

THE LODESTAR OF JUSTICE: EXAMINING THE FIRST INFORMATION REPORT UNDER THE BHARTIYA NAGARIK SURAKSHA SANHITA

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Abstract:

The First Information Report (FIR) stands as the landmark pillar upon which the structure of criminal justice in India is built. It is the formal induction of the investigative process, effected by information relating to the commission of a cognizable offense. This paper examines the significance of the FIR within the framework of the newly formed Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the colonial-era Code of Criminal Procedure, 1973. By analyzing the relevant provisions of the BNSS, this paper studies the procedural nuances of FIR registration, its evidentiary value, the rights of the informant and the accused, and the expected impact of the new Sanhita on this first step towards justice. Additionally, it will consider the progress and challenges introduced by the BNSS regarding FIR, including provisions for e-FIR and preliminary inquiries, and ultimately examine their value in promoting a fair, transparent, and efficient criminal justice system.

Keywords:

First Information Report (FIR), Bharatiya Nagarik Suraksha Sanhita (BNSS), Cognizable Offence, Investigation, Rights of Informant, Rights of Accused, E-FIR, Preliminary Inquiry, Criminal Justice System.

Introduction :

The administration of criminal justice depends upon the structured and just induction of legal proceedings. In India, this process mainly starts with the lodging of a First Information Report (FIR). It is universally understood as the initial written account of a cognizable offence, provided to the officer in charge of a police station. This formative document contains the who, when, what, and where of the alleged crime. Forming the base for successive investigation, prosecution, and adjudication.

The Bharatiya Nagarik Suraksha Sanhita, 2023, formed to modernize and update the criminal justice system, retains the fundamental concept of the FIR while introducing certain modifications and additions to the existing procedural framework under the Code of Criminal Procedure, 1973 (CrPC). This paper aims to critically analyze the role and

significance of the FIR within the competence of the BNSS, explore the changes brought about by the new legislation, and their expected implications for all involved in the criminal justice process.

The importance of the FIR cannot be overstated. It deals with the multiple crucial purposes: it is the first record of the alleged offence, reducing the possibility of trimming or twists over time; it informs the police about the commission of a cognizable offence, thereby start their statutory duty to investigate; it provides a crucial starting point for the investigation, guiding the primary line of inquiry; and it ensures that the magistrate is instantly informed about the reported crime, facilitating judicial oversight.

The specific provision of the BNSS is relevant to the FIR, and the corresponding provisions of the CrPC are compared and contrasted. It will examine the mandatory nature of FIR

registration in cognizable cases, the procedure for lodging an FIR, the concept of the “ZERO FIR”, the introduction of e-FIR, and the implications of the newly formed preliminary inquiry in certain categories of offences. Analyze the evidence value of FIR and the safeguards provided to both the informant and the accused at this initial stage of the criminal justice process. This paper provides a comprehensive understanding of the FIR within the context of the BNSS and its future of criminal justice administration in India.

The FIR under the Bharatiya Nagarik Suraksha Sanhita: A legislative overview

The Bharatiya Nagarik Suraksha Sahita, 2023, outlines the provisions related to the recording of the first information in **Section 173**. This section, while expressing the structure of **Section 154** of the CrPC, introduces certain remarkable changes and classification

Procedure for lodging an FIR:

FIR is registered under Section 173 of the BNSS, 2023. Anyone who has information about the commission offence can lodge an FIR. He/she doesn't need to be the victim himself. A police officer can lodge an FIR on his own if he comes to know about the commission of a cognizable offence, in Hallu & ors. Vs the state of MP⁸⁵⁵The Supreme Court of India interpreted section 154. The court held that section 154 CrPC (now section 173 BNSS) does not require that the report of a cognizable offense be given by a person who has personal knowledge of that incident reported.

They reasoned that the language of section 154 (now section 173 BNSS) speaks of “information relating to the commission of a cognizable offence given to the officer in charge of a police station”. This does not limit the source of the information to a person who knows of the incident.

