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CRITICAL ANALYSIS OF SECTION 173 OF BNSS

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ABSTRACT

This paper undertakes a detailed examination of Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023, which introduces the concept of preliminary inquiry into India's procedural criminal law. The provision aims to streamline the investigation process, particularly for cognizable offences punishable with imprisonment between three to seven years, by mandating a time-bound inquiry lasting no more than fourteen days. The paper evaluates whether this structural change strengthens procedural justice or raises concerns of constitutional inconsistency and executive overreach.

While the legislative intent appears to focus on curbing frivolous complaints and safeguarding individual liberties, the practical implications of empowering police authorities to conduct such inquiries without immediate judicial oversight raise significant questions. Drawing on precedents such as *Lalita Kumari v. State of Uttar Pradesh*, the study highlights how prior rulings required prompt registration of FIRs for cognizable offences, leaving little room for discretionary inquiries. The BNSS framework, however, introduces ambiguity in procedural timelines and approval mechanisms, potentially causing delays in access to justice.

This analysis further questions whether the newly inserted procedural layer compromises the balance between efficient law enforcement and protection of fundamental rights. Reference is also made to earlier jurisprudence, including *State of Gujarat v. Shyamlal Mohanlal Choksi*, to argue that preliminary inquiries, if permitted should be subject to judicial supervision rather than being an executive function alone.

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INTRODUCTION

Justice Krishna Iyer said, "*procedure is the handmaid of justice* meaning that the procedural rules are meant to serve justice and not to hinder it."[1]

An important stage in the criminal justice process in India is a preliminary inquiry under "Section 173 of the Bharatiya Nagrik Suraksha Sanhita" formerly known as the Section 154 of Code of Criminal Procedure (CrPC). The police are doing this inquire to find out is there any preliminary case exit's or not. A preliminary investigation's goal is to prevent needless trials from being brought against people based on petty or unfounded accusations, shielding them from unjust prosecution.

In a number of rulings, the Indian Supreme Court has emphasised the value of a preliminary investigation as a protection against the abuse of law enforcement authority. But this clause has also come under question for being unclear and possibly causing delays in the legal system. Critics contend that the absence of a set process for conducting preliminary enquiries allows the police excessive discretion, which may lead to prejudicial or arbitrary decisions.

In addition, the BNSS seeks to create a more fast and effective justice system that can address persistent issues with intricate processes, pending cases, poor conviction rates, a lack of technological adoption, and delayed delivery of justice. The protection of citizens against unfair exploitation of the criminal procedure system, which is made possible by flaws in the current system[2].

[1] Anonymous, 'Primacy to Suraksha: Understanding the Bharatiya Nagarik Suraksha Sanhita, 2023'(*SCC Online*, 5 May 2024) https://www.scconline.com/blog/post/2024/05/05/bnss-that-is-to-replace-crpc-explained-with-key-highlights/> accessed 31 August 2024.

[2] Ibid.

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OBJECTIVE OF SECTION 173 UNDER BNSS

ENSURING TRANSPARENCY AND FAIR INVESTIGATION

In order to preserve a balance between the rights of the accused and the authority of the police, Section 173 BNSS is essential. Before filing a report, the police must first gather information and gather preliminary enquiries to determine the case's facts. By guaranteeing that no one is falsely accused without sufficient evidence, this clause protects the fundamental rights of natural justice and guards against the abuse of police authority.

TIME-BOUND INVESTIGATION

"*Proceed to conduct a "preliminary enquiry" to ascertain whether there exists a prima facie case for proceeding in the matter within 14 days*"[3].

The necessity of an immediate inquiry and submission of the final report is emphasised in sub section (3) clause (a) of Section 173. According to the clause, the investigation must be completed "without unnecessary delay". This requirement is necessary to prevent long investigations that could cause the accused to be unjustly harassed and have their right to a quick trial violated. Nevertheless, the phrase "without unnecessary delay" is frequently interpreted differently, and in reality, investigations can take a long time for a variety of reasons, such as a lack of resources, the complexity of the case, or inadequate administration.

But what should be the definite time to take response from superintendent of police in this provision could not be defined.

CHANGES WITH RESPECT TO REGISTRATION OF FIRST INFORMATION REPORTS

It is now possible to file FIRs using electronic communication. The individual providing the information will sign it and it will become part of the record after three days[4].

A preliminary inquiry is introduced by BNSS before a formal complaint is filed. Only crimes that are cognisable and involve a sentence of three years or more, but not seven years, are subject to preliminary investigation. The same must be done in a timely way, specifically within 14 days of the information being received[5].

