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NAVIGATING LEGAL UNCERTAINTY: EXAMINING REPORTING MECHANISMS IN INDIA'S EVOLVING CRIMINAL PROCEDURAL FRAMEWORKS

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ABSTRACT

Legal certainty remains the bedrock of justice, yet India's criminal procedural framework grapples with persistent ambiguities that undermine this principle. The old enactment i.e. Criminal Procedure Code (CrPC), a cornerstone of India's criminal justice system, establishes critical processes for investigation, trial, and sentencing. However, its provisions related to the reporting of information frequently suffer from imprecision, leading to inconsistent application by law enforcement and judicial authorities.

The new enactment of the BNSS Act 2023, designed to fortify national security, introduces new procedural obligations that intersect with the CrPC. Instead of resolving existing ambiguities, these additional requirements have amplified the challenges, creating a convoluted landscape for reporting mechanisms. The lack of clear definitions and procedural cohesion complicates the implementation of both laws, jeopardizing fairness, due process, and the effective administration of justice.

This research critically assesses the interplay between the CrPC and the BNSS Act 2023, exploring how their combined ambiguities affect reporting mechanisms. By examining legal interpretations, enforcement practices, and international legal frameworks, this study highlights the pressing need for legislative reforms to ensure clarity, protect individual rights, and uphold the integrity of India's criminal justice system. Addressing these issues is not merely a matter of clarity but also for procedural refinement in a step toward reinforcing public trust in the rule of law.

Keywords: CrPC, BNSS Act 2023, legal uncertainty, criminal justice, reporting

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mechanisms.

EVOLUTION OF PROVISION OF FIR UNDER THE CODE OF CRIMINAL PROCEDURE

The concept of the First Information Report (FIR) has evolved significantly under the Code of Criminal Procedure in India. The FIR serves as a crucial document, marking the initiation of the criminal justice process. The historical roots of the FIR can be traced back to the colonial period when the British administration introduced the Criminal Procedure Code of 1861. This code laid the foundation for the systematic recording of information regarding the commission of offences in general which includes cognizable offenses and non-cognizable offenses.

The 1898 Criminal Procedure Code further formalized the process, establishing a more structured approach to the filing and management of FIRs. Despite these early codifications, the FIR remained a document largely devoid of statutory definition, relying heavily on judicial interpretation and procedural practice.

The post-independence era saw the enactment of the Criminal Procedure Code of 1973, which brought about significant reforms in the criminal justice system. However, even this comprehensive legislation did not provide a clear definition of the FIR, leading to various interpretations and legal challenges. The Supreme Court of India, through landmark judgments, has played a pivotal role in delineating the scope and importance of the FIR, emphasizing its role in ensuring transparency and accountability in the criminal investigation process.

Subsequent amendments to the CrPC, driven by technological advancements and the changing nature of crime, have sought to address the procedural lacunas and ambiguities associated with the FIR. The Criminal Procedure Code (Amendment) Act of 2013 introduced measures to facilitate the electronic filing of FIRs, aiming to enhance accessibility and reduce delays. Moreover, the recent Bhartiya Nagarik Suraksha (Second) Sanhita, 2023, aims to further streamline the process by repealing outdated provisions and incorporating modern technological tools.

Despite these progressive steps, the FIR's provision continues to grapple with challenges such as lack of clarity in modes of registration of FIR, delayed registration, non-registration, and procedural inconsistencies across different states. Addressing these issues remains crucial for fostering a more efficient and just criminal justice system in India. The evolution of the FIR thus

reflects an ongoing journey towards achieving greater clarity, efficiency, and fairness in the administration of criminal justice.

Historical background of the section 154 of the Code seems to represent the following stages from 1861 to 2024:

REPORTING OF INFORMATION PRE – INDEPENDENCE

First time in the Code of Criminal Procedure, 1861 it was mentioned in Section “139. Complaint etc, to be in writing. - Every complaint or information preferred to an officer in charge of a police station, shall be reduced into writing and the substance thereof shall be entered in a diary to be kept by such officer, in such form as shall be prescribed by the local Government.”

