

Section 161 Cr.P.C: Examination of witnesses by police

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Introduction:

The section 161 of the Code of Criminal Procedure, 1973 (or 'Cr.P.C.') titled "Examination of witnesses by police" allows an investigating officer to question a person who is supposed to be familiar with the facts and circumstances of the case.

Scope and relevance of statement under section 161 of CR.P.C:

The purpose of section 161 is to acquire evidence that can later be used in court. A charge may be formulated against the accused in a trial before a court of session or in a warrant-case trial based on the statement recorded by the police u/s 161.

This section gives police the authority to question witnesses during an investigation. Oral examination may be conducted on anyone who is supposed to be familiar with the facts and circumstances of the case. According to the Privy Council in *Pakala Narayana Swami v. Emperor*¹, the words "any person" in Section 161 (1) also encompass a person who may be accused of the crime and suspects.

Subsection (2) requires a person being questioned by police in the course of an inquiry to honestly answer all questions asked of him, except those that are likely to incriminate him or expose him to a criminal accusation. This section, as well as Article 20(3) of the constitution, protects such individuals from queries that could lead to criminal charges. Article 20(3) establishes a fundamental right that no one accused of a crime may be forced to testify against themselves.

The Supreme Court stated in *Nandini Satpathy v. P.L Dani*² that an accused person cannot be forced to answer questions simply because the responses are not implicative when seen in isolation and limited to that case. Even if the investigation is not about that, he has the right to keep his lips shut if the answers sought have a realistic chance of exposing him to guilt in some other accusation, actual or imminent.

¹ AIR 1939 PC 47

² 1978 SCC (Cri) 236

Witnesses' remarks under Section 161 should be recorded in the first person and should not be in the form of indirect speech. In an examination of witnesses under this section, no oath or affirmation is necessary. The investigating officer is not required to reduce the statement of the person examined to writing. However, if the statement is recorded, it must be recorded exactly as it was made. The preparation of a précis of a statement recorded under Section 161 of the Code is prohibited under sub-section (3). It is also stated that any statement given under this provision may be recorded using audio-video electronic devices. A woman's statement must also be recorded by a woman police officer or any women officer, according to the law.

*Ravikant Sharma v. State of NCT of Delhi*³ The Supreme Court explained the privilege in relation to statements of witnesses recorded during an investigation under Section 161 of the Evidence Act and held that any order to supply the "gist" of such statements was unsustainable because such statements of witnesses recorded during an investigation do not include the investigation officer's interpretation.

Evidentiary Value:

The police statements taken under section 161 of the Criminal Procedure Code are not admissible in court. They can be utilised by the defence to refute witnesses for the prosecution.⁴ When a prosecution witness becomes hostile, the Public Prosecutor can cross examine that witness with the permission of the court, using his 161 statements to establish contradiction.

When 161 statements fall under section 27 or 32(1) of the Indian Evidence Act, they can be utilised as evidence by the prosecution. Statements made under section 161 are not considered substantive evidence⁵. If an injured witness's statement was recorded as a dying declaration but he lived, the statement must be regarded S.161 statements⁶. However, if that person dies, the 161 statements can be considered a dying declaration⁷.

In criminal trials, S.161 statements cannot be utilised against the accused⁸. However, using those statements in civil disputes is not prohibited⁹. They may not be used for any reason other

³ (CrI.) No. 3480, 2006

⁴ In *Pebam Ningol Mikoi Devi v. State of Manipur and others* [(2010) 9 SCC 618], *Jayalekshmi vs State Of Kerala*, WP(CrI.). No. 280 of 2015 (S).

⁵ *Sethuraman @ Ramanathan vs State Rep. By, CrI. M.P.(MD). No.2985 of 2016*; *Md Jafrulla Khan v. Inspector of police, Hyderabad*,2000(2) ALT(Cri) 9 A, *Ram Swarup v. State of Rajasthan*,2005 SCC(Cri)61.

⁶ *Ranjit Singh & Anr v. State of MP*,2011 Cr LJ283(SC).

