BURKING OF CRIMES
BY REFUSAL TO REGISTER FIR IN COGNIZABLE OFFENCES

Abstract

An FIR disclosing the commission of a cognizable offence sets in motion the investigative machinery, with a view to collect all necessary evidence, and thereafter to take action in accordance with law. Registration of FIR is a medium employed by the state to maintain a record of the commission of cognizable offences. This helps the authorities to assess the law and order situation prevalent in any area and accordingly take appropriate steps to check the crime rate. This paper examines the legal and constitutional aspects of FIR registrations and analyzes the merits and demerits of holding preliminary inquiries prior to FIR registration, with the help of various judicial pronouncements. Various legal provisions have also been critically analyzed and an attempt has been made to clarify the mist surrounding these provisions by gathering the legislative intent behind them.

I Introduction

BURKING IS a term associated with crimes which mean to suppress or extinguish quietly.[1] Failure to get information of crime recorded stifles the criminal investigative process. Usually the efficiency of police and government is measured by the escalation or decline of crime rate during their tenure. Owing to this, there is a tendency to fudge the figures and more commonly to manage the crime statistics by not recording them. Manipulation of crime figures is often touted as an occupational disease plaguing the police force, at the root of which lies the greater evil of non recording of information in cognizable offences to dress up the statistics. For example, the last few months have witnessed an alarming surge in rape cases. This is because after the passing of the Criminal Laws Amendment Act, 2013, registration of information in rape cases has been made mandatory and a police officer refusing to register such information is liable to punishment under the revised law. It is not that suddenly incidences of rape have risen; the fact is that reporting has increased because now police officers are scared of turning away victims of rape or trying to effect compromises among the parties as doing so will make them guilty of the offence of refusal to register an FIR under section 166A of the IPC.

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1 Burking is a term associated with secretive disposal of proof regarding crimes. Named after William Burke (1792-1829), an Irish immigrant convicted of murdering 16 people in Edinburgh, Scotland within a period of ten months in 1828. From his method of committing murders, came the word 'burking', meaning to smother and compress the chest of a victim, and a derived meaning, to suppress something quietly.

First Information Report (FIR) is a report prepared by police regarding the commission of a cognizable crime. This is a written document that is supposed to contain the earliest information regarding the commission of a crime. The term FIR is not mentioned anywhere in the Cr PC, nor does it apply universally. It is a term used by India and some of our neighbouring countries such as Pakistan and Bangladesh to report of information disclosing the commission of crimes. Since it is a report which contains information that is first in point of time, it is referred to as the first information report. The information may be conveyed either verbally or in written form by any person and the police registers this information in the form of a report. It is generally a complaint lodged with the police by the victim or by someone on behalf of the victim. But law permits anyone, police officers, eyewitnesses or even complete strangers who receive such information to report the same. "An informant may lodge a report about the commission of an offence though he may not know the name of the victim or his assailant. He may not even know how the occurrence took place. A first informant need not necessarily be an eye witness so as to be able to disclose in great details all aspects of the offence committed."[2]

An FIR is an important document because it sets the criminal justice machinery in motion. It is mandatory for the police to first register a case before they start investigation in any case. The FIR forms the very basis of the case, hence the emphasis on its being recorded at the earliest post the commission of a crime. The objective behind recording of FIR is to obtain prompt information regarding criminal activity before people forget relevant facts or get an opportunity to embellish the same by concocting new facts. Once an FIR has been filed the contents of the same cannot be changed except in cases where the high court or the Supreme Court permits so.

In the case of *Tapan Kumar Singh*, the Supreme Court observed that, "It is well settled that a First Information Report is not an encyclopedia, which must disclose all facts and details relating to the offence reported. What is of significance is that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. At this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence, and not that he must be convinced or satisfied that a cognizable offence has been committed. If he has reasons to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. At this stage it is also not necessary for him to satisfy himself about the truthfulness of the information. It is only after

2 *Superintendent of Police, CBI* v. *Tapan Kumar Singh*, AIR 2003 SC 4140.

a complete investigation that he may be able to report on the truthfulness or otherwise of the information. Similarly, even if the information does not furnish all the details, he must find out those details in the course of investigation and collect all the necessary evidence."[3]

In section 154(1) of the Cr PC, the legislature in its collective wisdom has carefully and cautiously used the expression 'information' without qualifying the same as in section 41(1)(*a*) or (*g*) of the code wherein the expressions, 'reasonable complaint' and 'credible information' are used. Evidently, the non-qualification of the word 'information' in section 154(1) unlike in section 41(1) (*a*) and (*g*) may be for the reason that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility' of the said information is not a condition precedent for registration of a case.[4]

II The legislative position

Section 154 of the Cr PC, 1973 as amended by the Criminal Laws Amendment Act, 2013 provides as follows:

Section 154 information in cognizable cases

(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.

Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer:

3 *Id.* at 4145.

4 *State of Haryana* v. *Bhajan Lal*, 1992 CrLJ 527 (SC).

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 376B, section 376C, section 376D, section 376E or section 509 of the IPC 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 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.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(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 such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

A bare perusal of the language used in section 154 shows the mandatory character of the provision. The term employed by the legislature is 'shall'. This shows the legislative intent in making the registration of such information mandatory, but at the same time clause (3) of section 154 lays down a provision for a person aggrieved by refusal on part of an officer-in-charge of a police station to refuse to register an FIR to approach the superintendent of police. Such refusal has not been expressly prohibited or made punishable anywhere under the Cr PC or the IPC. It is well established that an enactment in form mandatory might in substance be directory and that the use of the word 'shall' does not conclude the matter.[5] Recent

5 *Hari Vishnu Kamath* v. *Syed Ahmed Ishaque* (1955) 1 SCR 1104.

amendments in the law have made registration of FIR mandatory but only in cases related to offences against women. Similarly sections 156(3), 190 and 202 provide alternate remedies to the person aggrieved by refusal on the part of the officer in charge to register an FIR. All these provisions clearly indicate that in certain circumstances the police officer in charge of a police station may refuse to register an FIR.

Under section 157 of the Cr PC, the police office may not investigate a case even after recording the FIR under section 154, if the facts mentioned in the complaint do not disclose sufficient grounds for starting an investigation. Usually police officers employ the same reasoning to defend their decision of refusing to register an FIR. They take the plea that the information did not disclose the commission of a cognizable offence.

Even under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 a public servant who willfully neglects his duty in registering a case can face a minimum sentence of six months and maximum sentence of one year in prison.[6] Also there is a bar on conduct of investigations by police officers below the rank of deputy superintendent of police, in cases of complaints relating to offences committed under the SC/ST Act.[7] This rule is based on the assumption that senior officials would be more efficient and less likely to be biased thus ensuring fair investigations. In the case of *D. Ramlinga Reddy* v. *State of AP*,[8] the Andhra Pradesh High Court held that "the provisions of rule 7 are mandatory and investigation under the SC/ST (Prevention of Atrocities) Act has to be carried out by only an officer not below the rank of DSP. An investigation carried out and charge sheet filed by an incompetent officer is more than likely to be quashed."

III Registration of information in cognizable offences whether mandatory:judicial view

While determining whether a provision is mandatory or directory, in addition to the language used therein, the court has to examine the language of the provision with respect to the context in which it is used and the objective that is sought to be achieved. Whenever there is any doubt regarding the construction of a statute the same has to be resolved in favour of the legislative intent behind such statute and the mischief sought to be remedied by the same. "The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the

6 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, rule 4.
7 The Scheduled caste and Schedule Tribe (Prevention of Atrocities) Rules, 1995, rule 7(1).
8 1999 CrLJ 2918.

consequences which would follow from construing it the one way or the other…."[9] Where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would result in inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words, as directory only. "The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."[10]

In *State of U.P.* v. *Babu Ram Upadhaya*,[11] a constitutional bench of the Supreme Court observed that, "When a statute uses the word 'shall', *prima facie*, it is mandatory, but the court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the court may consider, *inter alia*, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

In the case of *Ramesh Kumari* v. *State (NCT of Delhi)*[12] it was held by the Supreme Court that the provision of section 154 is mandatory. Hence, the police officer concerned is duty-bound to register the case on receiving information disclosing cognizable offence and also that genuineness or credibility of the information is not a condition precedent for registration of a case which can only be considered after registration of the case.

In the case of *Aleque Padamsee* v. *Union of India*[13] a petition was filed under article 32 of the Constitution of India, 1950 as the petitioners were aggrieved because of inaction of respondents. Information disclosing the commission of cognizable offences punishable under IPC was given, yet the police officials did not register the FIR and, therefore it was prayed that directions should be given to register the cases and wherever necessary accord sanction in terms of section 196 of the Cr PC, 1973.The respondents contended that on a bare reading of a complaint lodged, it

9 *State of UP* v. *Manbodhan Lal Srivastava* [1958] SCR 533.

