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Examination of the Challenges of Procedure of Investigation by Police in India from the Filing of FIR to Creating the Charge Sheet

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ABSTRACT

In India, there are 4 pillars of the criminal justice system. That includes the police, the prosecution, the judges or magistrates, and the correctional homes. The police have a very serious role to play in the context of an investigation. There are different offenses committed and the victims are not legal experts to accurately plant the FIR for the creation of a charge sheet.

From the time FIR is lodged in accordance with the Code of Criminal Procedure, the challenge begins on the part of the police to create a prima facie case with available evidence and file a charge sheet. The dissertation work examines the challenges that are there and the way ahead to address those challenges.

Keywords: *investigation, police officer, charge sheet, FIR, theft.*

I. INTRODUCTION

In India, there are 4 pillars of the criminal justice system. That includes the police, the prosecution, the judges or magistrates, and the correctional homes. The police have a very serious role to play in the context of an investigation. There are different offenses committed and the victims are not legal experts to accurately plant the FIR for the creation of a charge sheet.

From the time FIR is lodged in accordance with the Code of Criminal Procedure, the challenge begins on the part of the police to create a prima facie case with available evidence and file a charge sheet. The dissertation work examines the challenges that are there and the way ahead to address those challenges.

II. CRIME INVESTIGATION BY POLICE IN INDIA

State police forces and some central police organizations, such as the CBI (Central Bureau of Investigate cyber the infrastructural responsibility of conducting criminal investigations. Police

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officers must report a crime, gather evidence, locate the offender, develop charges against him, and assist in his legal prosecution in order to obtain a conviction. Due to higher crime rates, lower conviction rates, a number of openings, and a staff of police officers who are overworked, the quality of crime investigations has decreased.

Crime investigation requires forensic expertise, infrastructure, time, and resources, as well as knowledge and training.

In order to conduct professional investigations, the police lack the necessary knowledge and experience. They also lack legal understanding (on issues such as the admission of evidence), and their forensic and cyber infrastructure is both weak and antiquated.

The transfer of officers during the investigation, which delays the process and requires the newly appointed officer to study the case and restart the investigation, is another factor contributing to the investigation's lack of quality.

III. INVESTIGATION OF THEFT, EXTORTION, AND OFFENSES AGAINST PROPERTY

In accordance with the law of the land, the police's role during an investigation is to seek out the truth, and they should be allowed to do so without restriction. However, in reality, the investigators are affected by a wide range of factors. In some cases, the police act as a mediator to settle conflicts amicably before they go to court. The terms cognizable and non-cognizable are used to classify criminal cases.

According to the law, a police officers may only conduct investigations on their own initiative and make warrantless arrests in situations that are cognizable. Crimes like murder, rape, theft, and robbery are examples of recognizable cases. Non-cognizable cases are those in which a police officer lacks the legal authority to make arrests without a warrant. In such circumstances, a court order is required before the police can launch an inquiry. In any police station, one invariably finds that non-cognizable cases are more in number than cognizable cases. Police officers spend more time and have a greater interest in resolving such non-cognizable cases.

In such non-cognizable cases, police officers invest more time and energy into finding solutions.

F. I. R. Means any information about the commission of a Cognizable Offence given orally or in writing to an on-duty officer by an aggrieved person or any other person. Based on the information already provided, the investigation got underway. F. I.R. The Judicial Magistrate may also direct the concerned Police Station jurisdictional area to register.

Section 154: Information in cognizable cases

Every information relating to the commission of a cognizable offense, if given orally to an

officer in charge of a police station, shall be reduced to writing by him or under his direction, and shall then 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 specify.⁴

A duplicate of the data listed in subsection

(A) Shall be immediately provided to the informant, without charge.