With further amendments in Code of Criminal Procedure pre independence it was stated as follows

1. 1872 “112. Complaint to police to be in writing. - Every complaint preferred to on officer in charge of a police station, shall be reduced into writing, and shall be signed, sealed or marked by the person making it; and the substance thereof shall be entered in o book to be kept by such officer in the form prescribed by the local Government.”
2. Code of Criminal Procedure, 1882² "154. Information is cognizable cases. - 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 form as the Local Government may prescribe in this behalf. "
3. Code of Criminal Procedure, 1898 "154. Information is cognizable cases. - 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

² The Code of Criminal Procedure (Act No. X of 1872), s. 112

thereof shall be entered in a book to be kept by such officer in such form as the Local Government may prescribe in this behalf "

REPORTING OF INFORMATION POST INDEPENDENCE

Post-Independence, the Parliament of India restructured the Criminal Procedure Code and provided for the provision relating to registration of FIR under Section 154 of the new Code i.e., the Code of Criminal Procedure, 1973 which was further amended by the Criminal Law (Amendment) Act, 2013 and reads as follows:

CRPC , 1973: SECTION 154 - INFORMATION IN COGNIZABLE CASES

SECTION 1 , SUBSECTION (1): RECORDING INFORMATION

Every piece of information regarding the commission of a cognizable offense, when reported orally to an officer in charge of a police station, must be documented in writing by the officer or under their direction. This written record is then read back to the informant for verification. Subsequently, the informant must sign the document, confirming its accuracy. The essential details of this information are then entered into a register maintained by the officer, following the format prescribed by the State Government. This meticulous process ensures that there is a clear and accurate record of the reported offense, which is vital for subsequent legal proceedings.

SPECIAL PROVISIONS FOR WOMEN COMPLAINANTS

There are specific provisions for cases where the information is provided by a woman against whom offenses under sections such as 326A, 326B, 354, 354A, 354B, 354C, 354D, 376, 376A, 376B, 376C, 376D, 376E, or 509 of the Indian Penal Code have been committed or attempted. In such scenarios, the information must be recorded by a woman police officer or any woman officer. This provision aims to provide a more comfortable and sensitive environment for women victims, encouraging them to report offenses without fear or hesitation.

ADDITIONAL PROVISIONS FOR VULNERABLE PERSONS

Further provisions are made for individuals who are temporarily or permanently mentally or physically disabled. In these cases, the information must be recorded by a police officer at the residence of the individual or a place of their choice. This recording must occur in the presence of an interpreter or special educator if necessary. Additionally, the entire process must be video

recorded to ensure transparency and accuracy. The police officer is also required to have the individual's statement recorded by a Judicial Magistrate under clause (a) of sub-section (5A) of section 164 as soon as possible. These measures are designed to protect the rights of vulnerable individuals and ensure their statements are accurately and sensitively documented.

SUBSECTION (2): PROVISION OF RECORDED INFORMATION

A copy of the recorded information must be provided to the informant immediately, free of charge. This ensures that the informant has a documented acknowledgment of their report, which can be critical for their records and any further legal actions.

SUBSECTION (3): REDRESSAL FOR NON-RECORDING OF INFORMATION

If an officer in charge of a police station refuses to record the information as mandated in subsection (1), the aggrieved person has the right to send the substance of such information in writing, via post, to the concerned Superintendent of Police. Upon receipt, if the Superintendent is satisfied that the information indicates the commission of a cognizable offense, they are obligated to either investigate the case themselves or direct a subordinate police officer to do so. This provision ensures that there is a higher level of oversight and an alternative avenue for individuals whose reports are not initially recorded, thus safeguarding their rights and ensuring that potential offenses are appropriately investigated.³

CHAPTER XIII , SECTION 173: INFORMATION TO THE POLICE AND THEIR POWERS TO INVESTIGATE

Section 173(1) of Chapter XIII of the Criminal Procedure Code delineates the procedures for informing the police about a cognizable offense. This section highlights the inclusion of various communication methods for reporting offenses and outlines the procedural requirements for recording such information.

SUBSECTION (1): MODES OF REPORTING

Subsection (1) specifies the ways in which information regarding a cognizable offense can be communicated to the police:

1. Oral Communication:

³ Section 154 of the Code of Criminal Procedure , 1973

- If the information is given orally to an officer in charge of a police station, it must be written down by the officer or under their supervision.

- The written information should be read back to the informant to ensure accuracy.

- The informant is required to sign the document to confirm the information provided.

2. Electronic Communication:

- When the information is communicated electronically, the officer must record it.

- The informant must sign the recorded information within three days.

