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RE-EVALUATING ACCESS TO JUSTICE: A CRITICAL ANALYSIS OF FIR REGISTRATION UNDER THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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ABSTRACT

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, introduces reforms that significantly impact the registration of First Information Reports (FIRs) for cognizable offences. This paper critically examines the constitutional implications of the procedural requirements in the FIR process, particularly the impact on access to justice. It explores the potential conflicts between societal interests in efficient law enforcement and the individual's constitutional rights. By analysing the tension between these interests, this paper assesses whether the BNSS effectively balances procedural efficiency with fairness, accountability, and accessibility in the criminal justice system.

Keywords: BNSS, FIR Registration, Access to Justice, Criminal Procedure

INTRODUCTION

The Constitution is the supreme document and no law can abridge its essential principles. Since our Constitution continues to evolve even today, the criminal procedure is also undergoing evolution to make the dispensation of justice more effective and suited to present societal requirements.

An efficient and expeditious justice delivery system is integral to good governance. Yet, India's criminal justice system grapples with persistent challenges, including complex legal procedures, a significant backlog of cases, low conviction rates, limited integration of technology, delays in investigations, and underutilization of forensic evidence.

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In this context, the timely registration of First Information Reports (FIRs) becomes critical. As the first step in the criminal justice process, FIR registration is vital in ensuring that individuals' rights under Articles 21 (Right to Life and Personal Liberty) and 14 (Equality before the Law) are upheld. However, procedural inefficiencies, non-registration of FIRs, and the lack of accountability within law enforcement have frequently obstructed the pursuit of justice for individuals.

The outdated provisions of the Code of Criminal Procedure, 1973 (CrPC), which provided the procedural framework for arrests, investigations, inquiries, and trials prompted the enactment of Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS). The Government of India, replaced the colonial-era Code, aiming to modernize criminal procedures, and improving the efficiency of the justice delivery system.

The CrPC or now the BNSS essentially does the balancing of interest between more individuals than one and also the balancing between the societal interest on the one hand and the individual interest on the other hand. However, this balance remains contentious. Crime is seen as a societal wrong, threatening stability and security, which justifies state prosecution of the accused. While societal interests may require restrictions on the accused, the Constitution guarantees fundamental rights even to the accused, particularly the right to life and personal liberty. These rights, though not absolute, must be balanced with the need to protect societal order, requiring the state to carefully calibrate limitations to preserve the accused's basic freedoms.

This paper critically analyzes the changes introduced in the FIR provisions under the BNSS, focusing on their constitutional implications. It examines the conflict between societal interests in law enforcement and individual rights, specifically how the procedural requirements affect access to justice. The paper examines whether these provisions strike an appropriate balance between ensuring effective legal processes and protecting fundamental freedoms.

FILING FIR UNDER CR.P.C. AND BNSS – A COMPARATIVE ANALYSIS

The BNSS introduced key reforms to modernize the procedural framework of the CrPC while retaining its foundational principles. Among the significant areas addressed are the detention of undertrials, medical examinations, forensic investigation, timelines for procedural compliance, and the registration of FIRs.

The FIR is the cornerstone of the criminal justice process, initiating investigations into cognizable offenses. Despite its central role, the term "FIR" is not explicitly defined in either the CrPC or the BNSS. However, its significance can be understood from established judicial precedents and statutory interpretation where the Supreme Court of India has underscored its significance as the foundation of the criminal justice system, emphasizing its role in upholding due process and the rule of law.

An FIR can be described as the initial report provided to the police about the commission of a cognizable offense, typically including details of the incident, its location, the parties involved, and any evidence available.

From a legal perspective, the FIR is not merely a procedural step; it is the formal documentation of a victim's grievance and an essential safeguard against arbitrary action. It ensures transparency and accountability in investigations, protecting both the victim's right to justice and the accused's right to due process. It is the critical link between the state's responsibility to maintain law and order and the individual's right to seek justice.

This section delves into the procedural aspects of FIR registration under both the CrPC and BNSS examining the key differences. For clarity, a comparative analysis of the relevant provisions of the CrPC and BNSS is presented below –

THE RECORDING OF FIR IS PROVIDED UNDER SECTION 154 OF CRPC CORRESPONDING TO SECTION 173 OF BNSS.

