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Constructing and Deconstructing the Provisions of FIR: Methodology, Misuse, Denial & Possible Remedies

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India is a nation that firmly abides by its constitution, giving its citizens a number of basic rights and obligations. The nation also has a highly stringent criminal justice system that was created to safeguard the rights of citizens. Indian Police Service is recognized as an effective tool for crime detection and prevention. One such obligation of citizens is to report crimes they witness or in which they themselves become victims for which provision of FIR is provided by Indian Enactment, Code of Criminal Procedure 1973. However, studying these provisions makes them look very simple and straightforward but when it comes to reality, the situation is jumbled and complicated, with frequent abuse of authority and a general lack of faith among the populace in the police. On the other hand, it can be observed that the Indian Judicial system is as active as a bee in interpreting and filling in the gaps brought by misunderstanding, corruption, and the abuse of authority. The provisions of FIR as set out by legislation, issues with the process, misuse of authority, and the discovery of different alternative remedies are all covered in this article.

Keywords: *crpc, police service, fir, misuse of authority, denial of fir, judicial pronouncements.*

INTRODUCTION

India is a state that operates in accordance with its constitution¹. Here, the Constitution is adopted as a path on which and in accordance with which our nation shall advance. Constitution has laid certain rules of conduct on which both citizens and the government have to function accordingly which we call as Law. Generally speaking, the law is a road for the smooth traveling of society, where everyone's interests are taken care of. These laws can be said to be the rules of actions to which men are obliged to make their conduct conformable. This is what makes a country genuinely democratic and effective, where the constitution controls everything.

As said, India is a democratic nation, and Indian Citizens are guaranteed certain rights which seek to protect their interests and existence in society. There is an effective mechanism laid by Indian statutes where if in case any citizen's rights are violated or anywhere breach of law occurs or any person commits an act declared illegal then the Defense system of the Country comes into force. Clause 2 of Article 312 of the Indian Constitution² creates an all-India Service to be known as the 'Indian Police Service' and The Police Act, 1861³ also mentions about creation and reorganization of the police for an efficient instrument for the prevention and detection of crime. Indian Enactments like the Indian Penal Code, 1860⁴, and Code of Criminal Procedure, 1973⁵ define certain duties and powers of the police, both statutory and obligatory. Chapters X, XI, and XII of the 1973 Code of Criminal Procedure⁶ specifically address the role of police in the criminal justice system and categorize crimes into two categories: cognizable offences and non-cognizable offences. These sections also grant police certain powers and duties for taking preventative action and conducting investigations into and against the commission of cognizable offences. These provisions are made available to citizens in order to defend everyone's rights, whether they pertain to the right to life, liberty, or a fair trial. As the constitution grants citizens a number of fundamental rights, it also imposes obligations on them,

¹ Constitution of India 1950

² Constitution of India 1950, art. 312(2)

³ Police Act 1861

⁴ Indian Penal Code 1860

⁵ Code of Criminal Procedure 1973

⁶ Code of Criminal Procedure 1973

such as the obligation to report crimes they witness or in which they themselves become victims. This obligation is outlined in Section 39 of the Code of Criminal Procedure⁷, which requires members of the public to report crimes they witness to the police so that the offender can be brought to justice. Additionally, it is widely established legislation that it is illegal to ignore or conceal the crime.

PREVENTION OF CRIME

The occurrence of any cognizable offense amounts to a crime. Chapter XI of the Code of Criminal Procedure⁸ specifically deals with the power and duty of the police to take preventive action against Crime. To be specific, section 149 of the Code of Criminal Procedure⁹ says that every police officer has the right to intervene in order to stop any cognizable offence from being committed, and they must do so to the best of their abilities. And Section 151 of the Code of Criminal Procedure¹⁰ gives the power to police of arrest to prevent the commission of any cognizable offense.