- The substance of the information should be entered into a book maintained by the officer, following the format prescribed by the State Government.

PROVISO FOR SPECIAL CASES

The section includes a proviso specifically for reporting certain offenses against women. If a woman alleges the commission or attempt of offenses as listed under sections 64, 66, 67, 68, 70, 73, 74, 75, 76, 77, 78, or 122 of the Bharatiya Nyaya Sanhita, 2023, the information must be recorded by a female police officer or any female officer. This proviso ensures that the reporting process is conducted in a manner that is respectful and supportive of the victim, acknowledging the sensitivity required in handling such cases.

SUBSECTION (1)(A): REPORTING FOR DISABLED INDIVIDUALS

- In cases where the victim of an offence under sections 354, 67, 68, subsection (2) of 69, subsection (1) of 70, 71, 74, 75, 76, 77, or 79 of the Bharatiya Nyaya Sanhita, 2023 is temporarily or permanently mentally or physically disabled, special accommodations are mandated.

- The information must be recorded by a police officer at the victim's residence or another location chosen by the victim, ensuring the environment is convenient and comfortable.

- The presence of an interpreter or special educator is required, as appropriate, to facilitate accurate and effective communication.

SUBSECTION (1)(B): VIDEO GRAPHIC RECORDING

- The recording of any such information must be video graphed. This measure ensures that the process is documented accurately, providing an additional layer of transparency and accountability.

SUBSECTION (1)(C): JUDICIAL RECORDING

- The police officer is required to arrange for the victim's statement to be recorded by a Judicial Magistrate as soon as possible, in accordance with clause (a) of subsection (6) of section 183.
- This step ensures that the statement is officially documented in a manner that upholds judicial standards and can be reliably used in subsequent legal proceedings.

SUBSECTION (2): PROVISION OF INFORMATION COPY

- Under subsection (2), a copy of the recorded information must be provided immediately and free of charge to the informant or victim.
- This provision ensures that the informant or victim has access to their own statement, promoting transparency and allowing them to verify the accuracy of the recorded information.

SUBSECTION (3): PRELIMINARY ENQUIRY AND INVESTIGATION PROTOCOL

Under the amended provisions of Section 173, specific guidelines are provided for the handling of cognizable offences punishable by imprisonment for a term of three years or more but less than seven years.

SUBSECTION (3)(I): CONDUCTING PRELIMINARY ENQUIRY

- Upon receiving information about the commission of such an offence, the officer in charge of the police station is authorized to conduct a preliminary enquiry.
- This preliminary enquiry is intended to ascertain whether a prima facie case exists for proceeding further.
- The officer must obtain prior permission from a superior officer of at least the rank of Deputy Superintendent of Police, given the nature and gravity of the offence.
- The preliminary enquiry must be completed within a period of fourteen days.

SUBSECTION (3)(II): PROCEEDING WITH INVESTIGATION

- If the preliminary enquiry establishes the existence of a prima facie case, the officer in charge may proceed with the investigation.
- This step ensures that only cases with sufficient initial evidence are formally investigated, optimizing resource allocation and maintaining judicial efficiency.

SUBSECTION (4): RECOURSE FOR AGGRIEVED PERSONS

SUBSECTION (4)(I): APPEAL TO THE SUPERINTENDENT OF POLICE

- Any individual aggrieved by the refusal of the officer in charge to record the information as specified in subsection (1) can escalate the matter by sending the substance of the information in writing, via post, to the Superintendent of Police.
- If the Superintendent of Police is satisfied that the information reveals the commission of a cognizable offense, they must either investigate the case personally or direct a subordinate officer to do so.

SUBSECTION (4)(II): ESCALATION TO MAGISTRATE

- If the Superintendent of Police fails to act, the aggrieved person has the right to apply to the Magistrate under subsection (3) of section 175.
- This provision ensures a higher level of oversight and accountability in the investigation process, allowing for judicial intervention if necessary.⁴

THE DILEMMA AND UNCERTAINTY: AFTERMATH OF THE NEW AMENDMENT

The New Criminal Law Amendment which has been brought by the Union Ministry has posed several challenges like the completion of Criminal Trial in 3 Years which as said by the current CJI⁵ will become mere words if the means to achieve it are not provided. A feature of the new criminal laws is the transfer of powers from the civil administration, manned by the Indian Administrative Service, to the police. Now, police officers can be made special executive magistrates, not just members of IAS. To attach properties, the permission of the magistrate has been done away with. The police can arrest people without a warrant from a magistrate. A police officer can decide if an arrested person can be put in handcuffs.

