

“Section 173 BNSS and the FIR: An Analytical Study of Legal Provisions and Judicial Interpretations”

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Abstract

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, introduced significant betterment in India's criminal procedural law, notably through Section 173, which replaces Section 154 of the Criminal Procedure Code. This paper critically examines the legislative provisions of Section 173, focusing on the First Information Report (FIR) mechanism, the introduction of preliminary inquiries and the implications of these changes in light of judicial interpretations, particularly the Supreme Court's ruling in *Lalita Kumari v/s Govt. of Uttar Pradesh*. The research paper highlights the potential conflicts between the new statutory provisions and established judicial mandates.

Introduction

The enactment of the BNSS marks a pivotal change in India's approach to Criminal Procedure, aiming to modernize and streamline legal processes. The word FIR is nowhere mentioned in Section 154 Cr.PC and Section 173 Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023. Section 173 of BNSS introducing concepts like Zero FIR, Electronic communication and Preliminary inquiries. While these changes aim to enhance efficiency and victim-centricity, they also raise questions about their alignment with judicial precedents and potential implications for justice delivery. Basically an offence is against the whole society not only against specific individual. If we make comparison between Civil procedure and criminal procedure, in civil procedure – Order 6 deals with Pleading, Order 7 deals with Complaint and Order 7 deals with written statement. Pleading is under Oath but FIR not under Oath. If Pleading is false then this is also a punishable Act under Indian Penal Code and also under Bharatiya Nyaya Sanhita. FIR is not encyclopedia of facts. In FIR only material facts are involved. Material facts means all those facts which would be important for a judgement to be passed. The main object of FIR is to start the Criminal Justice System. FIR is set the criminal justice system into motion. BNSS gives Power to Public Prosecutor that he will have right to check investigation of police. FIR is accusation. It is not only accusation but it is complete picture of whatever happened with the person. Police investigation starts after FIR.

Object of FIR

1. To set the Criminal Justice System into motion.
2. Information about criminal activity.
3. It is not written anywhere that only injured/victim will launch an FIR.

Whether there is any format of FIR?

There is no format of FIR is mentioned in Criminal Procedure Code, 1973 and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 because it comes immediately after incident. Delay in FIR should be Fatal.

Whether FIR filed by Witness?

Yes, FIR can be filed by witness. Even accused can also file FIR.

Whether there is any specific time for filing FIR?

No fixed time for filing FIR is mentioned in Criminal Procedure Code, 1973 and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

Whether FIR is Substantive Piece of Evidence?

No FIR is not Substantive Piece of Evidence generally but there is one exemption i.e. dying declaration.

Overview of Section 173 BNSS

Section 173 of the BNSS outlines the procedures for recording information related to cognizable offences:

- **Sub-section (1)** Information can be provided orally or electronically is written in BNSS why there is no mention about written form. Oral information must be reduced to writing and read back to the informant, shall be signed by the informant. In case information is provided in Electronic form requires the informant's signature within three days to be officially recorded. The State Govt. will provide a form in which all the information related to FIR is recorded so form will be followed.
 - If the information is given by woman against whom any offence under Section 64 to 71, Section 74 to 79 and Section 124 of Bharatiya Nyaya Sanhita, 2023 is alleged to be committed or attempted, then such information such be recorded by a women police officer or any women officer i.e. SDM, Revenue Officer.

- a) If such woman is temporary or permanently mentally or physically disabled then such information shall be recorded by a police officer at the residence of the concerned person or at a convenient place, in the presence of special educator or interpreter.
 - b) When such woman given this information then it shall be videographed.
- **Sub-section (2)** - Copy of Statement recorded is given to the concerned person free of cost.
 - **Sub-section (3)** - For cognizable offences punishable with imprisonment of 3 years or more but less than 7 years, a preliminary inquiry may be conducted **within 14 days**, subject to prior approval from an officer not below the rank of **Deputy Superintendent of Police**.
 - **Sub-section (4)** - If a police officer refuses to record the information, the aggrieved person can approach to the Superintendent of Police and subsequently, if he again aggrieved then approach to the Magistrate, to initiate an investigation. In this case Magistrate will have all the powers of the officer incharge of police station including Arrest, Search and Seizure.

