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SPEEDY JUSTICE OR SYSTEMIC DELAYS?- A CRITICAL LOOK AT SECTION 173 OF BNSS

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I. INTRODUCTION

The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the Code of Criminal Procedure, 1973 (CrPC), introduces several new and amended provisions. While some of these changes are seen as progressive steps toward societal advancement, others have sparked controversy and debate. Naturally, the Act has received both praise and criticism for its reforms.

A particularly contentious provision is Section 173, which governs the filing of First Information Reports (FIRs) in cognizable cases. This provision, previously encapsulated under Section 154² of the CrPC, has been modified under BNSS with several additions. This paper aims to analyze the provision by comparing it with its previous version, examining relevant case laws and discussing critical arguments. The central question under consideration is whether Section 173 genuinely ensures a speedy and efficient trial or if it represents yet another failure of the executive authorities, turning a well-intentioned law into a missed opportunity.

II. RESEARCH QUESTION

Does Section 173 of the BNSS ensure speedy justice, or does it introduce barriers to efficient legal proceedings? By examining Section 173(1) and Section 173(3), this paper seeks to determine whether the changes align with the objectives of a transparent and swift criminal justice system.

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III. ANALYSIS

A. SECTION 173(1): EXPANSION OF FIR JURISDICTION

Section 173(1)³ mandates that any information regarding the commission of a **cognizable offence**, regardless of the location, must be reported either orally or through electronic communication to the officer in charge of a police station.

Although the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** does not provide a formal definition of a **First Information Report (FIR)**, it accords significant importance to it. In **Manoj Kumar Sharma v. State of Chhattisgarh (2016)**⁴, the **Supreme Court** emphasized the critical role of a **written FIR**, highlighting that it serves as the first step in an investigation and is integral to the administration of justice. An **FIR** is a crucial tool for **police officers**, enabling them to understand the nature of the crime, identify victims and suspects, and gather other relevant information.

Previously, a person filing an **FIR** was restricted by the jurisdiction where the offence was committed. To address this issue, the **J.S. Verma Committee**⁵, established in the aftermath of the **Nirbhaya Case (2012)**⁶, recommended the concept of **Zero-FIR** in its report. This concept allows an **FIR** for a **cognizable offence** to be registered at any police station, irrespective of territorial jurisdiction.⁷

Building upon this principle, **Section 173(1)(ii)**⁸ of the **Bharatiya Nagarik Suraksha Sanhita (BNSS)** further expands the law by permitting the registration of an **FIR** through **electronic communication** (E-FIR), provided that the complainant **signs it within three days**, irrespective of the police station's jurisdiction. This provision was not previously present in Section 154 of CrPC. So this was a progressive move on part of our legislators. And while this provision offers

³ The Bharatiya Nagarik Suraksha Sanhita 2023

⁴ *Manoj Kumar Sharma & Ors. v. State of Chhattisgarh & Anr.* [2016] Criminal Appeal No. 775 (SC).

⁵ Drishti IAS, 'J.S. Verma Committee on Sexual Harassment at Workplace Act' (Drishti IAS, 11 March 2024) <https://www.drishtiias.com/daily-updates/daily-news-analysis/j-s-verma-committee-on-sexual-harassment-at-workplace-act> accessed 21 March 2025.

⁶ *Mukesh & Anr v. State for NCT of Delhi & Ors.* [2017] 6 SCC 1 (SC).

⁷ Pink Legal, 'Zero FIR' (Pink Legal, n.d.) <https://pinklegal.in/topics/police/zero-fir.html#:~:text=What%20is%20a%20Zero%20FIR,can%20conduct%20a%20detailed%20investigation.> accessed 21 March 2025.

⁸ The Bharatiya Nagarik Suraksha Sanhita 2023, S 173(1)(ii)

significant relief to **marginalized communities** by expediting investigations and reducing the need for victims to repeatedly relive traumatic experiences, it also presents certain challenges.

For instance, the **Parliamentary Standing Committee** has emphasized the need for such **FIRs** to be registered exclusively through **recognized portals** to prevent the misuse of the system, such as the filing of **false or frivolous complaints** that could waste law enforcement resources.