10 *Id.* at 545.

11 AIR 1961 SC 751.

12 (2006) 2 SCC 677.

13 (2007) 6 SCC 171.

appears that no offence was made and that whenever a complaint is lodged, automatically and in a routine manner an FIR is not to be registered. After considering chapter XII, sections 154 and 156 the court observed that, "Whenever any information is received by the police about the alleged commission of offence which is a cognizable one there is a duty to register the FIR. There can be no dispute on that score. The basic question is as to what course is to be adopted if the police do not do it. The remedy available is filing a complaint before the Magistrate. The correct position in law, therefore, is that the police officials ought to register the FIR whenever facts brought to its notice show that cognizable offence has been made out. In case the police officials fail to do so, the modalities to be adopted are as set out in sections 190 read with section 200 of the Code".[14]

The true test is whether the information furnished provides a reason to suspect the commission of an offence, which the concerned police officer is empowered under section 156 of the code to investigate. If it does, he has no option but to record the information and proceed to investigate the case either himself or depute any other competent officer to conduct the investigation. The question as to whether the report is true, whether it discloses full details regarding the manner of occurrence, whether the accused is named, and whether there is sufficient evidence to support the allegations are all matters which are alien to the consideration of the question whether the report discloses the commission of a cognizable offence. Even if the information does not give full details regarding these matters, the investigating officer is not absolved of his duty to investigate the case and discover the true facts, if he can.[15]

At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of section 154(1) of the code, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under section 156 of the code to investigate, subject to the proviso to section 157.[16]

In other words, reliability, genuineness and credibility of the information are not the conditions precedent for registering a case under section 154 of the code. It is, therefore, manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of

14 *Ibid.*

15 *Supra* note 2 at 4145.

16 *Supra* note 4.

section 154(1) of the code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.[17]

In the case of *Parkash Singh Badal* v. *State of Punjab*,[18] the Supreme Court observed thus:

> At the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of section 154(1) of the Code, the police officer concerned cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under section 156 of the Code to investigate, subject to the proviso to section 157 thereof.

In the case of *Lallan Chaudhary* v. *State of Bihar*,[19] the Supreme Court held that section 154 of the code casts a statutory duty upon police officer to register the case, as disclosed in the complaint, and then to proceed with the investigation. The mandate of section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no other option except to register the case on the basis of such information. Thus, whenever cognizable offence is disclosed the police officials are bound to register the same and in case it is not done, directions to register the same can be given.[20]

IV Preliminary inquiry: legitimacy issues

Is a police officer bound under law to record every information conveyed to him regarding the commission of a cognizable offence or does he have the discretion to conduct a preliminary investigation in order to ascertain the truthfulness of the information before proceeding to register an FIR? There is a lot of confusion on this issue owing to conflicting judicial views on this matter and this indecisiveness has been sought to be put to rest when the Supreme Court while seeking answers to this question in *Lalita Kumari*[21] case referred this issue to a constitutional bench for

17 *Supra* note 12 para 33.

18 (2007) 1 SCC 1.

19 (2006) 12 SCC 229.

20 *Supra* note 12.

21 *Lalita Kumari* v. *State of Uttar Pradesh* (2012) 4 SCC 1.

an authoritative judgment.

Police cannot be compelled to record every vague information or irresponsible rumor. Whether a statement constitutes an FIR or not is a question of fact to be determined on the basis of facts and circumstances of each and every case. However, as stated by a full bench of the Kerala High Court in the case of *State of Kerala* v. *M.J. Samuel*,[22] "it can be stated as a general principle that it is not every piece of information however vague, indefinite and unauthenticated it may be that should be recorded as the first information for the sole reason that such information was the first, in point of time, to be received by the police regarding the commission of an offence".

In *Binay Kumar Singh* v. *State of Bihar*[23] the Supreme Court categorically stated that an officer in charge of a police station is not obliged to prepare FIR on any nebulous information received from somebody who does not disclose any authentic knowledge about commission of the cognizable offence. It is open to the officer-in-charge to collect more information containing details about the occurrence, if available, so that he can consider whether a cognizable offence has been committed warranting investigation thereto. In *Sevi* v. *State of Tamil Nadu*[24] also the court had expressly ruled that before registering the FIR under section 154 of Cr PC it is open to the station house officer (SHO) to hold a preliminary enquiry to ascertain whether there is a *prima facie* case of commission of cognizable offence or not.