Key Innovations and Their Implications

Zero FIR

The BNSS codifies the concept of Zero FIR, allowing the registration of FIRs irrespective of Jurisdictional boundaries. This ensures that aggrieved person can report offences without delay and the FIR can later be transferred to the appropriate jurisdiction.

Electronic Communication

Section 173 permits the submission of information through electronic means, such as emails, Text messages, Whatsapp or online portals. However, the informant must sign the information within 3 days for it to be officially recorded.

Preliminary Inquiry

The introduction of a preliminary inquiry for certain offences allows police officers to assess the validity of a complaint before registering an FIR. This provision, however, contrasts with the Supreme Court's directive in *Lalita Kumari v/s Government of UP*, which mandates immediate registration of FIRs upon receiving information about a cognizable offence, allowing preliminary inquiries only in specific circumstances.

Judicial Interpretations and Conflicts

The Supreme Court, in *Lalita Kumari v/s Government of Uttar Pradesh*, emphasized the mandatory nature of FIR registration upon receiving information about a cognizable offence, limiting preliminary inquiries to exceptional cases. The BNSS's provision for a 14 day preliminary inquiry period potentially conflicts with this ruling, raising concerns about delays in justice delivery and possible misuse of discretion by law enforcement agencies.

Victim Centric Concerns

While the BNSS aims to be more victim-centric, certain provisions may inadvertently undermine victims' rights. For instance, Section 173(2) states that a copy of the FIR shall be given to the "informant or the victim," which could result in situations where the victim does not receive the FIR if they are not the informant. Legal experts have suggested amending the language to ensure both parties receive copies, thereby safeguarding victims' participatory rights in the criminal justice process.

Lalita Kumari v/s Government of Uttar Pradesh¹

The Supreme Court held that the registration of an FIR is mandatory under Section 154 of the Code of Criminal Procedure (CrPC) if the information discloses the commission of a cognizable offence. Preliminary inquiries are permissible only in certain cases, such as matrimonial disputes, commercial offences, and medical negligence cases.

State of Andhra Pradesh v/s Punati Ramulu & Others²

The Court emphasized that police officers are duty-bound to register an FIR upon receiving information about a cognizable offence. Failure to do so violates the complainant's rights and undermines the criminal justice system.

Surender Kaushik v/s State of Uttar Pradesh³

The Supreme Court clarified that multiple FIRs can be registered if they pertain to different incidents forming part of the same transaction. Each FIR would be distinct in nature, ensuring a comprehensive investigation of all aspects related to a criminal act.

¹ (2014) 2 SCC 1.

² 1993 Supp (3) SCC 302.

³ (2013) 5 SCC 148.

Kishan Singh (Dead) v/s Gurpal Singh & Others⁴

The Court held that a second FIR for the same offence is not permissible. If multiple FIRs are lodged for the same incident, only the first FIR is valid, and subsequent ones are to be treated as statements under Section 161 of the CrPC.

Amit Kumar & Others v/s Union of India & Others

The Supreme Court reinforced the mandatory nature of FIR registration under Section 154 CrPC for cognizable offences. The judgment highlighted the need for institutional accountability and emphasized that police officers cannot refuse to register an FIR when a cognizable offence is disclosed.

Ramesh Kumari v/s Government of NCT of Delhi⁵

The Court reiterated that a preliminary inquiry is not a prerequisite for registering an FIR. If information received by the police discloses a cognizable offence, they are obligated to register an FIR immediately.

Imran Pratapgarhi v/s State of Gujarat⁶

The Supreme Court held that posting a poem promoting sacrifice and non-violence does not attract offences under Sections 196, 197, 299, 302, or 57 of the Bharatiya Nyaya Sanhita (BNS). Therefore, FIR registration in such cases constitutes an abuse of law.

Conclusion

Section 173 of the BNSS introduces several reforms aimed at modernizing the FIR registration process and enhancing victim participation. However, certain provisions, particularly those concerning preliminary inquiries and the distribution of FIR copies, may conflict with established judicial interpretations and potentially hinder timely justice delivery. To ensure the BNSS achieves its intended objectives, it is imperative to address these inconsistencies and align the statutory provisions with constitutional mandates and judicial precedents.

⁴ (2010) 8 SCC 775.

⁵ (2006) 2 SCC 677.

⁶ CrI.A. No. 1545/2025.