Anyone who feels wronged by a police officer's decision to forgo recording the data mentioned in the subsection and instead focus on other matters.

a. May submit the substance of such information, in writing and by mail, to the concerned Superintendent of Police who, if satisfied that such information discloses the commission of a cognizable offense, shall either personally investigate the case or direct an investigation to be made by any police officer under him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offense.

b. Who can File F.I.R:

- Victim of the offense, or family member or Friend of the victim, or
- Any person who witnessed the offense, or The person who has committed the offense, or
- A police officer, or any other person who has come to know about such an offense.
- In order to constitute an F.I.R. in terms of Section 154 of Cr. P.C two conditions are supposed to be fulfilled:
- What information is conveyed by the Victim of the offense must be a piece of information only;
- Only a Cognizable Offense must have been committed in order for the information to be relevant.

That is to say, F. I. R. Is the first stage, during which all the data related to the offense is gathered. In one judgment, the Madhya Pradesh High Court noted that the crime report that is motivating the police apparatus to launch the investigation is receiving an F. I. R. Reports that were written later are not considered to be the same as the original ones because they are not

⁴ Section 154 of Code of Criminal Procedure 1973.

covered by S.161.

c. Evidentiary value of F.I.R:

- F.I.R. is not substantive evidence in nature.
- It may be regarded as corroborating or disconfirming proof.
- F. I. R. Even used as a statement before death.
- F. I. R doesn't have all the answers (when, where, what, who, why), but it does have the information you need.

In the case *Gulshan Kumar v. Despite* not being a substantive piece of evidence, it was decided that an FIR could be used to support or refute the statement of the person who filed it as well as determine the veracity of the prosecution's account.

The FIR is admissible evidence at that point and can be used to summon someone whose name appears in the FIR but who has not yet been charged. When the FIR was filed based on a written complaint given to the police and the presence of certain individuals as eyewitnesses was not mentioned in the complaint, it was decided that the credibility of those eyewitnesses was properly questioned.

d. What Is Zero F.I.R.?

Zero F. I. R. After the Nirbhaya Rape Case, there was yet another amendment. With the aid of 0 F. I. R. No matter the police station's area of responsibility, a complaint may be filed there. Men and women will both benefit when in trouble.⁵

Any police station may file a Zero FIR, regardless of the jurisdictional area, but the police will only begin an investigation where the incident actually occurred. The police station registers the 0 FIR, assigning it the serial number 0, and sends it to the appropriate jurisdictional area so that the investigation can be conducted.

The concept of zero FIR is new. It refers to an FIR that is filed regardless of the location where the crime was committed. In such a circumstance, the police are unable to maintain their lack of jurisdiction. The police station with actual jurisdiction is then given a copy of such an FIR so that the investigation can start.

It was introduced on the recommendation of the Justice Verma Committee formed at the backdrop of the brutal Nirbhaya gang rape in Delhi in 2012.⁶ The police are now under a legal

⁵ The provision of Zero FIR came up as a recommendation in the Justice Verma Committee Report in the new Criminal Law (Amendment) Act, 2013 after the heinous Nirbhaya case of December 2012

⁶ J. J. S. Verma Committee, Report of the Committee on Amendments to criminal law (January 23, 2013).

obligation to launch an investigation and act without using the defense of lack of jurisdiction. Landmark Judgements in India in the context of FIR are mentioned as follows: The supreme court ruled in *Lalita Kumari v. Government of the U. P.*, stating that if the complaint relates to a cognizable offense, an FIR must be registered under Section 154.⁷

In *State of Andhra Pradesh v. Punati Ramulu and Others*,⁸ where the constable refused to lodge the FIR by the informant who was the nephew of the deceased and an eye witness of the crime on the grounds of jurisdictional limitations, the court observed the failure of duty of the police constable and emphasized on his legal obligation to record the information and then transfer it to the competent police station.

