponding to Section 162 Cr.P.C.)⁶ governs how police-recorded statements may be used in court. The general prohibition is that such statements shall not be signed by the person making them, and cannot be used as evidence in any inquiry or trial, unless permitted under specific provisions of law.

⁶Section 162 Cr.P.C. corresponds to Section 181 of the BNSS. The provision expressly prohibits the use of police statements as substantive evidence and restricts their use to contradiction during cross-examination.

The following uses are, however, expressly permitted:

- The accused may use any part of a prosecution witness's previous police statement to contradict that witness during cross-examination.
- The prosecution may, with leave of the court, refer to such statement for cross-examination of its own hostile witness.
- The process of using such statements must comply with Section 148 of the Bharatiya Sakshya Adhiniyam, 2023.

Section 181 does not apply to dying declarations falling under Section 26(a) of the Bharatiya Sakshya Adhiniyam, nor to information leading to discovery of facts as per the proviso to Section 23(2) of the BSA.

2.4 Omissions as Contradictions

A recurring question in criminal trials is whether an omission in a police statement constitutes a contradiction. The **Supreme Court in Tahsildar Singh v. State of Uttar Pradesh (1959 SCC OnLine SC 17)** held that not every omission in a police statement amounts to a contradiction under Section 162 Cr.P.C. / Section 181 BNSS. An omission qualifies as a contradiction only when it is material, clearly implied by or inconsistent with the witness's court testimony, and the trial judge must assess each case on its facts.

A delay of a few hours in recording statements is generally not a material infirmity, but an intentional delay enabling the police to fabricate a case is fatal to the prosecution. This principle was affirmed in **State of NCT of Delhi v. Ravikant Sharma (2007 SCC OnLine SC 194)**.

2.5 Latest Case Law under Section 180 BNSS

Renuka Prasad v. The State (2025 SCC OnLine SC 1074)

Issue: Evidentiary value of Section 161 Cr.P.C. / Section 180 BNSS statements.

The Supreme Court, in this significant decision, reaffirmed the limited evidentiary value of statements recorded under Section 161 CrPC. It held that an investigating officer's testimony based solely on such statements is inadmissible. Where all witnesses have turned hostile and no corroboration was provided, conviction cannot rest on the testimony of the investigating officer alone. The Court set aside the conviction and held that conviction cannot rest on testimony of an investigating officer alone when it is based on inadmissible statements under Section 161 CrPC and when all witnesses have turned hostile.

CHAPTER 3

ADMISSIBILITY AND EVIDENTIARY VALUE OF CONFESSIONS/STATEMENTS UNDER SECTION 183 BNSS (SECTION 164 Cr.P.C.)

3.1 Introduction and Purpose

Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) replaces Section 164 of the Code of Criminal Procedure, 1973 (Cr.P.C.).⁷ It authorises a Magistrate to record statements or confessions made by witnesses and accused persons during investigation, or at any time before the inquiry or trial begins.

The rationale behind this provision lies in the distrust of police-recorded confessions under the Indian legal system. Section 25 of the Indian Evidence Act, 1872 (now Section 23 of the Bharatiya Sakshya Adhinyam, 2023) renders a confession made to a police officer inadmissible as evidence against the accused.⁸ This is because Indian courts have historically been concerned about the misuse of police power --- coercion, fabrication, and manipulation of confessions --- which led Parliament to vest the power of recording confessions exclusively in judicial officers.

The key features of Section 183 BNSS are:

- Any Magistrate in the district, regardless of jurisdiction, may record a confession or statement during investigation.
- Recording may be done via audio-video electronic means.
- Recording must take place in the presence of the accused's advocate, where applicable.
- Before recording any confession, the Magistrate must explain to the person that making a confession is not mandatory, and that if made, it can be used as evidence against him.
- The confession can be recorded only if the Magistrate is satisfied that it is being made voluntarily.
- If the person refuses to confess, the Magistrate must not authorise police custody for him.

⁷Section 164 Cr.P.C. corresponds to Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023. The provision authorises Magistrates to record confessions and statements during investigation.

⁸Section 25 of the Indian Evidence Act, 1872 (now Section 23 of the Bharatiya Sakshya Adhinyam, 2023) renders a confession made to a police officer inadmissible as evidence against the accused.