Majority of the cases under section 304-A IPC alleging medical negligence on part of doctors[25] and complaints alleging cruelty on part of in-laws under section 498-A IPC[26] are filed with *mala-fide* and with oblique motives. It has been observed by the Supreme Court on a number of occasions that the allegations of the complainant in such cases should be scrutinized with great care and circumspection. In such cases where legal provisions are being abused, the police needs to make preliminary inquiries before conducting arrests. There is a need to permit preliminary investigations to prevent defamation and loss of reputation, of persons falsely accused of cognizable crimes.

In the case of *Kalpana Kutty* v. *State of Maharashtra*[27] the Bombay High Court laid down the general principles governing conduct of a preliminary inquiry: [28]

(a) When information relating to the commission of a cognizable offence is received by an officer in charge of a police station, he would normally

22 ILR 1960 Ker 783.

23 1997 (1) SCC 283

24 1981 Supp. SCC 43.

25 *Dr. Suresh Gupta* v. *Govt. of NCT of Delhi* 2004 (6) SCC 422.

26 *Preeti Gupta* v. *State of Jharkhand* (2010) 7 SCC 667.

27 2007 (109) Bom L R 2342 at 2356.

28 *Ibid.*

register a FIR as required by section 154(1) of the code.

(b) If the information received indicates the necessity for further inquiry, preliminary inquiry may be conducted.

(c) Where the source of information is of doubtful reliability *i.e.* an anonymous complaint, the officer in charge of the police station may conduct a preliminary inquiry to ascertain the correctness of the information.

(d) Preliminary inquiry must be expeditious and as far as possible it must be discreet.

(e) Preliminary enquiry is not restricted only to cases where the accused are public servants or doctors or professionals holding top positions. As to in which case preliminary inquiry is necessary will depend on facts and circumstances of each case. So also the type of preliminary inquiry to be conducted will depend on the facts and circumstances of each case.

Allowing a preliminary investigation before the registration of an FIR would undoubtedly serve as a check on the multitude of frivolous complaints that could be lodged by mischief makers or those seeking to settle old scores but at the same time it would also add to the woes of people who are genuinely in need of police help such as the oppressed, poor, indigent or illiterate persons. In the event of preliminary investigations being made mandatory before registering of cases, seeking justice would become even more difficult for them. There is a greater fear of abuse of such a discretionary power by the police where favours may be asked for in return for registration of cases. On the other hand, there are innumerable cases where the complainant is a practical person, FIRs are registered immediately, copies thereof are made over to the complainant on the same day, investigation proceeds with supersonic jet speed, immediate steps are taken for apprehending the accused and recovery persons and the properties which were subject matter of theft or dacoity.[29]

The existing law takes care of frivolous complaints. Lodging of false complaints or intentional furnishing of false information knowing the same to be false is punishable under section 182 of the IPC. It makes giving of false information, with intent to cause public servant to use his lawful power to the injury of another person *i.e.*, with intent to cause such public servant to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, punishable with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

Further the accused is entitled to discharge:

i. under section 227 of the Cr PC where judge considers that there are no

29 *Lalita Kumari* v. *Govt. of Uttar Pradesh*, 2008 (11) SCALE 154.

sufficient grounds for proceeding against the accused; or

ii. under section 239 Cr PC where no charge is made out against him in the *challan* or police report filed under section 173 Cr PC; or

iii. under section 245 Cr PC where the magistrate after taking prosecution evidence feels that either no charge is made out against the accused or that the charge is groundless.

In *Shashikant* v. *CBI*[30] the court observed that, "In certain exceptional cases, where there is a doubt whether or not the information so given discloses a cognizable offence, it may perhaps be permissible to conduct a preliminary enquiry first instead of registering the FIR at the first instance." But the above judgment has to be read only in the context of cases being investigated by the CBI which are governed by the guidelines contained in the CBI manual.[31] Chapter VI of this manual grants a discretion to the CBI officer to hold a preliminary inquiry where required. In a case where criminal proceedings are initiated on the basis of lodged FIR, commencement of investigation in the matter may be preceded by a preliminary inquiry.[32] A *prima facie* case may be held to have been established only on completion of a preliminary enquiry.[33] But Cr PC does not permit the conducting of a preliminary enquiry and provisions of CBI manual cannot be imported into or applied to interpretation of provisions contained in the Cr PC.