| Section 154, CrPC Information in cognizable cases | Section 173, BNSS Information in cognizable cases | Remarks |
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| <p>154(1): “Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf:</p> <p>Provided that if the information is given by the woman against whom an</p> | <p>173(1): “Every information relating to the commission of a cognizable offence, irrespective of the area where the offence is committed, may be given orally or by electronic communication to an officer in charge of a police station, and if given— (i) orally, it shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it; (ii) by electronic communication, it shall be taken on record by him on being signed within three days by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may by rules prescribe in this behalf:</p> <p>Provided that if the information is given by the woman against whom an</p> | <p><i>S.154 (1) CrPC corresponds to S.173 (1) of BNSS with one key distinction: under the BNSS, S.173(1) allows the registration of an FIR for a cognizable offense regardless of where the offense occurred. Additionally, the BNSS introduces a new subsection, S.173(1)(ii), which allows for the electronic registration of FIRs, marking a shift towards more modern, tech-enabled procedures in the criminal justice system.</i></p> <p><i>1st proviso to S.154 (1) CrPC corresponds to the 1st proviso to S.173 (1) BNSS and are identical provisions.</i></p> |

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| <p>offence under Section 326A, Section 326B, Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB, Section 376E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:</p> <p>Provided further that— (a) in the event that the person against whom an offence under Section 354, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376AB, Section 376B, Section 376C, Section 376D, Section 376DA, Section 376DB, Section 376E or Section 509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded</p> | <p>offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:</p> <p>Provided further that— (a) in the event that the person against whom an offence under section 64, section 65, section 66, section 67, section 68, section 69, section 70, section 71, section 74, section 75, section 76, section 77, section 78, section 79 or section 124 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed or attempted, is temporarily or permanently mentally or physically disabled, then such information shall be recorded by a police officer, at the residence of the person seeking to report such offence</p> | <p><i>Clause (a) of the 2nd proviso to S.154 (1) CrPC corresponds to Clause (a) of the 2nd proviso to S.173 (1) BNSS.</i></p> <p><i>Clause (b) of the 2nd proviso to S.154 (1) CrPC corresponds to Clause (b) of the 2nd proviso to S.173 (1) BNSS.</i></p> <p><i>Clause (c) of the 2nd proviso to S.154 (1) CrPC corresponds to Clause (c) of the 2nd proviso to S.173 (1) CrPC</i></p> <p><i>All are identical provisions.</i></p> |
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| by a police officer, at the residence of the person seeking to report such offence or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be; (b) the recording of such information shall be video-graphed; (c) the police officer shall get the statement of the person recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of Section 164 as soon as possible.” | or at a convenient place of such person's choice, in the presence of an interpreter or a special educator, as the case may be; (b) the recording of such information shall be video-graphed; (c) the police officer shall get the statement of the person recorded by a Magistrate under clause (a) of sub-section (6) of section 183 as soon as possible.” | |
| 154(2): “A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant.” | 173(2): “A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant or the victim.” | S.154 (2) CrPC <i>corresponds to S.173 (2) of BNSS with the BNSS expanding this provision to ensure that both the informant and the victim receive a copy of the FIR. It enhances transparency and ensures both parties are informed about the case's progress.</i> |
| No equivalent clause under CrPC | 173(3): “Without prejudice to the provisions contained in section 175, on receipt of information relating to the commission of any cognizable offence, which is made punishable for three years or more but less than seven years, | S.173 (3) of BNSS <i>introduces statutory recognition to “preliminary enquiry” to be conducted by the SHO, a provision absent in CrPC but approved by the Constitution Bench of the Supreme Court</i> |

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| | <p>the officer in charge of the police station may with the prior permission from an officer not below the rank of Deputy Superintendent of Police, considering the nature and gravity of the offence,— (i) proceed to conduct preliminary enquiry to ascertain whether there exists a prima facie case for proceeding in the matter within a period of fourteen days; or (ii) proceed with investigation when there exists a prima facie case.”</p> | <p><i>in Lalita Kumari v. Govt. of U.P.. However, “Lalita Kumari” allowed preliminary enquiries in rare cases, whereas the BNSS permits them more generally, potentially leading to delays in investigation.</i></p> |
| <p>154(3): “Any person, aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such 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, in the manner provided by this Code, and</p> | <p>173(4): “Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1), may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such 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, in the manner provided by this Sanhita, and such officer shall have all the powers of an</p> | <p>S.154 (3) CrPC corresponds to S.173 (4) of BNSS.</p> <p><i>BNSS limits the informant’s right to approach the Magistrate only after a failed application to the SP, unlike CrPC.</i></p> |

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| such officer shall have all the powers of an officer in charge of the police station in relation to that offence.” | officer in charge of the police station in relation to that offence failing which such aggrieved person may make an application to the Magistrate.” | |
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THE POWER OF INVESTIGATION IS PROVIDED UNDER SECTION 156 OF CRPC CORRESPONDING TO SECTION 175 OF BNSS.

