

Zero FIR: Assert women's right!

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“Justice delayed is Justice Denied”,
“Delay Justice is Injustice”

ABSTRACT

Nirbhaya's rape case in 2012 in Delhi left the country in agony and appalled the existing criminal laws for protection of women. As a result, stringent reforms were demanded for management of crimes against women. One of main amendment in criminal procedure system was the concept of zero FIR which came after the recommendation by the Justice Verma Committee. This imperative provision led to filing of FIR anywhere. This was quite a stepping stone in the history of criminal procedure system as it made the age-old hindrance of territorial jurisdiction of police to take cognizance of the matter obsolete. However, this legal right was still in the shadows and it was the movie “Pink” which awakened the people about what is Zero FIR. This paper aims to discuss what Zero FIR and how this right can be exercised

INTRODUCTION

“Delhi police Chief Neeraj Kumar announced that Zero First Information Reports (FIRs) may be registered on the basis of a woman's statement at any police station irrespective of jurisdiction. This means women can file an FIR at any police station and the complaint is required to be registered on the basis of the woman's complaint verbatim. Mr. Kumar stated: “The woman's statement has to be taken as gospel truth and a probe needs to be initiated on its basis.”

The introduction of the Zero FIR, the starting point towards improving criminal justice is the filing of the criminal complaint itself. It is well known that the filing of FIRs, particularly for cognizable offenses, is an extremely difficult exercise - more so for a rape victim who has to ceaselessly recount the horrific event. Police stations often refuse to register FIRs for cognizable complaints, and innumerable rapes around the country go unreported. The victims then are forced to file a private complaint in court under Section 156(3) of the Criminal Procedure Code seeking an order directing the police to register an FIR. The police chief's announcement that the woman's statement will be taken as the “gospel truth” is an important first step that will hopefully enable rape victims to register an FIR. While the Supreme Court has, in various judgments, taken contradictory views on the issue of whether the police are required to investigate a complaint before registering an FIR under Section 154 of the Cr.P.C. it has repeatedly expressed its deep anguish over the failure of police to register FIRs, particularly in rape cases. Hopefully, the police will now register an FIR based on the woman's statement as per the recently announced measures. However, the mandatory and automatic registration of FIRs can be ensured only through e-governance, that is, by providing for online registration of FIRs by citizens.”¹

Criminal law is the principal legal device to prevent anti-social acts. Once an offence is committed initial report is given to police station which is commonly known as “First Information Report” which is abbreviated as “FIR”. It is a very important document as it starts the process of criminal justice into motion against offence done. It is important to describe that any criminal proceeding can be initiated only after registration of FIR.²

The Supreme Court acknowledged in the case of *Soma Bhai v State of Gujarat*³ that “It is the information given to a police officer in the form of a statement or allegations regarding the occurrence of or suspected commission of a cognizable offence. FIR is the information which is given to the police first in point of time on the basis of which the police may select and record as First Information.”

¹ <http://www.thehindu.com/opinion/lead/going-from-zero-firs-to-efirs/article4329575.ece>
(Visited on 22nd February)

² K.N. Chandrashekhara Pillai, R.V. Kelkar's Criminal Procedure (Eastern Book Company, Lucknow 2008).

³ A.I.R. 1975 S.C. 1453

It is also the foundation stone to build-up of the entire structure of the prosecution case. The main motive from the stand point of the authorities of the FIR is to get hold of the information about commission of an alleged cognizable offence so as to commence investigation and trace and book the guilty. FIR is lodged under Section 154 of the Cr.PC. having three-fold motive, which are:

- Firstly, to inform the District Magistrate and Superintendent of the Police, who are in charge of law and order of the district;
- Secondly, to report to the judicial officers before whom the case has to be eventually tried, and accept the material evidences on the basis of which proceedings are commenced; and
- Thirdly, to collect and protect data about the commission of the offence without wasting vital time and before forgetfulness and evasion on the part of the informer.