The period for which a person can be kept in police custody has been increased from 15 days to a maximum of 90 days. The provision to permit an officer to carry out a preliminary investigation

⁴ Section 173 of the THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

⁵ Thomas, A. (2024, April 21). Change in mindset needed for new criminal laws: CJI DY Chandrachud. Hindustan Times. Retrieved from <https://www.hindustantimes.com>

before registering a first information report (FIR) would, ideally, be welcome - as registering FIRs is now a routine form of harassment. But it can be misused to not register an FIR against a powerful person, when filed by a powerless person. The shift in the balance of power towards the police makes police arbitrariness even more likely than it is now.

In this background one more prominent feature of the BNSS is creating a challenge which further increases uncertainty and dilemma to its implementation, which is the Registration of an FIR as per the new law.

The following are the Challenges relating to the FIR :

TILL WHAT EXTENT WILL THE INCLUSIVITY OF ELECTRONIC COMMUNICATION EXTENDS

As per Section 2⁶ of the new Sanhita it states that Section 2 (i) "electronic communication" means the communication of any written, verbal, pictorial information or video content transmitted or transferred (whether from one person to another or from one device to another or from a person to a device or from a device to a person) by means of an electronic device including a telephone, mobile phone, or other wireless telecommunication device, or a computer, or audio-video player or camera or any other electronic device or electronic form as may be specified by notification, by the Central Government;

Further As per Section 173 sub clause 2 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 prescribe in this behalf:

The uncertainty arises as Electronic Communication includes all forms of electronic communication which in practice means that a complainant can file a FIR by making a Video, send a mail, a pictorial representation to police threw mobile, mails, messages or any telecommunication device and it will be an FIR from the complainant

⁶ Section 2 of the THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

One such instance highlighted was in Mumbai where the police receive hundreds of online complaints on different banking and credit card frauds daily, but barely 5% get converted into FIRs and that too only if a complainant follows up the e-complaint by meeting officials.⁷

The Jammu & Kashmir and Ladakh High Court in September 2023 stated that In courts view a complaint to the police sent as a text message on WhatsApp is “substantial compliance”⁸

PRACTICAL IMPLEMENTATION OF THE SYSTEM

Now as the scope of complaint is immensely divers the practical implementation still remains a question that will the police be able to take the complaint from such divers platforms and whether they will register it so as to provide justice is still a uncertainty, As the offline system of reporting has shown the reluctance on the part of police to receive complaints and register FIRs as mentioned in the IPF Survey⁹

LIMITED SCOPE OF INCLUSION FOR ONLINE REPORTING

Further in the states in India where E - Complaint is taken is for non Heinous Crimes i.e. with the punishment of less than 3 Years so further the ambiguity remains on with the scope of taking the FIR for offences of more than 3 years will be inculcated or not and if so the Complainant information will be taken as a complaint or a FIR .

⁷ Times of India. (2023, June 27). National cybercrime portal got 21 lakh complaints. *The Times of India*. Retrieved from

[http://timesofindia.indiatimes.com/articleshow/101264726.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/101264726.cms?utm_source=contentofinterest&utm_medium=txt&utm_campaign=cppst)

⁸ Jain, A. (2023, September 20). Police complaint via WhatsApp? HC gives green light, says it's compliant with FIR filing laws. *The Print*. Retrieved from <https://theprint.in/judiciary/police-complaint-via-whatsapp-hc-gives-green-light-says-its-compliant-with-fir-filing-laws/1752308/>

⁹ IPF Smart Policing Survey. (2021). One area that is agitating the minds of citizens is the perceived reluctance on the part of police to receive complaints and register FIRs. (p. 32).

