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## FIRST INFORMATION REPORT: INCIDENTAL REPORT

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India is a great country but populated also. With the increased population crime also increasing day by day. Due to the lot of population, it was difficult to be aware of the offence. That's why in the code of criminal procedure, 1973, our legislature provides section 154 first information report i.e.; any person gives information to the police relating to the commission of the cognizable offence. The term any person here means anyone whether citizen or non-citizen. The first information report popularly called F.I.R. the main object of F.I.R. is to set criminal law into motion. There are three ways in which criminal law is set into motion-

- 1) F.I.R
- 2) Criminal private complaint
- 3) Suo Motu

However, to register the F.I.R. the offence must be cognizable. Now the question arises what do you mean by cognizable and non-cognizable offence?

**Cognizable offence- Section 2(c) of the code of criminal procedure,1973 said that “cognizable offence” means an offence for which, and “cognizable case”, means a case in which, a police officer may, by the first schedule or under any other for the time being in force, arrest without warrant.**

**Non-cognizable cases - section2(l) of the code of criminal procedure,1973 said that “non-cognizable offence” means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without a warrant.**

- Cognizable offences are those offences that are cognizable in the first schedule of the code of criminal procedure,1973( hereinafter called crpc). Whereas non-cognizable offences are those offences that are non-cognizable in the same schedule.

The above is a reference to the Indian Penal Code, 1860( hereinafter IPC), and the IPC does not found of any criteria for the quantum of sentence.

- The more grave is called cognizable offences and the less grave are called non-cognizable offences.
- In cognizable offences, a police officer may arrest without a warrant and investigate without the prior permission of the magistrate. Whereas in non-cognizable cases a police officer does not have the power to arrest without a warrant or investigate without prior permission of the magistrate.
- In case of other offences of other laws either that other law with itself declared an offence to be a cognizable or non-cognizable offence and if that other law does not declare so then in such case second classification of the first schedule of crpc would apply.

As per the second classification, if the offence is punishable up to 3 years or more than 3 years imprisonment, that offence would be taken to be a cognizable offence, and the offence which is punishable less than 3 years then that offence would be considered to be a non-cognizable offence.

However, before discussing the difference between offence and case we will first discuss the legal definition of the term “offence”.

***Section 2(n) crpc- “offence” means any act or omission made punishable by any law for the time being in force and includes any act in respect of which a complaint may be made under section 20 of the cattle-trespass act,1871.***

An offence is a result of the wrongful conduct of the accused which is defined to be punishable in the IPC or any other law. The cognizable offence became a cognizable case when the proceedings are initiated concerning a particular offence through F.I.R. or some complaint.

One case may involve a single or maybe more than one offence, it depends upon the transaction in which the offence is committed by section 6 of the Indian Evidence Act,1872( hereinafter IEA).

**Now the question arises what will happen if one case involves one or more cognizable offences as well as non-cognizable offences?**

There can be a situation where both cognizable and non-cognizable offences are involved then in such case a situation the entire case shall be deemed to be a cognizable case in respect of some non-cognizable offences are involved by the virtue of section 155(4) crpc.

***section 154 crpc Information in cognizable cases- (1) every information relating to the commission of a cognizable offence, if given orally to an officer in charge of the 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 its behalf.***

Any person gives information relating to the commission of the cognizable offence, in any form whether written or oral. If the informant gives oral information to the Station house officer( SHO) then that officer or his subordinate officer shall reduce it into written form and read over that information to the informant. The informant must sign that paper of information. After all the above processes SHO or his subordinate officer write down that information in the book called Daily Diary Report( DD). The reason for writing down and signature of the informant is to ensure that what has been reduced into writing is a true and trustworthy version of information given to the officer in charge of the police station.

***Section 2(o) crpc- “ officer in charge of a police station” includes, when the officer in charge of the police station is absent from the station-house or unable from illness or other cause to perform his duties, the police officer present at the station-house who is next in rank to such officer and is above the rank of constable or, when the state government so directs, any other police officer so present;***

It is mandatory to register the case in the form of F.I.R. based on information that discloses the commission of the cognizable offence. The objective of registering an F.I.R. is to provide access to justice to the victim, avoid any manipulation in a criminal case, and provide transparency in criminal justice.

*In-state of Haryana v. bhajan lal,1992 supp(I) SCC335* supreme court said that the word “information” in section 154crpc is not qualified as “ reasonable” a police officer must register the information.