PROVISION & PROCEDURE OF FIR

As was previously said, it is important to report crimes and other cognizable violations in both important and necessary circumstances. However, it is unclear which section addresses this issue precisely. It might be concluded that the best answer to this problem is provided by Section 154 of the Code of Criminal Procedure¹¹. This section mentions that any information about the commission of a cognizable offense that is given verbally to a police officer in charge of a station must be put in writing by him or under his supervision and read to the informant; additionally, all such information, whether given verbally or in writing as described above, must be signed by the person providing it, and its contents must be recorded in a book maintained by the officer in the manner prescribed by the State Government. This Book is called First Information Report i.e., FIR. Information received at a police station under any of the following headings must be

⁷ Code of Criminal Procedure 1973, s 39

⁸ *Ibid*

⁹ Code of Criminal Procedure 1973, s 149

¹⁰ Code of Criminal Procedure 1973, s 151

¹¹ Code of Criminal Procedure 1973, s 154

recorded in the FIRST INFORMATION REPORT book, which is required under section 154 of the Code of Criminal Procedure.¹²

- Cases that fall under the purview of the Indian Penal Code or any other currently enacted legislation,
- The complaints (of a recognizable kind) that magistrates forwarded to the Police for investigation,
- All incidents that need inquiry, including a) suicides; b) accidental deaths; c) fires; d) livestock straying; and e) missing people (men, women, or children); only in cases where there is cause to suspect the conduct of crimes that are punishable by law,
- Cases of non-recognizability sent to the Police for investigation
- After it has been decided to present cases under sections 107 to 110 of the Code of Criminal Procedure¹³ before a magistrate,
- The central excise and customs agency which must be notified of any violations,
- Reports were submitted to a magistrate in order for sections 144 and 145 of the Code of Criminal Procedure¹⁴ to be followed, and
- When a police officer detains a person or a group of people in order to stop them from committing an offence under section 151 of the Code of Criminal Procedure.

As per these provisions, it becomes the duty of the police to register the information so received when it showcases the commission of cognizable offenses and once the FIR gets registered, the investigation¹⁵ process begins where several evidences are collected, witnesses, identified are questioned, the crime scene is thoroughly inspected, case property which was recovered is sent for forensic testing and multiple or several statements are recorded. After such an investigation the police come to the conclusion that the culprits can be apprehended if the police are successful in locating and identifying them. Police then prepare a final report in which one or several

¹² 'First Information Report' (Government of Puducherry)

<<https://police.py.gov.in/Police%20manual/Chapter%20PDF/CHAPTER%2038%20A%20First%20Information%20Report%20to%20the%20Police.pdf> > accessed 16 October 2022

¹³ Code of Criminal Procedure 1973, s 107

¹⁴ Code of Criminal Procedure 1973, s 144

¹⁵ Code of Criminal Procedure 1973, s 156

charges are framed against the person, charges include under which sections of the Indian Penal Code and other current enactments the person so identified is held accused along with his statement. Such a report is then called a charge sheet. This charge sheet is then submitted before the court for initiating the criminal trial. That is why in *Dharma Rama Bhagare v The State of Maharashtra*¹⁶, the Supreme Court remarked that FIR is only a complaint to set the procedure prescribed by law in motion.

DECONSTRUCTING THE LACUNA

Discussing the provision and procedure, makes the process look simple, smooth, and straightforward but why then the topic always revolves around legal controversies and is always highlighted in news? The answer to this can be both very simple and complex at a time, the procedure can be called as simple yet the police may err in this too. It is often seen that police in India misuse the powers given to them by the abovementioned provisions and many-a-times may deny registering the FIR. According to the study conducted by the Indian Institute of Public Opinion, New Delhi¹⁷ regarding “Image of the Police in India”, it was discovered that in around 50% of cases, officers did not file the complaints of responders who went to the police station to report the crime. This was also seen to be a common practice in practically every police station across India. The Five judge bench constituting of P. Sathasivam (CJI, 2013), B.S. Chauhan, Ranjana Prakash Desai, Ranjan Gogoi, S.A. Bobde in *Lalita Kumari v State of Uttar Pradesh*¹⁸ have observed that the number of FIRs not registered is approximately equivalent to the number of FIRs actually registered in India, keeping in the view the NCRB figures. That is why a very negative image of Police has been created in a society where around 75% of people do not report crimes due to their very negative and unfriendly image¹⁹.