In The case of *K. Ramachand Reddy v. Public Prosecutor*, it was decided that filing an FIR after being injured and later passing away constituted a relevant dying declaration.⁹ In *K Ramachand Reddy v Public Prosecutor case*, the head note of the judgment said the following. The two appellants and three others were tried by the Additional Sessions Judge of Nellore, under Sections 147,148, 302/149 and 302/34 I.P.C. , for having committed the murder of victim Venugopal Reddy.

The Sessions Judge recorded the prosecution evidence, heard the arguments, and acquitted the accused, holding that the prosecution had failed to prove the case against them. On appeal by the State under Sec. 41 of Code of Criminal Procedure, the High Court reversed the acquittal order in respect of the appellants and convicted them under Sec. 302/34 I.P.C solely on the basis of a dying declaration allegedly made by the deceased before a Magistrate.

In the present appeal filed under Sec. 2 it was contended before this Court firstly that the High Court had wrongly interfered with an order of acquittal in a case where two views are possible, and secondly, that the dying declaration was not a voluntary or true disclosure but was the result of tutoring and prompting. Allowing the appeal the Court, it was held,

(1) By failing to directly inquire of the injured whether he was mentally capable of making any statement, the Magistrate appears to have engaged in a serious irregularity.

In particular, the Magistrate's omission when he was satisfied that the injured was in excruciating pain and was unable to speak normally would not be sufficient to allay the doubts raised by the doctor's certification that the deceased was in a fit state of mind to make a statement.

⁷ (2014) 2 SCC 1 (India).

⁸ AIR 1993 SC 2644 (India).

1. *k. Ramachand Reddy v. Public Prosecutor*, (SC)-1976-5-25

(2) Even if the High Court was in a position to take a view different and distinct from the one taken by the Sessions Judge on the same evidence, this would not be a ground for reversing the order of acquittal. Thus as two views were possible, the High Court was in error in construing and disturbing the order of acquittal passed by the Sessions Judge. [551 & E] *Ram Jag & ors. v. The State of U.P.* [1974] 3 SCR 9 followed. CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 143 of 1975.

e. Is There Any Time Bar For Filing FIR?

According to practical knowledge, each FIR must be registered and submitted as soon as possible. In certain situations, a period of time may be granted for filing the FIR. But given the compelling circumstances, there must be some convincing explanations for the FIR's tardy filing. Judges with a great deal of common sense and experience can exercise their discretion in every case wisely and in the interest of justice.

However, no possible duration test of time can be fixed for applying the test of reasonableness to the lodging of an FIR; it depends upon the facts and circumstances of each case. The delay in lodging the FIR as such is not lethal in law if the prosecution substantiated lodging the report.

f. Reports Or Statements Which Does Not Amount To FIR

- A statement or report made after the investigation's start (Sec. 162 and 163 of the Cr. P. C.).
- After several days since the beginning of the offense, the record is not recorded.
- Records are not kept right away, but rather after a witness has been questioned.
- Only a cryptic message in the form of an appeal for immediate assistance is recorded, not the commission of any cognizable offenses. Complaint made directly to Magistrate.
- Information is given to Magistrate or police Officer on the phone.
- Information was obtained at the police station before filing an FIR.

Damodar v. In the State of Rajasthan, it was decided that even though an entry was made and information was provided to the police over the phone, it would not be sufficient to constitute an FIR under section 154 of the Criminal Code. P. C. Even if the information revealed the commission of a crime.

g. Supreme Court Recommendations/Directions For Filing A Report:

If the information reveals the commission of a cognizable offense, Section 154 of the Code requires the filing of an FIR, and no preliminary investigation is permitted in such

circumstances.¹⁰

A preliminary inquiry may only be conducted to determine whether a cognizable offense is disclosed or not if the information received does not disclose a cognizable offense but indicates the need for an investigation.

The FIR must be filed if the investigation shows that a cognizable offense was committed. A copy of the entry noting the closure of the complaint must be given to the first informant as soon as possible and no later than one week after the preliminary investigation concludes. It must briefly explain why the complaint is being closed and no further action is being taken.