| Section 156, CrPC Police officer's power to investigate cognizable cases | Section 175, BNSS Police officer's power to investigate cognizable case | Remarks |
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| 156(1): “Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.” | 175(1): “Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV: Provided that considering the nature and gravity of the offence, the Superintendent of Police may require the Deputy Superintendent of Police to investigate the case.” | <i>S.156 (1) CrPC corresponds to S.175 (1) of BNSS.</i> <i>S. 175 (1) of BNSS has a proviso which is absent in S.156 (1) CrPC.</i> <i>The proviso allows investigations in serious offences to be conducted by a Deputy Superintendent of Police, a positive change.</i> |
| 156(2): “No proceeding of a police officer in any such case shall at any stage be called in question on the | 175(2): “No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the | <i>Sub-section (2) of both provisions is identical.</i> |

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| ground that the case was one which such officer was not empowered under this section to investigate.” | case was one which such officer was not empowered under this section to investigate.” | |
| 156(3): “Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned.” | 175(3): “Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.” | <i>S.156 (3) CrPC corresponds to S.175 (3) of BNSS.</i> <i>S.175 (3) of BNSS sets certain pre-conditions requiring the Magistrate to review the affidavit under section 173(4), conduct an inquiry, and consider police submissions before ordering an investigation creating additional barriers leading to procedural complexity.</i> |
| No equivalent clause under CrPC | 175(4): “Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to— (a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and (b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.” | <i>S.175 (4) of BNSS is a new provision.</i> <i>This provision deviates from established principles of criminal law, as it introduces additional procedural hurdles undermining the swift dispensation of justice.</i> |

THE PROCEDURE OF INVESTIGATION IS PROVIDED UNDER SECTION 157 OF CRPC CORRESPONDING TO SECTION 176 OF BNSS.

| Section 157, CrPC PROCEDURE OF INVESTIGATION | Section 176, BNSS PROCEDURE OF INVESTIGATION | Remarks |
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| <p>157(1): “If, from information received or otherwise, an officer-in-charge of a police station has reason to suspect the commission of an offence which he is empowered under section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender :</p> | <p>176(1): “If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 175 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:</p> <p>Provided that- (a) when information as to the</p> | <p><i>S.157 (1) CrPC corresponds to S.176 (1) of BNSS.</i></p> |

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| <p>Provided that - (a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer-in-charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot; (b) if it appears to the officer-in-charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case.</p> <p>Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality.”</p> | <p>commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot; (b) if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case:</p> <p>Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality and such statement may also be recorded through any audio-video electronic means including mobile phone.”</p> | <p><i>1st proviso to S.157 (1) CrPC corresponds to the 1st proviso to S.176 (1) BNSS and are identical provisions.</i></p> <p><i>2nd proviso to S.157 (1) CrPC corresponds to the 1st proviso to S.176 (1) BNSS. There is an additional requirement of recording the statement of victim of offence of rape through any audio-video means. It ensures greater accountability and transparency in the process.</i></p> |
| <p>157(2): “In each of the cases mentioned in clauses (a) and (b) of the proviso to sub-section (1), the officer-in-charge of the</p> | <p>176(2): “In each of the cases mentioned in clauses (a) and (b) of the first proviso to sub-section (1), the officer in charge</p> | <p><i>S.157 (2) CrPC corresponds to S.176 (2) of BNSS.</i></p> |

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| <p>police station shall state in his report his reasons for not fully complying with the requirements of that sub-section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.”</p> | <p>of the police station shall state in his report the reasons for not fully complying with the requirements of that sub-section by him, and, forward the daily diary report fortnightly to the Magistrate and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by rules made by the State Government.”</p> | <p><i>BNSS requires that police submit the daily diary report fortnightly to the magistrate. This ensures greater oversight of law enforcement activities.</i></p> |
| <p>No equivalent clause under CrPC</p> | <p>176(3): “On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device:</p> <p>Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the</p> | <p><i>S.176 (3) of BNSS is a new provision. Mandating forensic evidence collection and videography enhances accountability, but limited forensic facilities may delay investigations.</i></p> |

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| | facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State.” | |
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CONSTITUTIONAL IMPLICATIONS

The Constitution is a living document that guides the state in promoting social change and progress. In this context, the BNSS introduces reforms designed to make law enforcement more efficient, all while ensuring that justice, public welfare, and individual rights are upheld, in line with the Constitution’s core principles.