¹⁶ *Dharma Rama Bhagare v State of Maharashtra* [1973] AIR 476 (SC)

¹⁷ Bandana Saikia, ‘Basics on FIR that one must know!’ (*The Law Bug*, 7 April 2021) <<https://www.thelawbug.com/basic-of-fir/>> accessed 16 October 2022

¹⁸ *Lalita Kumari v State of Uttar Pradesh* AIR 2012 SC 1515

¹⁹ Neeraj Chauhan, ‘75% of people do not report crimes as cops are unfriendly’ (*The Times of India*, 9 November 2017) <<https://timesofindia.indiatimes.com/india/75-of-people-do-not-report-crimes-as-cops-are-unfriendly/articleshow/61569006.cms>> accessed 13 October 2022

HOW POWER IS MISUSED

After discovering the statistics showing the extent of misuse and creation of a negative image of the police, the next step would be discussing the instance explaining how powers given to police under the Code of Criminal Procedure are misused in the context of FIR. Police can abuse the authority by misusing the powers granted to them under Sections 156 and 157 of the Code of Criminal Procedure²⁰, which give an officer in charge of the police, the authority to look into the facts and circumstances surrounding the commission of an offence after receiving information in order to determine whether the information actually reveals any cognizable offence or not. It may be called misuse as such investigative power is not defined as a mandatory procedure before registering FIR, it was considered relevant only in exceptional cases. Supreme Court has remarked that if a police officer has doubt about the veracity of the accusation, he has to conduct a preliminary inquiry only in circumstances where the information so received does not disclose the commission of cognizable offence but indicates the necessity for an inquiry.²¹

Another facet can be the police denying registering the FIR. The reason can be 'incomplete information' or preliminary inquiry that does not disclose any suitable information or sometimes monetary inducement to police where there is the involvement of high profile cases and corruption or laziness in fulfilling their legal duties and obligations. The best answer to these problems can be simple. First of all, the language of section 154 of the Code of Criminal Procedure does not explain the nature of the word 'information', there is no qualified adjective before the word 'information', therefore, it can be put after interpretation that it can be raw, it can be incomplete although it apprehends about the commission of any cognizable offence, or as the official words say, information 'relating' to the commission of a cognizable offence which can be interpreted as information which though may not be complete but certainly it only relates to cognizable offence happening, can also be said to be admissible. Further, it is to be noted that, the 'reasonableness' and 'credibility' of information are not a condition precedent for the

²⁰ *Ibid*

²¹ J. Venkatesan, 'Court makes exceptions for preliminary enquiry before FIR' (*The Hindu*, 29 November 2021) <<https://www.thehindu.com/news/national/court-makes-exceptions-for-preliminary-enquiry-before-fir/article5355943.ece/amp/>> accessed 13 October 2022

registration of the case²². Secondly, we have to look into various governmental guidelines and Supreme Court rulings on the pretext.

JUDICIAL INTERPRETATION

*State of Haryana v Bhajan Lal*²³

The Supreme Court in this case held that in a perfect system of prevention and detection of crimes, undeniably the paramount duty of a police officer to whom the commission of a cognizable offence is reported is to register a case without causing any delay and promptly commence the investigation without perverting or subverting the law. Once an information is laid before a police officer in compliance with the requirements of Section 154²⁴, the police officer is obliged to enter it in a prescribed form and register the case – He cannot refuse to do so on grounds that it is not reasonable or credible information.

*Ramesh Kumari v State (NCT of Delhi)*²⁵

The Supreme Court held in this case that it should be noted that in Section 154(1)²⁶ of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression “information” without qualifying it, as opposed to Section 41(1)(a) or (g)²⁷ of the Code, which uses the expressions “reasonable complaint” and “credible information”. Evidently, the non-qualification of the word “information” in Section 154(1), as opposed to Section 41(1)(a) and (g) of the Code, maybe for the reason that a police officer should not refuse to record any information relating to the commission of a cognizable offence and to register a case based on the reasonableness or credibility of the information. It is thus obvious that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no choice but to enter the

²² *State of Haryana v Bhajan Lal & Ors* [1992] AIR 604 (SC)

²³ *Ibid*

²⁴ *Ibid*

²⁵ *Ramesh Kumari v State (NCT of Delhi)* [2006] 2 SCC 677

²⁶ *Ibid*

²⁷ Code of Criminal Procedure 1973, s 41(1)(a) and (g)

substance thereof in the prescribed form, i.e., to register a case on the basis of such information. Section 154 of the Code is mandatory, and the responsible official is required to record the case based on such information revealing a cognizable violation.

*State of Maharashtra v Shiv das Singh Chavan*²⁸

In this case, the Chief Minister of the state directed all state collectors not to record the FIR unless an investigative committee approved it. The Supreme Court was shocked to learn that such an instruction could come from the Chief Minister of a state governed by a Constitution that resolves to make India a socialist, secular, democratic republic. The Court stated that the Chief Minister's directions are so contradictory and archaic, defying all logic and reason, that our conscience is greatly troubled. In this instance, the Supreme Court stated that the legal position is well settled that when information is submitted to the police and the information reveals the commission of a cognizable offence, the police must record the same in line with Section 154 of the Criminal Procedure Code.