If a cognizable offense is revealed, the police officer is obligated to report it. If the information received by him reveals a cognizable offense, action must be taken against negligent officers who fail to file the FIR.

The preliminary investigation's purpose is to determine whether any cognizable offenses are revealed by the information, not to confirm its accuracy or lack thereof.

The facts and circumstances of each case will determine the type of preliminary inquiry to be conducted and in which situations. Following are the types of cases where a preliminary investigation may be conducted.

- Matrimonial disputes/ family disputes
- Commercial offences
- Medical negligence cases
- Corruption cases
- Cases where there is an unusual delay in starting a criminal prosecution, such as when reporting the matter is delayed by more than three months without a satisfactory justification. The aforementioned are merely examples and are not an exhaustive list of all circumstances that might warrant a preliminary investigation.

A preliminary investigation should be made time-limited and, in any case, it should not last longer than seven days while upholding and defending the rights of the accused and the complainant. Such a delay must be noted in the General Diary entry, along with its facts and reasons.

We order that all information relating to cognizable offenses, whether resulting in the registration of an FIR or leading to an inquiry, must be mandatorily and meticulously reflected

¹⁰ *Lalita Kumari v. Govt. of U.P & Ors* on 12 November 2013

in the said Diary, as well as the decision to conduct a preliminary inquiry, as mentioned above. This is because the General Diary/Station Diary/Daily Diary is the record of all information received in a police station.

h. Actions Needed If FIR Is Not Registered

- You can meet with the Superintendent of Police or other higher-ranking officers, such as the Deputy Inspector General of Police and Inspector General of Police, and inform them of your complaint.
- You can send a written and postal complaint to the relevant Superintendent of Police. If the Superintendent of Police is pleased with your complaint, he will either conduct an investigation personally or order one to be conducted.
- You can submit a private complaint to the appropriate court.
- You can also file a complaint with the State Human Rights Commission or the National Human Rights Commission if the police fail to enforce the law or conduct an investigation in a fair and impartial way.

i. Are there any alternatives to filing a fir (especially for women)?

Yes, there are other processes for women to take when filing an FIR.

Step 1: Contact the National Commission for Women (ideal if an FIR is refused).

The National Commission of Women (NCW) is a national organization tasked with protecting women's interests. To address issues of violence and prejudice against women, they have counseling, legal, and research departments.

Domestic violence, harassment, dowry, torture, desertion, bigamy, rape, refusal to file a police report, cruelty by a husband, derivation, gender discrimination, and sexual harassment at the workplace are just a few of the complaints they receive.

The NCW cell's primary responsibilities are to conduct on-the-spot investigations, interview various witnesses, gather evidence, and submit the report with recommendations, all of which can provide some immediate and direct assistance. If you call the NCW, they will advise you on how to proceed with regard to hiring counsel.

The NCW responded to complaints by taking action.

- Counseling: The harmed party will receive counseling services, during which she will be informed of the status of the law and the range of options at her disposal.

- Resolution by alternative means: The NCW would arrange for mediation between the parties through the assistance of its panel of experts.

The victim may decide in some circumstances to resolve the conflict directly with the offender. Unless they have left the city limits, if you can identify the person, they will be located and taken into custody by law enforcement within 24 hours.

A charge sheet is submitted, and necessary witnesses are contacted and questioned. Documents are submitted with the FIR, and the sessions court then handles the case.

j. What Is Charge Sheet?

A charge sheet is a formal police record that lists each person who has been taken into custody, the charges being made against them, and who the accusers are. The phrase "four-part charging instrument" may also be used to describe it.

Information on the suspect and any witnesses, the charges and their details, the preference for certain charges, and a referral to a summary are all included.

The First Information Report (FIR), which is the primary document that describes a crime that has been committed, is different from a charge sheet. It typically refers to one or more FIRs and accuses someone or something of (some or all of) the crimes listed in those FIR(s). Once the charge sheet has been submitted to a court of law, prosecution proceedings against the accused begin in the judicial system.