The court interpretation of section 154 OF CrPC (now section 173 BNSS) has been followed by

courts in later cases. In **State of Punjab vs. Gurmit Singh**⁸⁵⁶ The Supreme Court held that a police officer registers an FIR based on information received from reliable sources, even if the officer does not have personal knowledge of the incident.⁸⁵⁷

The procedure of lodging an FIR under the BNSS remains largely constant with the CrPC. An individual with knowledge of a cognizable offence can provide information to the officer in charge of the nearest police station, either orally or in writing. If the information is provided orally, the police officer is duty-bound to reduce it to writing and read it over to the informant to ensure accuracy before taking their signature. A copy of the record information, i.e., the FIR, must be given immediately, free of cost, to the informant. These provisions ensure transparency and empower the informant with a formal record of their complaint.

In cases involving offences against women (e.g., sexual offences or domestic violence), a female officer or an authorised woman must record the FIR. This ensures victim sensitivity. For individuals with disabilities, the recording can occur at their residence or a suitable location, using interpreters or special educators as needed.

Electronic filing of FIR (E-FIR):

A considerable upgrade introduced by the BNSS is the clear recognition of electronic communication as a valid mode for providing information relating to a cognizable offence under **Section 173(1)(ii)**. This provision states that if information is given by electronic means of communication, it shall be taken on record by a police officer and signed within three days by the person giving it. This formalizes the practice of e-FIRs, aligning the legal framework with increasing belief in digital platforms for communication and grievance redressal. The introduction of e-FIRs is expected to enhance accessibility to justice, particularly for individuals in remote areas or those who may find it difficult to visit a police station physically.

⁸⁵⁵ AIR 1974 SUPREME COURT 1936

⁸⁵⁶ AIR 1996 SUPREME COURT

⁸⁵⁷ <https://indiankanoon.org>

However, the requirement of physical signing within three days might pose a challenge in certain situations, and careful implementation guidelines are required.

Zero FIR:

While the term “Zero FIR” does not find express mention in the BNSS, the essential principle is completely recognized and reinforced by the mandatory registration of cognizable offenses irrespective of territorial jurisdiction. A Zero FIR is essentially an FIR registered by the police station that does not have territorial jurisdiction over the place of the offence. Once registered, the FIR is then transferred to the police station having the appropriate jurisdiction for investigation. The BNSS, by asserting the immediate recording of information about a cognizable offense, supports the purpose of zero FIR, ensuring that victims are not turned away due to jurisdictional technicalities and that prompt action can be initiated.

Including the Zero FIR provision is beneficial for victims since police officers are obligated to record the initial information, irrespective of territorial jurisdiction. The words in section 173(1) “irrespective of the area where the offence is committed” remove the jurisdictional barriers.

It is important to observe that the concept of Zero FIR is not a recent introduction in the Indian criminal law system. In 2015, advice from the Ministry of Home Affairs, the government recommended the filling of Zero FIR, specifically emphasising the necessity of registering Zero FIR in various cases.

For example, in the case of the **state AP vs. Punati Ramulu and others**⁸⁵⁸. The Supreme Court held that the constable should have recorded information about the cognizable offence and forwarded it to the police station responsible for the area where the crime was allegedly committed, despite any territorial jurisdictional limitations.

It helps ensure that the legal process starts promptly and that the investigation is not hindered by jurisdictional issues.

Preliminary inquiry before FIR registration (section 175):

An important exception from the general rule of immediate FIR registration is the introduction of Section 175 in the BNSS, which empowers a police officer to conduct a preliminary inquiry to ascertain whether a cognizable offence has been committed in certain specified categories of cases. These categories of offences relate to marriage, family affairs, and sexual offences. The preliminary inquiry is mandated to be completed within fifteen days from the date of receiving the information, the reasons for conducting such inquiry, it appears that a cognizable offense has been committed, an FIR shall be registered.

The introduction of a preliminary inquiry aims to address concerns regarding the misuse of FIRs in sensitive matters. However, it also raises concerns about the potential delays in initiating a formal investigation and the possibility of influencing the inquiry process. Clear guidelines and strict adherence to the agreed-upon timeframe are crucial to prevent this provision from becoming a tool for unwarranted delay or denial of justice to genuine victims.