LACK OF OPENNESS TO ADAPT TO THE CHANGES AND DEPENDENCE ON GOVERNMENTS ALLOCATION OF FUNDS

In the current online CCTNS System that is also a major digitalization process in Reporting system despite the government's current hesitance to utilize the cloud for mission-critical projects like the CCTNS, the concern over cloud security is largely rooted in perception rather than a lack of understanding about cloud operations. There is a need for companies to raise awareness and foster trust in cloud technologies. From a technological standpoint, today's cloud infrastructure whether hybrid or public is considerably more robust. Most cloud service providers implement comprehensive security measures, covering application, data, and network security from all angles. Further it is also heavily dependent on government's timely allocation of funds.¹⁰

LACK OF ACKNOWLEDGMENT AND GUIDANCE PROCESS

The Further major problem with the E- Fir system is the Validity as its neither provides the Acknowledgment system form the officials as done in Hong Kong ¹¹where it is An e-Reference number for the successful e-Report will be generated after the Informant has completed the on-line e-Report form. The Police acknowledges threw a receipt through email about 15 minute after the successful submission and the same system prevails in United Kingdom and New zeland .Nor they provide the system of educating system for citizens where before filling whereas in countries like United Kingdom ¹², Hong Kong¹³ , Canada¹⁴ and Newzeland¹⁵ they provide a certain set of question to make sure right complaint is filed on right crime , which is not inculcated in our system which will further pose a threat.

¹⁰ Ujaley, M. (2015, December 30). What is causing the CCTNS delay? *Egov Watch Magazine*. Retrieved from https://egov.eletsonline.com/2015/12/what-is-causing-the-cctns-delay/

¹¹ Hong Kong Police Force. (n.d.). FAQs about Emergency Report Centre (ERC). Retrieved from https://www.police.gov.hk/ppp_en/13_faqs/faq_erc.html, (2024, April 11).

¹² United Kingdom Police . (2024, April 11). Contact us.United Kingdom Police. https://www.police.uk/pu/contact-us

¹³ Hong Kong Police Force. (n.d.). FAQs about Emergency Report Centre (ERC). Retrieved from https://www.police.gov.hk/ppp_en/13_faqs/faq_erc.html, (2024, April 11).

¹⁴ Royal Canadian Mounted Police. (2024, April 11). Contact us. Government of Canada. https://www.rcmp-grc.gc.ca/cont/index-eng.htm

¹⁵ New Zealand Police.(2024, April 11) . How to report a crime or incident. https://www.police.govt.nz/advice-services/how-report-crime-or-incident

LACK OF AUTHENTICATION PROCESS

The system which prevails in the states which at present has the online complaint system fail to contain any systematic authentication system so as to increase the authenticity of the complaint and nor is the issue brought in light or dealt with in the new BNSS . Whereas in Countries like the United Kingdom¹⁶ , Canada ¹⁷, New Zealand ¹⁸and Hon Kong they have a verification system linking verification before starting and few have a specific time limit for a single complaint to be registered therefore increasing the authentication for speedy and robust Justice system .

LACK OF DATA

There is no data that before the BNSS how much complaints came from online e reporting and how much were disposed off or considered by the police . The NCRB has also not recorded any data relating to the same . The need for accountability is therefore required for the new BNSS

CONCLUSION

In conclusion, the principle that "legal certainty is the cornerstone of justice" is particularly pertinent to India's criminal procedural framework. The inherent ambiguities and lack of precision in the reporting mechanisms under the Criminal Procedure Code (CrPC) pose substantial challenges to the consistent and fair administration of justice. The recent implementation of the BNSS Act 2023 has further complicated the procedural landscape by introducing new, often vague, requirements that intersect with existing laws. This intersection has not been adequately clarified, leading to potential inconsistencies in law enforcement and judicial interpretation.

To uphold the principles of fairness and due process, it is imperative to address these procedural uncertainties. Ensuring clarity in the CrPC and integrating the BNSS Act's provisions coherently is essential for safeguarding legal certainty, protecting individual rights, and maintaining the integrity of the criminal justice system. Without such measures, the efficacy and justice of India's criminal procedural framework remain at risk.

¹⁶ United Kingdom Police . (2024, April 11). Contact us. United Kingdom Police. <https://www.police.uk/pu/contact-us>

¹⁷ Royal Canadian Mounted Police. (2024, April 11). Contact us. Government of Canada. <https://www.rcmp-grc.gc.ca/cont/index-eng.htm>

¹⁸ New Zealand Police.(2024, April 11) . How to report a crime or incident. <https://www.police.govt.nz/advice-services/how-report-crime-or-incident>

Therefore as said that “A job half done is as good as none.” Unless the current ambiguities as listed in the paper if not resolved the change is of in practice no use . and further practical implementation standards are to be met. Therefore as it is further said that "Adapt to change or be left behind in silence." It is the need of the hour to adopt to this changes or else of no use .