3.2 Significance of Recording Statements by a Magistrate

Recording statements under Section 183 BNSS serves a dual purpose:

First, it dissuades witnesses from altering their testimonies. By capturing accounts immediately after an incident, the reliability of the information provided is enhanced. Witnesses who fear being prosecuted for perjury are less likely to change their accounts when their statements are promptly recorded by a judicial officer.

Second, it enables the legal system to bypass the immunity granted to witnesses under other provisions. Statements made in the course of investigation, when recorded under Section 183 BNSS, have significant evidentiary value. They are considered more trustworthy when recorded promptly after the incident.

3.3 Mechanism for Recording Statements under Section 183 BNSS

The following procedural requirements govern the recording of confessions:

- The confession must be recorded in the same manner as an accused's examination under Section 316 BNSS, and must be signed by the person making it.
- A memorandum signed by the Magistrate must be added, certifying that the confession was voluntary, recorded in the Magistrate's presence and hearing, and is accurate and complete.
- Statements that are not confessions may be recorded in any form the Magistrate deems appropriate.
- The Magistrate has the authority to administer an oath while recording non-confessional statements.

Special rules apply in the following scenarios:

- In serious offences (including offences punishable under Sections 64 to 79 and Section 124 of the Bharatiya Nyaya Sanhita, 2023), the Magistrate is mandated to promptly record the victim's statement once the police are notified. Such statements are preferably recorded by a female Magistrate or in the presence of a female officer.
- For offences punishable with 10 years' imprisonment or more, life imprisonment, or death, the Magistrate is obligated to record the statement of the witness produced by the police. If the witness is mentally or physically disabled, the Magistrate must use an interpreter or special educator, and the statement must be audio-video recorded.
- A statement recorded from a disabled person is treated as examination-in-chief under Section 142 of the BNSS.

- Any confession or statement recorded under this section must be forwarded to the Magistrate who will try or inquire into the case.

3.4 Evidentiary Value

A confession duly recorded by a Judicial Magistrate following the procedure under Section 183 BNSS, if found to be voluntary and trustworthy, can independently form the basis for a conviction. This principle is supported by Section 80 of the Indian Evidence Act, 1872 (now Section 79 of the Bharatiya Sakshya Adhinyam, 2023),⁹ which mandates a presumption in favour of the genuineness of statements and confessions recorded by Magistrates.

The following distinctions must be borne in mind:

- A confessional statement recorded by a Judicial Magistrate under Section 183 BNSS is admissible as substantive evidence against its maker and can independently sustain a conviction.
- A non-confessional statement recorded by a Judicial Magistrate cannot be used as substantive evidence. However, it may be used to corroborate the witness's court testimony under Section 154 of the Bharatiya Sakshya Adhinyam, or to contradict the witness under Section 145 of the Bharatiya Sakshya Adhinyam, if the person who made such a statement is called as a witness in the trial.
- A statement made by a woman victim recorded under the special provision in Section 164(5A)(a) CrPC (corresponding to Section 183 BNSS) can be used as an examination-in-chief under Section 137 of the Indian Evidence Act.
- A retracted confession does not automatically become inadmissible. The burden shifts to the accused to prove that the confession was not freely made; if the prosecution proves voluntariness, the retracted confession may be used for corroboration.

3.5 Important Case Laws under Section 183 BNSS / Section 164 Cr.P.C.

Dagdu v. State of Maharashtra (1977 SCC OnLine SC 185)

Issue: Admissibility of confessions where procedural guidelines are not strictly followed.

The Supreme Court held that a confession recorded under Section 164 CrPC (now Section 183 BNSS) remains admissible even if procedural guidelines are not strictly

⁹Section 80 of the Indian Evidence Act, 1872 (now Section 79 of the Bharatiya Sakshya Adhinyam, 2023) provides a presumption of genuineness in favour of certified copies of documents and confessions recorded by Magistrates.

followed, though such non-compliance may diminish its evidentiary value. The Court laid down that the primary inquiry is whether the confession was voluntary and truthful.

K.I. Pavunny v. Assistant Collector (Head Quarter), Central Excise Collector ((1997) 3 SCC 721)

Issue: Voluntary confession as basis for conviction; retracted confessions.