GOVERNMENT'S INSTRUCTIONS

In 2014, the topic caught fire in the media and gained much popularity, which led to too much confusion and generated legal controversy. Upon which the Ministry of Home Affairs, issued a notification²⁹ after *Lalila Kumari v Government of Uttar Pradesh*³⁰ in which it, the Compulsory Registration of FIR under Section 154 Code of Criminal Procedure was made necessary for all police stations across the country where the information makes out a cognizable offence irrespective of territorial jurisdiction and zero FIR. It was also stated that the reliability, genuineness, and credibility of the information are not prerequisites for registering a case under Section 154 of the Code of Criminal Procedure, and it is clear that even if the offence was committed outside the jurisdiction of the police station, zero FIR would still be registered, and

²⁸ *State of Maharashtra v Shiv Das Singh Chavan* [2011] 1 SCC 577

²⁹ 'Compulsory Registration of FIR u/s 154 Cr.P.C when the information makes out a cognizable offence' (Government of India, 5 February 2014) <https://www.mha.gov.in/sites/default/files/AdvisoryFIR_060214.pdf> accessed 15 October 2022

³⁰ *Ibid*

the FIR would then be transferred to the appropriate police station as per Section 170 of the Code of Criminal Procedure³¹.

POSSIBLE ALTERNATIVE REMEDIES

Law offers other various possible remedies to its citizens when the police deny registering the FIR and to give rise to immediate effect and aid several other provisions in law may provide substantial help.

- Section 154(3) of the Code of Criminal Procedure³²

The very alternate remedy is provided in section 154 itself. Subsection (3) of 154 provides that if any person who feels mistreated by a police officer's refusal to record information as described in subsection (1)³³ may send the specifics of that information, in writing and by mail, to the relevant superintendent of police, who, if convinced that the information reveals the commission of a crime, will either conduct his own investigation or will order one to be conducted by a police officer under his supervision.

- Legal Services Authority

The Madras High Court in *Sugesan Transport Pvt. Ltd. v Assistant Commissioner of Police*³⁴ remarked that we have the Legal Services Authority Act 1987³⁵, a viable mechanism for providing access to justice to anyone in need of it, has been put in place. According to Article 144 of the Indian Constitution, it is the obligation of these authorities to act in support of the Supreme Court, and hence they should guarantee that the mandates of the Lalita Kumari Case are carried out. Any person who is dissatisfied with the police's refusal to register a FIR on his complaint or issue a CSR receipt may approach the local Legal Services Authority, and if

³¹ Code of Criminal Procedure 1973, s 170

³² Code of Criminal Procedure 1973, s 154(3)

³³ Code of Criminal Procedure 1973, s 154(1)

³⁴ *Sugesan Transport Pvt. Ltd. v Assistant Commissioner of Police & Anr* [2016] 5 CTC 577

³⁵ Legal Services Authority Act 1987

approached, the Authority shall entertain the complaint and ensure the implementation of the Supreme Court's directions in the Lalita Kumari Case.

- Police Complaints Authority

In *Prakash Singh v Union of India*³⁶, the Supreme Court has set out Police Reforms Guidelines, and one of the reforms directs of creation of a Police Complaints Authority at the state level and also at the district level to inquire into the complaints against police officers. Aggrieved persons can file a complaint under this against a police officer who denies registering the FIR also the authority is directed to help in registering the FIR upon denial. Also, the complaint under Section 166 of the Indian Penal Code³⁷ shall also be directed against such refusing officer.

- Section 156(3) of the Code of Criminal Procedure³⁸

Section 156(3) of the code gives the power to Magistrate to order investigation as per his powers defined in Section 190 of the Code³⁹ where he can directly take cognizance of the offense upon receiving a complaint of facts constituting any offense from any person other than police. Such investigation cannot occur in a vacuum, therefore if the magistrate asks to undertake a such investigation using powers under Section 156(3) to police, then police have to register the FIR first. As in *Dilawar Singh v State of Delhi*⁴⁰, the Supreme Court held that The officer in charge of the police station is required to file the FIR regarding the cognizable offence disclosed by the complaint even if a Magistrate does not expressly direct investigation under Section 156(3) of the CrPC⁴¹. This is because that police officer may take additional steps described in Chapter XII of the CrPC.