B. SECTION 173(3): PRELIMINARY INQUIRY AND ITS IMPLICATIONS

The most **contentious aspect** of this provision lies in **Clause (3)**⁹, which grants the **officer in charge** the authority to conduct a **preliminary inquiry** within **fourteen days** before registering an **FIR** to establish a **prima facie** case.¹⁰

In **Lalita Kumari v. State of U.P. & Ors. (2014)**¹¹, the **petitioner's father** filed a **writ of habeas corpus** seeking the protection of his **minor daughter**, who had been **kidnapped**. Despite submitting a **written report** to the officer in charge, the authorities failed to take action, and the **FIR** was registered only after the **intervention of the Superintendent of Police**.

Therefore, central issue in the case was whether a **police officer** is **duty-bound** to register an **FIR** upon receiving information regarding the commission of a **cognizable offence** under **Section 154 of the CrPC**, or whether the officer has the discretion to conduct a **preliminary inquiry** to verify the authenticity of the information before registration.¹² The **Supreme Court** held that **Section 154(1) of the CrPC** mandates the **immediate registration** of a **FIR** if the information discloses a **cognizable offence**. If the information is ambiguous, a **preliminary inquiry** may be conducted **only to determine** whether a **cognizable offence** has been committed, and such an inquiry **must be concluded within seven days**. Furthermore, all information—whether leading to an **FIR** or an **inquiry**—must be meticulously recorded in the **General Diary**, and officers failing to register a **valid FIR** should face **disciplinary action**.¹³

⁹ The Bharatiya Nagarik Suraksha Sanhita 2023, S. 173(3)

¹⁰ <https://www.myjudix.com/post/comparative-analysis-between-section-154-crpc-and-section-173-bnss-key-differences>

¹¹ *Lalita Kumari v. State of U.P. & Ors.* (2014) 2 SCC 1 (SC).

¹² Dhyeya Law, 'Lalita Kumari v. Government of Uttar Pradesh' (Dhyeya Law, n.d.) <https://www.dhyeyalaw.in/lalita-kumari-v-government-of-uttar-pradesh> accessed 21 March 2025.

¹³ Drishti Judiciary, 'Lalita Kumari v. State of U.P. & Ors. (2014)' (Drishti Judiciary, n.d.) <https://www.drishtijudiciary.com/landmark-judgement/code-of-criminal-procedure/lalita-Kumari-v-state-of-up-&-ors-2014> accessed 21 March 2025.

Thus, the **Lalita Kumari case** established a **landmark precedent**, affirming several guidelines that if an **offence is cognizable**, the **registration of an FIR is mandatory**, and a **preliminary inquiry is not permitted** in such cases.¹⁴

The **new law**, which was intended to be a **pillar of civil rights**, is now being **manipulated to erode individual liberties**. Under **Section 173(3)**, a **police officer** is granted the discretion to **delay the registration of an FIR in cognizable cases** for up to **fourteen days** while conducting a **preliminary inquiry** to establish **prima facie** evidence. However, as discussed earlier, this provision directly contradicts the **Supreme Court's ruling in Lalita Kumari**, which mandates the **immediate registration of an FIR** upon disclosure of a **cognizable offence**. This discrepancy raises concerns about the **legality and potential misuse** of this provision.¹⁵

The **legislature's rationale** for introducing this provision is to **reduce the number of FIRs** and **prevent frivolous cases** from overburdening the police. However, the **Criminal Procedure Code (CrPC)** already provides **safeguards** against false complaints, including **prosecution for filing fake FIRs**. Thus, there are existing mechanisms to **filter out frivolous cases**, making this **new provision not only redundant but also dangerous**. Instead of **protecting justice**, it opens the door for **arbitrary police action**, where officers could **intentionally delay cases** or **avoid registering complaints** altogether.¹⁶

Historically, the **Supreme Court** has recognized limited circumstances in which a **preliminary inquiry** may be warranted—such as in **matrimonial disputes, corruption cases, and medical negligence cases**—to protect the **rights of the accused** from wrongful detention based solely on **allegations**. However, the **broad discretionary power** now vested in **police officers** under **Section 173(3)** allows them to **withhold the registration of FIRs in any cognizable offence**, which **seriously undermines access to justice**. The **corrupt influence of the wealthy and powerful** over law enforcement further exacerbates this issue, as **police officials may selectively**

¹⁴ Shillong Police, 'Mandatory Registration of FIR: Supreme Court Guidelines' (Shillong Police, n.d.) https://shillongpolice.gov.in/Supereme_Court_Rulings_Judgements/02_Mandatory_Registration_FIR_Supreme_Court_Guidelines.pdf accessed 21 March 2025.