Mandatory Registration of FIR in cognizable offences:

Sub- section (1) of Section 173 of the BNSS especially mandates that every information relating to the commission of a cognizable offences, if given to the orally to an officer in charge of a police station, shall be reduced to writing by or under direction and be read over to the informant; and every information, whether given in writing or reduced to writing as said, shall be signed by the person giving it. The Sanhita retains the main provisions that the reality of such information shall be entered in a book to be kept by the officer in such form as the state government may prescribe in this behalf.

⁸⁵⁸ AIR 1993 SUPREME COURT 2644

If police officer refuse to record the FIR of the complaint, then he may send the substance of such information, in writing and by post, to the Superintendent of police, if satisfied that such information discloses the cognizable offence, the superintendent of police can either investigate the case himself or direct an investigation to be made by any police officer subordinate to him.

Section 173(4) of the BNSS allows for the option to apply to the magistrate under section 175(3) of the BNSS if the FIR is not registered despite the superintendent of police's intervention.

This mandatory registration highlights the principle laid down by the Supreme Court in landmark cases like **Lalita Kumari vs Government of Uttar Pradesh & others**.⁸⁵⁹ It admitted that the registration of the FIR has been mandatory if the information discloses the commission of a cognizable offence, and no preliminary inquiry is permissible before registration in such cases, except in certain specified areas. The BNSS, while introducing the concept of preliminary inquiry in Section 175, maintains the general rule of obligatory FIR registration for cognizable offences.⁸⁶⁰

Before this ruling, the registration of FIR was often subject to the discretion of police officers, leading to inconsistent practices and potential delays in the initiation of investigations. The Supreme Court recognised the crucial role of the FIR in initiating criminal proceedings and safeguarding the rights of the victims and aggrieved parties.

The court order justified the importance of immediate and impartial action by the police in registering an FIR. The Supreme Court further clarified the procedure of registering an FIR. It emphasised that FIR should be registered based on the information provided by the complainant without requiring a process, and eliminated unnecessary delays.

Copy to the victim:

Section 154(2) of the CrPC orders that a copy of the information provided free of cost to the informant, section 173(2) of the BNSS expands this provision to include both the victim and informant.

Digital documentation and public access to the FIR information

FIR can be given online on the website of the agency; e.g., the Delhi police has its website <https://delhipolice.gov.in/> for online FIR registration.

In the case of Youth Bar Association of India vs. Union of India Supreme Court held that the FIR in the case should be on the relevant agency website within 24 hours of its registration.

Rights of the Informant and the Accused Concerning the FIR

The process of FIR registration and the investigation involves both the informant and the potential accused. The BNSS, like the CrPC, safeguards certain rights of both parties at this initial stage.

Rights of the informant:

- **Rights to lodge an FIR:** Any person knowing of a cognizable offence has the right to lodge an FIR at the police station having jurisdiction or through the method of a zero FIR or E-FIR.
- **Right to a free copy of the FIR:** The informant is entitled to receive a copy of the FIR immediately after its registration, free of cost.
- **Right to information on investigation progress:** the BNSS states that the police officer shall, within ninety days from the date of registration of the FIR, inform the informant or the victim of the steps taken in the investigation and the progress made.
- **Right to seek redressal for refusal to register FIR:** if the officer in charge of a police station refuses to record the information, the informant can send the

⁸⁵⁹ AIR 2014 SUPREME COURT 187

⁸⁶⁰ <https://indiankanoon.org/search/?formInput=lalita%20kumari> (n.d.).

substance of the information in writing by post to the superintendent of police, who, if satisfied that the information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him. Additionally, the informant can also approach the jurisdictional magistrate with a complaint under section 210 of the BNSS, seeking directions for investigation.