Supreme Court in *Sikiri Vasu v State of Uttar Pradesh*⁴² also remarked that if an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be

³⁶ *Prakash Singh v Union of India* [2006] 8 SCC 1

³⁷ Indian Penal Code 1860, s 166

³⁸ Code of Criminal Procedure 1973, s 156(3)

³⁹ Code of Criminal Procedure 1973, s 190

⁴⁰ *Dilawar Singh v State of Delhi* [2007] 12 SCC 641

⁴¹ Code of Criminal Procedure 1973

⁴² *Sakiri Vasu v State of Uttar Pradesh* [2008] 2SCC 409

registered in the event that no proper inquiry was conducted, the court might mandate that one be conducted. Under the same provision, the Magistrate can also oversee the inquiry to guarantee a competent investigation.

- Section 200 of the Code of Criminal Procedure⁴³

Any person aggrieved of denial from FIR registration may directly complain before the Magistrate under Section 200 of the code, where the Magistrate would treat the complaint as a private complaint and the court then will conduct an inquiry and with its application of mind, it will find whether a prima facie case is formed or not and then if found the court directly takes cognizance and the case will be sent for trial. As the Supreme Court in *Rameshbhai Pandurao v State of Gujarat*⁴⁴ held that the power to direct an investigation to the police authorities is available to the Magistrate both under Section 156(3) CrPC and under Section 202 CrPC⁴⁵ following a complaint under Section 200 of the code.

- Section 482 of the Code of Criminal Procedure⁴⁶ or under Article 144 of the Constitution

One can reach High Court if one faces denial in registration of FIR only when Magistrate refuses to entertain a complaint under Section 156(3) of the Code of Criminal Procedure, when the Magistrate orders the police to file FIR, but the police do not obey when the police do not complete its preliminary investigation even after 6 weeks as mandated in Lalita Kumari Case, when the case may be a rarest to rare of its kind, extremely shocking, contains ugly offense, has extreme official apathy and indifference, needs to answer the judicial conscious or there is the existence of the hostile environment. As in *Maharashtra Chess Association v Union of India*⁴⁷, the Supreme Court held that even after the existence of an alternative remedy, High Court can entertain a petition to register FIR, and also in *Sugesan Transport Pvt. Ltd. v Assistant Commissioner of Police*⁴⁸ the Court has also held that this Court will not shut its door

⁴³ Code of Criminal Procedure 1973, s 200

⁴⁴ *Rameshbhai Pandurao v State of Gujarat* [2010] 4 SCC 185

⁴⁵ Code of Criminal Procedure 1973, s 202

⁴⁶ Code of Criminal Procedure 1973, s 482

⁴⁷ *Maharashtra Chess Association v Union of India* [2019] SCC OnLine 932 (SC)

⁴⁸ *Ibid*

completely and deny access to justice. The Court will entertain an application under Section 482, CrPC on the failure of the police to follow the timetable in the Lalita Kumari Case or not pay heed to the order passed by the Magistrate under Section 156(3), CrPC, Therefore it can be said that Supreme Court has multiple times pointed out the alternative remedy principle, but it is also stated that it is a Rule of convenience and not rule of Law.

CONCLUSION

The discussion may be summed up by saying that the Indian Constitution, Code of Criminal Procedure, and Principles offered specific privileges to both people and the nation's defense system in order to combat crime. The whole study about provisions of the First Information Report as discussed, on how, when and for whom it can be brought into use can easily make one feel confident but after studying the lacuna and misuse of these provisions one may feel degraded and that is why it was seen why people of India fear from police and rather prefer silence. But one must remember that Law can be blind but the Judge is not⁴⁹. The Supreme Court in a plethora of cases, as discussed, have deeply interpreted the FIR provisions, making them more sound viably, and to be followed effectively, and efficiently has prevented the defense system from acting arbitrarily. It is also not to be forgotten that this Judicial system have many times opened the eyes of the government on the issue, making them issue strict directions against misuse and denial of such provisions to anyone. At last, for the benefit and for upholding justice at any time soon, this judicial system has provided various alternative remedies for the registration of FIR as discussed in many Supreme Court cases. This surely proves Judiciary is working hard enough and maintaining its position as the Sole guardian of the Indian Constitution.

⁴⁹ Sana Khan, 'Law may be blind but The Judge is not' (*LinkedIn*, 30 July 2017)

<<https://www.linkedin.com/pulse/law-may-blind-judge-sana-khan/>> accessed 15 October 2022