ZERO-FIR: ENSURING TIMELY JUSTICE

One of the key reforms in the BNSS is the introduction of Zero-FIR, which allows an FIR to be filed at any police station, regardless of its territorial jurisdiction. This reform addresses a major societal concern by enabling law enforcement to act swiftly, reducing delays and ensuring quicker responses to criminal activity. It also eliminates the issue of police refusal to register complaints based on jurisdictional boundaries, thus protecting public interest.

However, there are concerns regarding individual rights. While the provision requires the FIR to be transferred to the appropriate jurisdiction, the law doesn’t specify a clear timeframe for this transfer, potentially causing delays and leading to a miscarriage of justice. Additionally, there is a risk of jurisdictional manipulation, where complainants could file an FIR in a distant area to harass the accused, adding unnecessary legal complications. The ability of a police station to act on an FIR outside its jurisdiction also raises questions about the potential for unlawful detentions or arbitrary actions, which could violate the accused’s right to personal liberty under Article 21 of the Constitution.

E-FIR: ACCESSIBILITY AND EFFICIENCY

The introduction of E-FIR is a notable reform that aims to modernize the criminal justice system by allowing individuals to file FIRs electronically. This change reduces the need for victims to revisit the trauma of recounting their ordeal in a police station, making it easier and less stressful, especially for vulnerable populations. It's a step forward in improving access to justice, ensuring that more people can easily initiate the process of reporting a crime.

From a societal perspective, E-FIR has the potential to enhance the efficiency of law enforcement by speeding up the initial stages of criminal proceedings and enabling faster responses to urgent cases. However, there are also individual concerns. The parliamentary standing committee has raised issues regarding the lack of regulation around E-FIRs, which could lead to practical challenges, such as tracking multiple electronic filings or preventing misuse. Without proper safeguards, the integrity of the investigation process could be at risk, particularly in complex cases where the credibility of electronic filings may be difficult to verify. Additionally, if the system isn't adequately managed, the surge in E-FIRs could overload police resources, potentially causing delays in investigations and compromising the speed of justice.

PRELIMINARY ENQUIRY: SHIFTING THE BURDEN TO POLICE DISCRETION

The introduction of a preliminary enquiry under the BNSS allows police to investigate for up to 14 days before registering an FIR, provided they find a *prima facie* case. While the goal is to ensure that only genuine complaints are pursued, this provision raises significant concerns, especially in light of constitutional rights under Article 14 (Right to Equality) and Article 21 (Right to Life and Personal Liberty).

In the landmark *Lalita Kumari* case, the Supreme Court emphasized that FIRs should be registered without delay when a cognizable offence is reported. By introducing a discretionary preliminary enquiry, the BNSS risks causing unnecessary delays in justice and giving police officers room for arbitrary decisions. This could ultimately violate the right to timely justice. While the intent behind the enquiry is to reduce frivolous complaints and ease the burden on police, it also provides police with significant discretion. This may lead to unequal treatment, with vulnerable groups – such as women, marginalized communities, or minorities – potentially facing barriers in having their

complaints registered, resulting in further harm. The lack of clear guidelines for the enquiry process adds to the risk of discrimination, bias, or misuse of power.

Therefore, while the preliminary enquiry could help streamline certain cases, it needs to be carefully regulated to ensure that it doesn't undermine the fundamental principles of justice, fairness, and equality before the law. Without sufficient safeguards, this provision could unintentionally erode the public's trust in the legal system, especially among those most in need of its protection.

MAGISTRATE – A PRISONER OF PROCEDURAL BARRIERS UNDER SECTION 175(3) AND 175(4) BNSS

Under CrPC, a Magistrate could order an investigation under Section 156(3) in two major scenarios:

1. **Refusal of FIR registration:** If the police refused to register an FIR, the aggrieved had the option to approach the Magistrate directly to order an investigation. This ensured a timely response, especially when the police were unwilling to act.
2. **Private Complaints:** The CrPC allowed a complainant to either file a private complaint directly with the Magistrate or report the cognizable offence to the police. If reported to the police, the investigation would follow, and the police report would be submitted, allowing the Magistrate to take cognizance. Alternatively, the complainant could approach the Magistrate for an investigation under Section 156(3) without involving the police at the outset.

However, Section 175(3) of the BNSS corresponding to Section 156(3) of CrPC changes this framework, imposing a similarly restrictive procedure for both situations.

REFUSAL OF FIR REGISTRATION

The registration of an FIR is mandatory. Under BNSS, if the police refuses to register an FIR, the aggrieved must first approach the Superintendent of Police (SP) under Section 173(4) before seeking judicial intervention. Only after the SP's refusal can the aggrieved approach the Magistrate under Section 175(3). This adds a layer of bureaucratic delay that did not exist under the CrPC. The previous framework allowed direct Magistrate intervention, ensuring prompt action, but BNSS requires multiple steps that delay access to justice.