¹⁵ Shashwat Kaushik, 'FIR Registration under Bharatiya Nagarik Suraksha Sahita' (iPleaders, 22 August 2024) <https://blog.iplayers.in/fir-registration-under-bharatiya-nagarik-suraksha-sahita/#Introduction> accessed 21 March 2025.

¹⁶ Aditya Arun and Anushka Singh, 'Introduction of BNSS: A Step Forward or Backward' (LiveLaw, 12 July 2024) <https://www.livelaw.in/lawschool/articles/introduction-bnss-step-forward-backward-263140> accessed 21 March 2025.

exercise this discretion, ensuring that **cases against influential individuals never see the light of day**. This could result in **manipulation, fabrication, and suppression of cases**, turning the **criminal justice system into a tool of oppression rather than protection**.

In **Pradeep Nirankarnath Sharma v. State of Gujarat (2025)**¹⁷, the **Supreme Court**, citing **Lalita Kumari**, reaffirmed that **police officers have no discretion** in registering an **FIR** when a **cognizable offence** is disclosed. The judgment clarified that a **preliminary inquiry** is permissible **only in cases where the existence of a cognizable offence is uncertain and requires verification**.¹⁸ The ruling further stressed that **mandatory FIR registration** is essential to uphold **transparency and accountability** in executive actions. This landmark decision has brought Section 173(3) under scrutiny, as its provisions continue to contradict established **judicial precedents**.¹⁹

Section 173(3) could also be seen as violating **Article 21 of the Indian Constitution**²⁰, which guarantees the **right to a fair trial**. By allowing police officers a **fourteen-day preliminary inquiry**, the provision introduces delays that may **hamper evidence collection, enable witness tampering, and weaken the victim's case**. Additionally, granting **police excessive discretion** in deciding whether an FIR should be registered creates room for **bias, corruption, and procedural injustice**, contradicting the principles of **natural justice and due process** upheld by the Supreme Court

IV. CONCLUSION

Rather than ensuring a fair and speedy trial, Section 173(3) provides an opportunity for police officers and influential individuals to manipulate the criminal justice system. By enabling delays in registering FIRs, the provision allows wrongdoers to escape accountability, making it harder for victims to seek justice.

¹⁷ *Pradeep Nirankarnath Sharma v. State of Gujarat & Ors.* [2025] 6 SCC 350 (SC).

¹⁸ Gursimran Kaur Bakshi, 'Lalita Kumari Judgment Doesn't Create Absolute Rule That Preliminary Enquiry Is Necessary in Every Case Before FIR: Supreme Court' (LiveLaw, 19 March 2024) <https://www.livelaw.in/supreme-court/lalita-kumari-judgment-doesnt-create-absolute-rule-that-preliminary-enquiry-is-necessary-in-every-case-before-fir-supreme-court-286704> accessed 21 March 2025.

¹⁹ Law Trend, 'SC Clarifies Lalita Kumari Judgment on Law on Preliminary Inquiry Before Lodging FIR' (Law Trend, 18 March 2025) <https://lawtrend.in/sc-clarifies-lalita-kumari-judgment-on-law-on-preliminary-inquiry-before-lodging-fir/> accessed 21 March 2025.

²⁰ The Constitution of India 1950, Article 21

Moreover, this unfettered power granted to the police creates room for inconsistent practices, corruption, and potential delays in investigations, ultimately weakening the rule of law. The provision undermines landmark Supreme Court judgments, which have consistently emphasized the importance of immediate FIR registration in cognizable offences. Additionally, the provision raises concerns under **Article 21**, as it potentially **violates the right to a fair trial** by enabling **delays, bias, and procedural inefficiencies**.

To truly ensure speedy justice, Section 173 must be amended to align with judicial precedents. The fourteen-day window for a preliminary inquiry should be removed or strictly limited to exceptional cases. Additionally, robust oversight mechanisms must be implemented to prevent abuse of discretion by police officers.

The spirit of justice lies not only in creating laws but also in ensuring their fair and impartial execution. Section 173, in its current form, risks undermining the very objective it seeks to achieve—ensuring a swift, transparent, and accessible criminal justice system. Therefore, immediate legislative review and judicial intervention are necessary to prevent the erosion of individual liberties and restore public trust in law enforcement.