The concept of Zero FIR was introduced after the atrocious Delhi rape case after the commendation of the Justice Verma Committee in the Criminal Law Amendment Act, 2013. Zero FIR is coined as jurisdiction free FIR. Zero FIR removes the obstacles faced by an informant while lodging the FIR occurs because of the restrictions of territorial jurisdiction-imposed officer in-charge of the police station. A FIR ordinarily under Section 154 is read with Section 156 is lodged in a police station where the magistrate has authority to take cognizance of the matter. The officer in-charge is to ought to register the crime under “ZERO” number. Officer-in-charge is then authorized under Section 170 to conduct a preliminary investigation and after gathering sufficient evidences and material which ensures that a cognizable offence has been committed beyond his territorial limits such has to be transmitted to the concerned police station.

The Centre has issued a “fresh advisory” to all the states to make amendments in the state laws with respect to the registration of the Zero FIR on receipt of complaint or information about a crime without getting into argument related to the jurisdiction to prevent delay in justice. Central Government has warned by invoking the amendment in the criminal law that if there is any refusal with regards to the registering of the Zero FIR, it will lead to imprisonment. This ordered amendment of Zero FIR empowers the police to register the complaint acknowledged in police station other than jurisdictional police station where offence has been committed. In fact the concept of Zero FIR is a free jurisdiction FIR, brought up in order to avoid the delay in filing the crime report and to avoid wastage of time that adversely impacts the victim and gives a freeway to offenders getting a chance to flee from the rule of the law.⁴

SCOPE OF FIR:

The initiation of any criminal proceeding against any crime by a private citizen is done either by lodging a first information report commonly known as FIR in a police station or he/she may lodge a complaint with the competent magistrate irrespective of whether the offence is a cognizable or a non- cognizable one. Therefore, registration of the information by the authorities is of paramount importance. In the case of *Lalita Kumari v. State of U.P.* & ors⁵ Keeping this in mind the apex court unwaveringly stated that if there is information of any cognizable offence being committed then the police is bound to register the FIR and then start the investigation. In case of information discloses commission of cognizable offence filed with the magistrate under a different jurisdiction, such magistrate is empowered to take cognizance of such offence and is protected under the immunity afforded to him under Section 190 of the Procedure Code.

Whenever there is commission of any cognizable offence and the matter is reported to the police, if the investigating officer draws a conclusion that the matter does not arise within his territorial jurisdiction then he has to register the matter and to direct the matter to the concerned magistrate who is empowered to take cognizance of the matter. Along with this the investigating officer has to send the copy of the FIR and all the evidences and materials collected till date with report of the investigation to the concerned Police Station.

IMPORTANCE OF ZERO FIR FOR WOMEN

The supreme court in one of its rulings stated that whenever a woman who is a victim of circumstances can register their grievances using Zero FIR ruling to any police station regardless of the jurisdiction where the crime acted. Once a woman has lodged her FIR, it would be investigated first and then transferred to the jurisdiction where the offence eventually happened. Supreme court gave the ruling regarding the protection of women and to ensure that the culprit does not go scot- free.

⁴ <http://blog.ipleaders.in/registering-fir-outside-jurisdiction/> (Visited on 22nd February)

⁵ Supra note 6

IMPACT OF FIR

The Process of implementing the registration of online FIR has been lead by Zero FIR started in 2013 by the ministry of Home Affairs. Now almost thirteen states and Union Territories have adopted the process of lodging E-FIR in every police station. The Concept of E -FIR is that under the process of E-FIR system, any individual can now log in from any part in India and file an E-FIR into a specified website. It means that every individual can now claim his or her fundamental rights in seeking justice against any criminal offense committed against him or her. It saves time, money and mainly the harassment he/she suffered in police station during questioning. However the question that arises is that in India the rural people as well as people in remote areas don't have the facility of internet as well as they are not aware of their rights and unable to use E-FIR system. But it is a good step in e-governance and hopefully it will serve the purpose of getting justice which will contribute in making the Digital India initiative, a success.