Moreover, under the BNSS, the complainant is now required to submit an affidavit. While the CrPC allowed the Magistrate to request an affidavit at their discretion, BNSS makes it a mandatory prerequisite. This mandatory affidavit requirement creates an additional burden on the complainant, particularly for marginalized individuals, and delays the initiation of investigations. The Magistrate must also conduct an inquiry before ordering an investigation, further slowing the process.

Another significant concern is the potential bias introduced by the police, as the Magistrate is obliged to consider police submissions when deciding whether to order an investigation. Since the same police officers who refused to register the FIR are now involved in the process, their input may influence the Magistrate's decision, undermining judicial independence.

PRIVATE COMPLAINTS

Under the CrPC, a complainant could directly approach the Magistrate, who could either take cognizance or, under Section 156(3), order a police investigation without taking cognizance. This allowed complainants to bypass police inaction and directly seek judicial relief. However, Section 175(3) of the BNSS introduces a sequential process, requiring the complainant to first seek police action under Section 173(1), escalate to the Superintendent of Police (SP) under Section 173(4) if the police fail to act, and only then approach the Magistrate. This new procedure disregards the independent nature of a complaint and imposes additional formalities, such as mandatory affidavits and police submissions assuming notice to police for same, further delaying access to justice.

The procedural shift prioritizes police action, even when they may have initially refused to act, curtailing the complainant's ability to seek judicial intervention independently. By the time these steps are completed, vital evidence may be lost, undermining the investigation's effectiveness.

While under the CrPC an affidavit was required when a complainant sought an order for investigation, the Magistrate also had the authority to suo motu order an investigation. The BNSS, however, raises a key issue regarding the Magistrate's ability to suo motu order an investigation under Section 175(3) without proof that the complainant has first exhausted remedies under Section 173(4) and considered the police officer's submissions.

This restructuring places undue emphasis on the police, even when they may have initially refused to act, thus curtailing the complainant's ability to seek judicial intervention independent of police involvement. The Magistrate's hands are essentially tied which dilutes judicial independence.

In comparison to the CrPC's more streamlined approach, the BNSS significantly curtails the complainant's right to a prompt and impartial investigation, creating systemic delays that erode access to justice. Moreover, Section 175(4) introduces further complications in cases involving complaints against public servants. The Magistrate must first receive a report from the public servant's superior and consider their defence before deciding whether to order an investigation. While intended to prevent frivolous complaints, this provision disproportionately favours powerful individuals, creating an inherent power imbalance. In urgent cases, these procedural delays may prevent timely accountability and hinder justice for the complainant.

USE OF FORENSIC EVIDENCE

Section 176(3) of the BNSS requires police officers to collect forensic evidence and record crime scenes through videography for serious offences. This provision is aimed at improving the accuracy and reliability of investigations, ensuring that evidence is properly documented and preserved. With the widespread availability of mobile phones, the requirement for videography adds a layer of transparency, ensuring that justice is not only done but is seen to be done. The use of forensic evidence also strengthens criminal prosecutions and boosts public trust in the legal system.

However, this provision presents some practical and constitutional challenges. One issue is the quality of videography, which may not always meet the standards necessary for forensic evidence, particularly when captured on mobile phones. Poor lighting, shaky footage, or technical glitches could compromise the integrity of the evidence, potentially impacting the fairness of the trial. Additionally, the logistical burden on police officers could be significant, especially in rural or under-resourced areas. With limited personnel and resources, police officers may find it difficult to ensure thorough evidence collection at every crime scene, leading to delays or incomplete investigations, which could ultimately undermine the pursuit of justice.

CONCLUSION

In conclusion, the analysis of the FIR provisions under the CrPC and the BNSS reforms reveals the delicate balance between protecting procedural safeguards and ensuring the fundamental right to access justice. These reforms aim to safeguard both individual and societal interests by promoting fairness and accountability. However, as discussed, they have the potential to delay justice and complicate the process, particularly for marginalized or vulnerable groups. While the

reforms are intended to uphold the rights of the accused and maintain law and order, they may inadvertently create barriers for those seeking timely and impartial redress.

The tension between protecting societal interests—such as preventing frivolous claims—and safeguarding an individual's right to prompt justice is evident. As Justice Krishna Iyer has said, "Procedure is the handmaid of justice and not its mistress" - The judiciary must critically assess whether these reforms truly uphold the right to timely and effective justice, without infringing on constitutional guarantees. It is crucial that legal processes remain accessible, fair, and efficient for all citizens, ensuring that justice is not delayed or denied due to procedural complexities.