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[3] Bhartiya Nagrik Suraksha Sanhita 2023, s 173.

[4] Anonymous, 'Overview of the Bhartiya Nagarik Suraksha Sanhita, 2023' (AZB PARTNERS Advocates $ Solicitor, 12 January 2024) < https://www.azbpartners.com/bank/overview-of-the-bharatiya-nagarik-suraksha-sanhita-2023/> accessed 2 August 2024.

[5] [Ibid] 2.

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BACKGROUND OF ZERO FIR

Under the Justice Verma Committee recommendation on which was made in the wake of the 2012 Nirbhaya gangrape case. Zero FIR was implemented in number of Supreme Court and High Court rulings also support the implementation of a Zero FIR. Supreme court came with landmark judgement on zero FIR held that filing a "First Information Report" is required if information reveals the commission of a crime that is punishable by law[6]. Delhi High Court ruled held that a woman may file a complaint from any location other than the scene of the occurrence[7].

NEW INCLUSION- ZERO FIR

Any police station, regardless of jurisdiction, may file a Zero FIR in response to a complaint about a crime that is punishable by law. At this point, no predefined FIR number is assigned. The revenant police station files a new FIR and begins an inquiry after obtaining the Zero FIR[8]. Its purpose is to make it easier and faster for victims of major crimes like women and children in particular case to file a complaint online, saving them the trouble of travelling from one police station to another. It also serves to guarantee that witnesses and evidence are not misplaced or altered as a result of complaint filing delays. It is moved to the appropriate police station where the crime was committed or if further investigation is required. Zero FIR can be file orally or electronic communication of any police station.

FLAWS IN ZERO FIR

Regardless of the location of the offence, an officer in charge of a police station is required under sub-section(1) of Section 173 of the BNSS to register "information" about a cognisable offence in the "FIR Book." In other words, the officer in charge in Odisha is required to file a formal complaint (FIR) if the SHO of a police station in the state receives information about a cognizable act being committed in Delhi. Unexpectedly however, Section 175 (1) of BNSS maintains the co-extensive jurisdiction of the police station and the magistrate[9].

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[6] *Lalita Kumari v. Govt. of UP* (2013)14 S.C.R. 713.
[7] *Satvinder Kaur v. State* (1999) 8 SCC 728.
[8] Aditya Arun, Anushka Singh, 'Introduction Of BNSS: A Step Forward or Backward' (2024) 3 Live Law1
[9] Justice V. Ramkumar, 'The Bhartiya Nagarik Suraksha Sanhita, 2023 ("BNSS" For Short) At A Glance-Comments by Justice Ramkumar' (*Live Law*, 16 March 2024) < livelaw.in/top-stories/justice-ram-kumar-comprehensive-analysis-bharatiya-nagarik-suraksha-sanhita-2023-252551?fromIpLogin=89407.39927462103> accessed 2 September 2024.

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In reality, a clause requiring the filing of the FIR and its transfer to the police station with investigative authority was what was required. That would have been consistent with the decision made in *State of A.P v. Punati Ramulu*[10].

KHAKI A TEMPORARY BLACK GOWN

> *"We are concerned for the present with sub-section (3) of Section 173. The said provision of BNSS says that if the "information" received by the SHO relates to the commission of any cognizable offence punishable with imprisonment ("with imprisonment" is absent in the provision) for **3 years** or more but less than **7 years**, the SHO may with the prior permission from an officer of and above the rank of DySP considering the "nature" and "gravity" of the offence"*

All of us know that a Constitution Bench of the Supreme Court of India in paras 49, 72, 73, 114, 120.6 of *Lalita Kumari v. Govt. of UP*[11]. In this case constitutional bench observed that the SHO is mandatorily register the fir in the FIR Book or FIR Register as soon as he receives information on the commission of a cognisable offence. The Constitution Bench adopted the aforementioned opinion after observing that police officials were abusing the mandatory requirement of Section 154 (1) Cr.P.C. by treating informants unfairly. Now, the aforementioned Lalita Kumari obligation is also give the discretion to the police to register a case with in 7 days by the new Section 173 subclause (3)[12].

However, Section 173(3) now allows for preliminary inquiry in all instances that carry a punishment of three to seven years in jail. Therefore, if the SHO receives "information" in this respect from someone in any of these situations, they must first get approval from the superior authority before conducting a "preliminary enquiry"to see whether a prima facie case exist. Although there is a 14-day window for carrying out the "preliminary enquiry," there is no time limit for getting the higher officer's prior consent. This implies that the First Informant who went to the SHO to file a complaint will have to wait a lifetime to find out if his complaint is filed or not.