Rights of the accused:

While the FIR is primarily a record of the informant's allegations, it can have significant implications for the potential accused. The BNSS, consistent with constitutional principles and established jurisprudence, ensures certain safeguards for the accused even at this preliminary stage:

- **Right to know the contents of the FIR:** although the accused is immediately provided with a copy of the FIR as a matter of right, they are entitled to know the allegations against them during the investigation. Section 230 of the BNSS mandates that the magistrate shall furnish the accused, free of cost, with a copy of the FIR and other relevant documents after the charge sheet is filed.
- **Right to seek anticipatory bail (section 482 BNSS):** In anticipation of arrest in a non-bailable offence, the potential accused can approach the high court under its inherent power to seek the quashing of the FIR to prevent undue harassment.
- **Protection against false FIR:** The Indian penal code, (which is being replaced by the Bharatiya Nyaya Sanhita, 2023, but remains in force until the new Sanhita is fully implemented) contains provisions to penalize individuals who lodge false FIR (Section 182 and 211 IPC, corresponding to Sections 12299 and 212

BNSS). This provides a legal recourse for individuals falsely implicated in a crime.

Impact of the Bharatiya Nagarik Suraksha Sanhita on FIR: advancements and challenges

The Bharatiya Nagarik Suraksha Sanhita introduces several changes that are likely to impact the process and significance of the FIR in India.

Advancements:

- **Formal recognition of E-FIR:** The clear introduction of electronic communication as a valid mode for lodging FIR under section 173 is a progressive step that aligns with the digital age and enhances accessibility to justice.
- **Mandatory timeline for informing the informant:** the condition under section 176 for informing the informant or victim about the progress of the investigation within ninety days promotes transparency and accountability in police functioning.
- **Consideration of preliminary inquiry in specific cases:** The introduction of preliminary inquiry under section 175 in sensitive cases to prevent the misuse of FIR and protect individuals from false implication, particularly in matrimonial, family, and sexual offense cases.

Challenges

- **Implementation of E-FIR:** The practical implementation of E-FIR, including the infrastructure requirements, authentication of digital complaints, and ensuring their complete incorporation with the traditional FIR registration process, will be crucial. The requirement of physical signing within three days might also need to be reconsidered for greater efficiency.
- **Potential for delay due to preliminary inquiry:** while the preliminary inquiry is intended to prevent misuse of FIR, there is a risk of it causing unwanted delay in initiating formal investigation, potentially

leading to loss of crucial evidence or allowing the accused to tamper with it. Strict observation of the fifteen-day timeframe and clear guidelines are essential to reduce this risk.

- Balancing information and accused rights: striking a fine balance between the rights of the informant to have their complaint registered and investigated promptly, and the rights of the potential accused to the protected from false and malicious FIR, will be a continuing challenge under the new Sanhita. The implementation of the preliminary inquiry provision needs careful monitoring to ensure it does not disproportionately affect the rights of genuine victims.
- Awareness and training: Effective implementation of new provisions related to FIR under BNSS will require comprehensive awareness campaigns for the public and training for law enforcement personnel and the judiciary.

CONCLUSION

The first information report remains the critical first step in the criminal justice system in Indian criminal justice system under the Bharatiya Nagarik Suraksha Sanhita, 2023. The new Sanhita largely retains the fundamental principle governing FIR registration while introducing progressive changes such as the formal recognition of E-FIR and the mandatory timeline for informing complaints about investigation progress. The introduction of preliminary inquiry in specific categories of cases represents a significant shift aimed at preventing the misuse of FIR, but its implementation requires careful oversight to prevent delays in delivering justice.

The success of the BNSS in modernizing the criminal justice system will, in no small measure, depend on the effective and fair application of the provisions related to the FIR. Ensuring that the process of FIR registration is accessible, transparent, and fair to all stakeholders is

supreme. Continued monitoring, evaluation, and adaptation of the implementation guidelines will be necessary to address the challenges and maximize the benefits of the new provisions.

The FIR is more than just a piece of paper. It is the guide for the initial stage of justice. As India transitions to the new legal framework under the Bharatiya Nagarik Suraksha Sanhita, a deep understanding of the role and implications of the FIR is essential for upholding the rule of law and ensuring that justice is not only done but is also seen to be done. The journey towards a more efficient and equitable criminal justice system begins with this crucial first step, and the provides a renewed opportunity to strengthen this foundation.

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