⁷ *Mukesh Gopal v. State of Gujarat*,2010 Cr LJ4721(SC)

⁸ *Bontu Venkata Rao and anr. Vs. Kalla Venkataramana and anr*, 2005ACJ77; 2003(3)ALD314

⁹ *Bonta Venkata Rao v. Kolla Venkata Ramana*,2003(2) ALT(Cri)572AP.

than to contradict a witness in the way specified in S. 162 proviso (1). In addition, the FIR is not a significant piece of evidence¹⁰. The Witness is not challenged with the statement under Sections 161 and 162 of the Criminal Procedure Code. The Court is not permitted to exploit the statement in any way to harm the witness in the future¹¹.

Such statements are unreliable if a thumb impression or signature is produced¹². The signing of a statement merely cautions the Court and may entail a more thorough examination of the evidence, but the evidence cannot be rejected completely on this basis¹³. If properly explained, police detention of witnesses under section 161 of the Criminal Procedure Code is not fatal to the prosecution case¹⁴.

State Amendment

Chhattisgarh

The second proviso to sub-section (3) of section 161 of the Code, shall be substituted with the following proviso, namely: -

Provided further that statement of the woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 354E, section 376, section 376A, section 376B, section 376C, section 376D, section 376E, section 509, section 509A or section 509B of the Indian Penal Code, is alleged to have been committed or attempted, shall be recorded, as far as possible, by woman police officer and shall also be recorded by audio-video means, as far as possible, and it shall be the duty of such police officer to take all such steps as are necessary to protect the identity of the woman.¹⁵

Arunachal Pradesh-

Amendment of section 161.-In the second proviso to sub-section (3), of section 161 of the principal Act, for the words, figures and letters "section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code "the words, figures and letters namely section 354, section 354A, section 354B, section 354C, section 354D, section 376,

¹⁰ Baldev Singh vs. State of Punjab (AIR 1991 SC 31); Rajendra singh vs. State of U.P – (2007) 7 SCC 378

¹¹ Dandu Lakshmi Reddi vs. State of A.P. (AIR 1999 SC3255).

¹² Gurnam Kaur vs. Bakshish Singh and others – AIR 1981SC 631.

¹³ State of U.P vs. M.K. Anthony – AIR 1985 SC 48.

¹⁴ Banti v. State of MP, 2004 Cr LJ 372 SC.

¹⁵ Ins. by Act 5 of 2009, s. 12 (w.e.f. 31-12-2009).

section 376A, section 376AA, section 376B, section 376C, section 376D, section 376DA, section 376E or section 509 of the Indian Penal Code shall be substituted.¹⁶

Provision of Examining Witness by Police in Other Countries

Singapore

In Singapore, the Criminal Procedure Code permits the police to take statements under Section 22 of the Criminal Procedure Code, which authorises the police to question anyone orally who they believe has knowledge of the facts and circumstances of the matter under investigation. The examinee is required to tell the truth about the facts of the case, but the accused is not required to say anything that could lead to a criminal accusation. The witness statement is a statement given by a person.

Pakistan

Similar to India's Code of Criminal Procedure, Pakistan's Code of Criminal Procedure contains provisions for police interrogation of witnesses. On this aspect, the law is same (Section 161 and 162). The common law of Canada also allows police to question a witness before filing a case. The witness must honestly answer all questions, but he also has the right to remain silent and is protected from self-incrimination.

United Kingdom

A "witness statement" is a written record of the evidence in the United Kingdom. During the course of an investigation, an investigator may obtain a statement from a witness. The evidence contained in the statement has the potential to influence a variety of critical investigative choices. The witness may be asked to give oral testimony if there is a prosecution that leads to a trial. However, there are processes in place that allow the contents of a witness statement to be utilised as evidence in criminal proceedings without requiring the witness to appear in court. 'Statements' include those made freely on a form compatible with section 9 of the Criminal Justice Act (CJA), such as an LP70, and those made voluntarily on a form suitable with section 20 of the HSW Act, such as the LP7 form. The latter has limitations in terms of how it can be used in court.

¹⁶ Ins. by Act 13 of 2013, s. 15 (w.e.f. 3-2-2013).

Conclusion

The police examination of witnesses is regarded as an important stage in the criminal justice system, in which witnesses are examined before the trial begins under various articles of law. The purpose of 161 is to acquire evidence that will be used at trial. A charge may be established against the accused based on such remarks in the case of a warrant case or before a sessions court. A methodical and intelligent approach to witness interrogation clarifies the case and improves the justice delivery system.