The Bombay High Court acknowledged that "the police officer has a territorial jurisdiction under Section 156 (1) to investigate any cognizable case that comes under the within the local limits of such police station would have power to enquire into or try under the provisions of Chapter XIII. Besides, sub section (2) stipulates that no police officer shall be called or interrogated in the court on the pretext that such police officer lacked appropriate jurisdiction to probe into the matter. As per the law after conclusion of the investigation the report has to be submitted as per Section 168, 169 and 170 of the Criminal Procedure Code. Section 170 of the code incontrovertibly states that if, upon an inquisition, the station in- charge of that police station is of the rationale that there are adequate evidences and reasonable grounds to justify the advancement of the case to a magistrate, empowered to take cognizance of the case upon the police report to try or commit for trial in the concerned court. Additionally, if the investigating officer is of the assessment that the cause of action of the offence arose outside the territorial jurisdiction of the police station, then the FIR can be sent to the police station exercising jurisdiction over the area of offence. However, this does not imply that the police officer can deny recording of the FIR or investigating it."⁶

The Supreme Court in *In Re: Indian Woman says gang-raped on orders of Village Court published in Business and Financial News*⁷ concluded that a pathetic response on part of State police department lead to the shocking gang rape of 20 year old girl, which was staged by the Panchayat, and commented "As a long term measure to curb such crimes, a larger societal change is required via education and awareness. Government will have to formulate and implement policies in order to uplift the socioeconomic condition of women, sensitization of the Police and other concerned parties towards the need for gender equality and it must be done with focus in areas where statistically there is higher percentage of crimes against women."

"The crimes, as noted above, are not only in contravention of domestic laws, but are also a direct breach of the obligations under the International law. India has ratified various international conventions and treaties, which oblige the protection of women from any kind of discrimination. However, women of all classes are still suffering from discrimination even in this contemporary society. It will be wrong to blame only on the attitude of the people. Such crimes can certainly be prevented if the state police machinery work in a more organized and dedicated manner. Thus, we implore upon the State machinery to work in harmony with each other to safeguard the rights of women in our country."

The Supreme Court lashed out at the West Bengal government for its failure to defend "the fundamental rights" of a 20-year-old tribal woman who was gang raped by 13 men in Birbhum district and directed it enhance the amount of compensation paid to her by an additional Rs. 5 lakh, and said that "No compensation can be adequate. As the state has failed to protect the victim's rights, it is duty-bound to provide compensation." The Supreme Court Further Pointed Out that "Likewise, all hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, are statutorily obligated under Section 357C to provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under Sections 326A, 376, 376A, 376B, 376C, 376D or Section 376E of the IPC."

In *Re: Suo Motu Cognizance*⁸, the Chief Justice of Delhi High court taking suo motu cognizance of definite gender insensitive comments made by Ld. Judge, the Special Fast Track Court who delved in character assassination of the victim of rape, warned against the gender bias approach in judiciary "The point which needs to be highlighted is that judicial pronouncements which are gender biased may be used as a standard by the police personnel and prosecutors in making decisions how they should investigate and prosecute cases."

⁶Satish Dharmu Rathod & ors. V. State of Maharashtra & ors. (2017) 1 A.I.R. Bom. R (Cri) 779.

⁷(2014) 4 SCC 786

⁸ 2014(1) RCR(Criminal) 510

In *State of Karnataka v. Shivanna @ Tarkari Shivanna*⁹, the Apex Court has made an effort to fast track the procedure in cases of rape and gangrape. The court said that “it has been seen that though there are fast track courts for the disposal of cases also including the cases of rape but yet there is no fast track procedure established and followed with regard to the same resulting in regular repeated heinous offences. It observed that there is a vital need to introduce drastic amendments into the Cr.P.C. in the nature of the fast court procedures for Fast Track Courts especially in the cases involving trial for charge of rape.”

In regard to this, the court issued the following interim direction to all police stations in the country:

1. “Upon receiving the information relating to the commission of crime of rape, the Investigating Officer shall make immediate steps to take the victim to any Metropolitan/preferably Judicial Magistrate for the purpose of recording her statement Under Section 164 Code of Criminal Procedure. A copy of the statement Under Section 164 Code of Criminal Procedure should be handed over to the Investigating Officer immediately with a specific direction that the contents of such statement Under Section 164 Code of Criminal Procedure should not be disclosed to any person till charge sheet/report Under Section 173 Code of Criminal Procedure is filed.

2. The Investigating Officer shall as far as possible take the victim to the nearest Lady Metropolitan/preferably Lady Judicial Magistrate.

3. The Investigating Officer shall record specifically the date and the time at which he learnt about the commission of the offence of rape and the date and time at which he took the victim to the Metropolitan/preferably Lady Judicial Magistrate as aforesaid.