Furthermore, Lalita Kumari ruled that the SHO can only investigate whether or not the FIR reveals a cognisable offence and that the SHO is not permitted to investigate the genuineness or veracity of the FIR. However, the SHO is authorised by "Clauses (a) and (b) of Section 173

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[10] 1994 Supp (1) SCC 590.
[11] AIR 2014 SC 187.
[12] Ratanlal & Dhirajlal, *The Code of Criminal Procedure* (23th edn, Lexis Nexis, 2019) 427.

(3) of the BNSS" to investigate whether the FIR contains a "prima facie case". This is how far the ruling in Lalita Kumari is overlooked.

THE ARBITRATRY POWER OF PRELIMINARY INQUIRY

The Criminal Procedure Code has received a cosmetic makeover from the Bhartiya Nagrik Suraksha Sanhita (BNSS). One of the rare statutes that has undergone revision is the notable addition of sub clause 3, Section 173 of the BNSS, which gives police the authority to carry out an initial investigation prior to filing a First Information Report[13] .

In order to determine whether or not an offence qualifies as a cognisable offense that is, an offence for which police can make an arrest without a magistrate's approval, the men in khaki are now issued a temporary black clothes and have 14 days to decide what to do. The rule stipulates that a preliminary investigation must be approved by the Deputy Superintendent of Police (DSP) and must be completed within the allotted time. However, no timeline has been established for requesting authorisation from the DSP.

The rights of informants and complainants in the criminal justice system may be impacted by the police's discretionary power. Further delay in filing the occurrence report could make the delay worse since it would further undermine the trial. That's why supreme court came with judgement ,It has long been the norm for the police to refuse to accept reports of crimes that are legally actionable. A five-judge Constitution Bench clearly ordered the filing of a First Information Report (FIR) in order to eradicate political influence and corruption in the historic Lalita Kumari case. The Criminal Procedure Code and the "Criminal Law (Amendment) Act of 2013" were interpreted by the supreme court, which found that it was clearly the legislative intent for a FIR to be automatically filed without a preliminary investigation.

[13] Rishav Sharma, Kshitij Goel 'The Arbitrary Power of Preliminary Enquiry' (*News Click,* 24 august 2024) < https://www.newsclick.in/arbitrary-power-preliminary-inquiry> accessed 2 September 2024.

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CRITICAL ANALYSIS

Preliminary inquiry is a predicament created by judges, and I have had necessity to write articles criticising it on multiple occasions because it is not a process that the Cr.P.C. intended. In *State of Gujarat v. Shyamlal Mohanlal Choksi*[14], a Supreme Court Constitution Bench had already heard the case. The five judges bench, noted that carrying out a inquiry is the sole responsibility of the magistrate and not the police. Lalita Kumari has also observed that the police lack the authority to conduct enquiries.

Unfortunately, BNSS has recognised the judge-made law of "preliminary enquiry" which is now applicable to all cases carrying a sentence of three to seven years in jail[15]. An SHO should not have been granted any freedom of this kind. It may be important to remember that intelligent police officers nevertheless carry out discrete enquiries to determine whether or not a crime that can be prosecuted, even in the absence of a court granting them the Authority to undertake preliminary enquiries.

Without changing the criminal code, the methodical reform to increase access to justice is headed down a difficult path. The pretence of conducting preliminary investigation before filing a formal complaint might potentially put the process on hold from the start. Investigating a crime before filing a formal complaint is not only open to misuse, but it also goes against the precedent that the Supreme Court has established in a number of cases. A law that permits behaviour that is inconsistent with the highest judicial interpretations jeopardises not only the integrity of the system but also its consistency and fairness. According to Justice Krishna Iyer, *how should salt be seasoned if it has lost its flavour*?

[14] AIR 1965 SC 1251.
[15] Bhartiya Nagrik Suraksha Sanhita, s 173(3).

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CONCLUSION

The BNSS was developed empirically with the specific intention of protecting the nagrik (citizen) in criminal proceedings and avoiding impeding the rights of the accused or victim. It is not a blind alley. The BNSS's measures, such as balancing the interests of all parties involved in a hearing or introducing sentence guidelines to prevent discretionary sentencing, also assure its efficacy. In addition, the Sanhita provides much-needed technical advancements to the nation's justice delivery system, bringing justice to the people instead of making them endure a lengthy, difficult, and gruelling legal search.

There are challenges in its practical implementation. One issue is the possibility of procedural delays, which can hinder justice and lead to prolonged disputes. Additionally, there may be concerns about the impartiality of officials conducting the inquiry, as local influence or corruption could compromise the integrity of the process.