In the case of *Rajinder Singh Katoch* v. *Chandigarh Administration*,[34] the police authorities made some preliminary investigations in order to find out as to whether there was any substance in the first information sought to be lodged or not. In pursuance of the directions of the high court the superintendent of police himself visited the site of dispute and conducted investigations in the matter by questioning the neighbors to ascertain the truth. The allegations leveled by the appellant in his complaint were found to be false and were filed with an ulterior motive to take illegal possession of the first floor of the house. The court observed, "Although the officer in charge of a police station is legally bound to register a first information report in terms of section 154 of the Cr PC, if the allegations made by them give rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned, the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case. We are not oblivious to the decision of this Court in *Ramesh Kumari* v. *State (NCT of Delhi)*[35] wherein such a statutory duty has been found in the police officer. But, as indicated

30 (2007) 1 SCC 630.

31 Crime Manual 2005, Prepared by the CBI.

32 *Nirmal Singh Kahlon* v. *State of Punjab* (2009) 1 SCC 441 para 26.

33 *Id.* para 30.

34 2007 (10) SCC 69.

35 *Supra* note 12.

hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."[36]

In the absence of any prohibition in the code, express or implied, it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. In the case of *State of Uttar Pradesh* v. *Bhagwant Kishore Joshi* [37] it was held that, "No doubt, Section 5A of the Prevention of Corruption Act was enacted for preventing harassment to a Government servant and with this object in view investigation, except with the previous permission of a Magistrate, is not permitted to be made by an officer below the rank of a Deputy Superintendent of Police. Where however, a Police Officer makes some preliminary enquiries, does not arrest or even question an accused or question any witnesses but merely makes a few discreet enquiries or looks at some documents without making any notes, it is difficult to visualize how any possible harassment or even embarrassment would result there from to the suspect or the accused person."

V Impact of Criminal Law (Amendment) Act 2013

Section 166A of the IPC providing for punishment in cases of refusal to register FIR was inserted in the IPC *vide* the Criminal Law (Amendment) Act 2013. Clause (c) of the aforesaid section prescribes punishments for public servants who disobey directions under law. It provides as follows: [38]

> Whoever being a public servant fails to record any information given to him under sub section (1) of section 154 of the Code of Criminal Procedure, 1973, in relation to cognizable offence punishable under section 326A, section 326B, section 354, section 354B, section 370, section 370A, section 376, section 376A, section 376B, section 376C, section 376D, section 376E or section 509 shall be punished with rigorous imprisonment for a term which shall not be less than six months but which may extend to two years, and shall also be liable to fine.

The express inclusion of certain specific offences and exclusion of others casts a shadow of doubt on the mandatory character of section 154. The omission is conspicuous and does little to clear the ambiguity relating to the question of legislative intent behind section 154. Thus although the law laid down under section 154 of the Cr PC makes it mandatory for police to register an FIR, the absence of stringent

36 *Id.* para 8.

37 AIR 1964 SC 221.

38 Cl (c), s. 166A IPC, 1860 as amended by the Criminal Laws Amendment Act, 2013.

penal provisions has failed to ensure its implementation. Earlier policemen who refused to register information in cognizable offences despite having information regarding the same could at the most face departmental proceedings for misconduct or dereliction of official duty. Post the 2013 amendments, now refusal to register an FIR has been made a cognizable and bailable offence where the information reveals the commission of any of the following offences under the IPC.

i. Voluntary causing grievous hurt by use of acid *etc* (section 326A);
ii. Voluntary throwing or attempting to throw acid (section 326B);
iii. Assault or use of criminal force to woman with intent to outrage her modesty (section 354);
iv. Assault or use of criminal force to woman with intent to disrobe (section 354B);
v. Trafficking of persons (section 370);
vi. Exploitation of a trafficked child (section 370A);
vii. Rape (section 376);
viii. Person committing an offence of rape and inflicting injury which causes death or causes the woman to be in a persistent vegetative state (section 376A);
ix. Sexual intercourse by husband upon his wife during separation (section 376B);
x. Sexual intercourse by a person in authority (section 376C);
xi. Gang rape (section 376D);
xii. Repeat offenders (section 376E);
xiii. Uttering any word or making any gesture intended to insult the modesty of a woman *etc* (section 509).

VI Mandatory registration of FIRs: constitutional aspect

A proposition that the moment a complaint disclosing ingredients of a cognizable offence is lodged, the police officer must register an FIR without any scrutiny whatsoever, is an extreme proposition and is contrary to the mandate of article 21. Similarly, the extreme point of view that the police officer must investigate the case substantially before registering an FIR is also an argument of the other extreme. Both must be rejected and a middle path must be chosen.[39]

Police officers should refrain from registering FIRs in a mechanical manner. This was the underlying message given in the case of *Francis Coralie Mullin* v. *Administrator, Union Territory of Delhi*[40] where upholding liberty as the most cherished and prized possession of man in a civilized society, the Supreme Court held that, "Article 21 as interpreted in *Maneka Gandhi's* case[41] requires that no one shall be deprived of his life or personal liberty except by procedure established by law and

39 *Supra* note 21 para 59.