The Supreme Court held that a voluntary confession made under Section 164 CrPC can by itself form the sole basis for conviction of its maker. If the confession is later retracted, the burden shifts to the accused to prove it was not voluntarily made. A reasonable doubt is sufficient to discharge this burden. Upon failure by the accused, the burden shifts back to the prosecution to prove voluntariness. The Court further held that a retracted confession, if proved voluntary, may be used for corroborating independent evidence in the prosecution case.

Mahabir Singh Etc. v. State of Haryana (2001 SCC OnLine SC 866)

Issue: Voluntary approach to Magistrate for recording confession.

The Supreme Court held that a person wishing to confess may directly approach a qualified Magistrate and request a recording of the confession, without being produced by police. However, the Magistrate must satisfy himself that the person is concerned with the case and that the confession is being made voluntarily, free from fear and external pressure. In this case, since the Magistrate had not warned the maker that confession is not mandatory, the Supreme Court declined to act upon the recorded confession.

Babubhai Udesinh Parmar v. State of Gujarat (2006 SCC OnLine SC 1277)

Issue: Prohibition on administering oath before recording confession.

The Supreme Court held that the administration of an oath before or during the recording of a confession or statement from the accused is strictly forbidden. If a confession is recorded after administering oath, it is vitiated and cannot be relied upon. The accused's confession in this case was made under oath administered by the Magistrate --- the Supreme Court held this to be a serious procedural infirmity.

Varghese M.U. v. Central Bureau of Investigation, Cochin (2015 SCC OnLine KER 12068)

Issue: Confidentiality of statements recorded under Section 164 Cr.P.C.

The Supreme Court directed Magistrates recording statements of witnesses and victims to maintain strict confidentiality and not to share such statements with anyone except the police personnel investigating the case. The Court cautioned that if such statements are disclosed, the defence may tamper with evidence, which would be detrimental to the prosecution and to the victim's right to justice. Magistrates were also directed to record non-confessional statements of witnesses and victims in camera, wherever possible.

CONCLUSION

The three statutory provisions examined in this paper --- Section 351 BNSS (Section 313 Cr.P.C.), Section 180 BNSS (Section 161 Cr.P.C.), and Section 183 BNSS (Section 164 Cr.P.C.) --- collectively represent the legal architecture governing the gathering, recording, and use of statements and confessions in the Indian criminal justice system. Each provision serves a distinct purpose but together they ensure that the twin constitutional imperatives of a fair trial and effective prosecution of crime are balanced.

Section 351 BNSS (Section 313 Cr.P.C.) is the cornerstone of the accused's right to a fair hearing. It is not a procedural formality but a constitutional right flowing from Article 21, ensuring that no accused person is convicted without being given a genuine opportunity to explain the incriminating evidence against him. Courts must take this exercise seriously --- framing specific, intelligible questions for each piece of evidence --- and the accused's response, though not substantive evidence, has a significant role in testing the prosecution's case. Where this right is violated and prejudice is established, appellate courts have the power to remand for fresh examination.

Section 180 BNSS (Section 161 Cr.P.C.) reflects the limited evidentiary weight accorded to police-recorded statements. Such statements, not being made under oath or subject to cross-examination, cannot prove the truth of their contents. They serve primarily as tools for contradiction --- a mechanism to test the credibility of witnesses who depart from their earlier accounts during trial. The provision preserves investigative efficiency while protecting the accused from potential misuse of unsworn police statements.

Section 183 BNSS (Section 164 Cr.P.C.) bridges the gap between police-recorded inadmissibility and court-led admissibility by vesting the power to record confessions in Judicial Magistrates. Such confessions, when voluntary and procedurally sound, have full substantive evidentiary value and can independently sustain a conviction. Non-confessional statements under this section serve a corroborative and impeachment function. The provision reflects the Indian legal system's commitment to the principle that justice must not only be done but must be seen to be done, by entrusting the sensitive function of recording confessions to independent judicial officers with mandated procedural safeguards.

Together, these provisions ensure that the rights of the accused are protected at every stage --- investigation, inquiry, and trial --- while enabling the State to prosecute crime

effectively. Their correct application by trial courts is indispensable to the integrity of the criminal justice system.

--- PRESENTED BY ---

DISTRICT AND SESSIONS COURT, KABIRDHAM AT KAWARDHA (C.G.)