Section 173 Report of a police officer following the conclusion of the inquiry.

Without undue delay, each investigation conducted in accordance with this Chapter must be finished.¹¹

- (i) As soon as it is finished, the officer in charge of the police station shall forward a report in the form prescribed by the State Government, stating to a Magistrate empowered to take cognizance of the offense on a police report.
 - a. the names of the parties;
 - b. the nature of the information;
 - c. The identities of those who seem to be familiar with the facts;
 - d. Whether an offense appears to have been committed and, if so, by whom;
 - e. Whether the suspect has been taken into custody;
 - f. If he was let go of his bond, and if so, whether it was with or without sureties;
 - g. Whether he has been transferred into custody in accordance with section 170.
- (ii) The officer must also inform the person, if any,

¹¹ Section 173 of Code of Criminal Procedure in India

who initially provided the information regarding the commission of the offense, of the action he has taken. This must be done in a way that the State Government may prescribe.

k. Is There Any Time Bar For Filing Charge-Sheet?

The time limit to file a charge sheet is related to the arrest of the accused in the case. In cases that can be heard by lower courts, the charge sheet must be filed within 60 days of the accused's arrest; in cases that can be heard by the Court of Sessions, the deadline is 90 days.

IV. INVESTIGATION OF OFFENSE AGAINST BODY

Voluntarily causing grievous hurt on provocation

Therefore, anyone intentionally causing great harm but only after being provoked is subject to Section 335. Because the accused was provoked in this case, the punishment for intentionally causing great bodily harm, while still a crime, is somewhat lessened. Regarding Dalip Singh and Others. Vs. In the case of the State of Haryana (2008), there was no prior animosity between the parties; instead, there was a minor fight over a matter.¹²

The accused later asked the victim to come to a panchayat meeting the next day to resolve the issue and had no intention to hurt the victim. But, during the meeting, the offense was committed during a heated exchange of words. According to the Punjab and Haryana High Court, the victim did not suddenly provoke the offense, so Section 335 did not apply to the accused.

With no awareness or intent that such a move could potentially cause severe harm.¹³

The requirement that the grievous harm must be done with the intent to harm and knowledge of the harm's consequences is a key component of Section 326.¹⁴ However, there are times when people may hurt someone more than they intended to in a fit of rage. This clause is crucial in those situations to safeguard the accused and lessen the severity of the punishment. Within Ahmed Ali v. State of Tripura (2009), the Supreme Court upheld the fine but reduced the accused's sentence from four years to three months of hard labor.¹⁵

The reduction in sentence was deemed justified because the accused was at a "tender age" when the offense was committed and was not aware of the consequences of his actions.

The next concept that needs to be understood is "grievous hurt.". The same is described in Section 320 of the Penal Code of 1860. The scope of Section 320 is quite limited, and in the

¹² *Dalip Singh and Ors. v. State of Haryana* (2008)

¹³ Section 335 of the Indian Penal Code 1860

¹⁴ Section 326 of the Indian Penal Code 1860

¹⁵ *Ahmed Ali v. State of Tripura* (2009)

case of *Mathai v. The State of Kerala* (2005) case led the Supreme Court to rule that this Section's clauses must be strictly construed and interpreted. The following types of harm are categorized as "grievous" in nature:

- Castration, also known as emasculation, involves harming or removing the male genitalia.¹⁶
- Permanent loss of eyesight in either eye
- Permanent loss of hearing in either ear
- Loss of a limb or joint
- Destruction or permanent impairing of the powers of any limb or joint
- Permanent disfiguration of the head or face
- A bone or tooth fracture or dislocation.
- Any injury that puts the victim's life in danger, renders them incapable of engaging in their regular activities for a period of twenty days or causes them to experience excruciating physical pain.

¹⁶ *Mathai v. State of Kerala* (2005)