40 1981 (1) SCC 608 para 4 and 5.

41 (1979) 1 SCC 248.

this procedure must be reasonable, fair and just and not arbitrary, whimsical or fanciful and it is for the Court to decide in the exercise of its constitutional power or judicial review whether the deprivation of life or personal liberty in a given case is by procedure, which is reasonable, fair and just or it is otherwise." To require SHO to register an FIR irrespective of his opinion that the allegations are absurd or highly improbable, motivated *etc.* would cause a serious prejudice to the person named as accused in the complaint and would violate the rights of the accused under article 21 of our Constitution.

Thus, it is the mandate of article 21 which requires a police officer to protect a citizen from baseless allegations. This, however, does not mean that before registering an FIR the police officer must fully investigate the case. A delicate balance has to be maintained between the interest of the society and protecting the liberty of an individual. Therefore, what should be the precise parameters of a preliminary enquiry cannot be laid down in abstract. The matter must be left open to the discretion of the police officer.[42] Criminal procedural law has to embody principles of natural justice and the constitutional guarantees must be safeguarded. A balance has to be struck between speedy trial and fair trial and the principles of natural justice cannot be compromised with in order to achieve speedy dispensation of justice. Liberty of individual has to be zealously guarded by the law. Detention for even a single minute would amount to invasion of liberty. Civil liberties cannot be jeopardized unless sufficient grounds exist for doing so.

VII Conclusion

In 2008, the Supreme Court took strict cognizance of delays in lodging of FIRs and also in conducting investigations. In order to curb such lapses and delays on part of erring police officers and to ensure speedy justice delivery to victims of cognizable offences the Supreme Court issued directions to governments of all the states and union territories besides their director generals of police/commissioners of police as the case may be to the effect that if steps are not taken for registration of FIR immediately and copies thereof are not made over to the complainant, he/she may move the concerned magistrates by filing complaint petitions to give direction to the police to register case immediately upon receipt/production of copy of the orders and make over copy of the FIR to the complainant, within twenty four hours of receipt/production of copy of such orders. It may further give direction to take immediate steps for apprehending the accused persons and recovery of kidnapped/abducted persons and properties which were subject matter of theft or dacoity. In case FIR is not registered within the aforementioned time, and/or

42 *Supra* note 21 para 58.

aforementioned steps are not taken by the police, the concerned magistrate would be justified in initiating contempt proceeding against such delinquent officers and punish them for violation of its orders if no sufficient cause is shown and awarding stringent punishment like sentence of imprisonment against them in as much as the disciplinary authority would be quite justified in initiating departmental proceeding and suspending them in contemplation of the same.[43] Taking stock of the fact that majority of victims in the country are poor and illiterate with little or no knowledge of law at all the Supreme Court also issued directions for such directions to be made public and also to be placed on its website to educate the general public.

Thereafter in 2012, a three judge bench of the Supreme Court again heard this matter[44] and further requested the Chief Justice of India to refer this matter to a constitutional bench of at least five judges for an authoritative judgment on this issue.

Non-registration of FIRs by the police is an issue worthy of considered attention. This problem affects the indigents and the illiterates the most and these are the two categories of people who are the worst victims of crimes. Whenever a layman is aggrieved by an offence, approaching the police is his only recourse for redressal of his grievance. The majority of people are unaware whether the offence committed against them is cognizable or non cognizable. In such a scenario it would be asking for too much to expect them to know the procedure of sending the contents of their complaint in writing and by post to the superintendent of police or approaching a magistrate in cases where the police officer refuses to register an FIR. Section 157 already permits discretion to police officers in deciding whether the case is fit for investigation or not. Thus this is the time when the police officers would be justified to hold a preliminary inquiry in order to decide whether the case merits a full fledged investigation or not and this decision should be arrived at, after carefully considering all the legal and constitutional aspects of a case. But registration of FIR should be absolutely mandatory as this is the only way to inspire confidence in the general public. Frivolous or nebulous complaints can always be weeded out at the second stage by conducting a preliminary inquiry into the facts of the complaint before conducting investigations or arrests in any matter.

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43 *Supra* note 29.

44 *Supra* note 21.

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