4. If there is any delay exceeding 24 hours in taking the victim to the Magistrate, the Investigating Officer should record the reasons for the same in the case diary and hand over a copy of the same to the Magistrate.

5. Medical Examination of the victim: Section 164A Code of Criminal Procedure inserted by Act 25 of 2005 in Code of Criminal Procedure imposes an obligation on the part of Investigating Officer to get the victim of the rape immediately medically examined. A copy of the report of such medical examination should be immediately handed over to the Magistrate who records the statement of the victim Under Section 164 Code of Criminal Procedure.”

“that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Code of Criminal Procedure skipping over the recording of statement by the Police Under Section 161 Code of Criminal Procedure to be kept in sealed cover and thereafter the same be treated as evidence at the stage of trial which may be put to test by subjecting it to cross examination. We are further of the view that the statement of victim should as far as possible be recorded preferably before the Lady Judicial Magistrate under Section 164 Code of Criminal Procedure skipping over the recording of statement by the police under Section 161 Code of Criminal Procedure which in any case is inadmissible except for contradiction so that the statement of the accused thereafter be recorded Under Section 313 Code of Criminal Procedure. The accused then can be committed to the appropriate Court for trial whereby the trial court can straightway allow cross examination of the witnesses whose evidence was recorded earlier before the Judicial Magistrate.”

The Court further was of the view that “the recording of evidence of the victim and other witnesses multiple times ought to be put to an end which is the primary reason for delay of the trial. We are of the view that if the evidence is recorded for the first time itself before the Judicial Magistrate Under Section 164 Code of Criminal Procedure and the same be kept in sealed cover to be produced and treated as deposition of the witnesses and hence admissible at the stage of trial with liberty to the defence to cross examine them with further liberty to the accused to lead his defence witness and other evidence with a right to cross examination by the prosecution, it can surely cut short and curtail the protracted trial if it is introduced at least for trial of rape cases which is bound to reduce the duration of trial and thus offer a speedy remedy by way of a fast track procedure to the Fast Track Court to resort to.”

In *Mohd. Haroon v. Union of India*¹⁰, a writ petition was filed against the State Police for not providing ample security to women, which resulted in several gang rapes being committed during the said communal bloodshed. The petition also highlighted the inaction on the part of State Police against the real perpetrator and the apathetic attitude towards the victim's rehabilitation and security in various procedural matters, such as recording of victim's statement and the medical examination. The Supreme Court pursuant to this obtained a status report from the State as well as, inter alia, directed recording of additional statements under Section 164 of the Cr.P.C. before a Lady Magistrate and payment of compensation

⁹ (2014) 8 SCC 913

¹⁰ (2014) 5 SCC 252

CONCLUSION

Zero FIR evolved as a result of recommendation by 'The Justice Verma Committee' is a type of FIR without a perimeter of jurisdiction acting as an impediment between the criminal justice system. It is an immensely expedient concept which will help in stirring assurance in the minds of the general public regarding efficacy of the police in comprehending criminal activity. This notion will act as recourse in perseverance of the grievances of the public. It is a noteworthy step towards access to criminal justice system.

However, possibility cannot be ruled out that exploitation of this contrivance is possible, unscrupulous people may connive with some corrupt police officials and register FIR in the jurisdiction of their preference so as to influence the investigation in the prejudicial manner. Since, in aftermath of every case the initial investigation done by the police is of chief prominence.

In the case of *Bimla Rawal and Ors. v. State (NCT of Delhi) and ors.*¹¹ FIR was lodged in Delhi however act was committed in Mumbai. Writ petition was filed in Supreme Court regarding the malicious intention of the police acceding under the pressure asserted by the opposite party. Supreme Court quashed the FIR filed at Delhi and ordered filing of new FIR at Mumbai directed for initiation of fresh investigation of the case. It was held that the police abused the power of filing Zero FIR for the benefit of the opposite party.

Trepidation aside, we cannot let apprehension of likely abuse of utilitarian concept deter us from implementing this legal right for the benefit of general public. The government should organize awareness campaigns so as to make people aware of their legal rights facilitate them in achieving justice.

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¹¹W.P. (CrI.) No. 1541/2007