But if a police officer refuses to lodge an F.I.R. then the informant may go to the superintendent of police to lodge an F.I.R. if SP is satisfied that the offence is cognizable then he or his subordinate officer investigates the case and register an F.I.R. such officers have all the powers

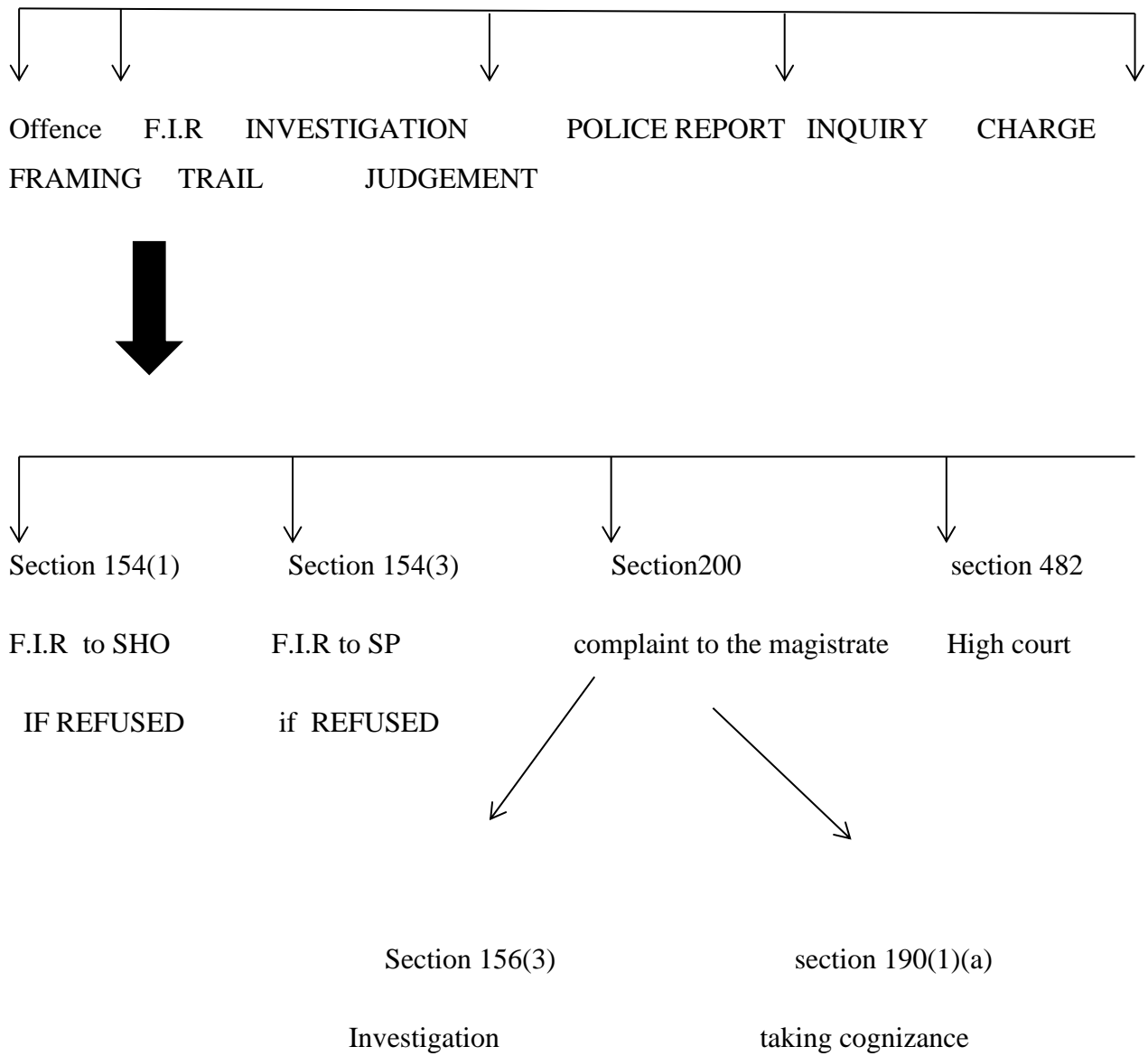
like of officer in charge of a police station in such offence by the virtue of section 154(3) crpc read with section 36 crpc.

***Section 154(3) crpc 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 disclosed 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 about that offence.***

***Section 36 crpc powers of superior officers of police- police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed as may be exercised by such officer within the limits of his station.***

- In the case of non-lodging of F.I.R., the informant can file a complaint before the area magistrate under section 200 crpc. There the Magistrate can take cognizance of such complaint under section 190(i)(a) crpc.
- even in appropriate cases if the magistrate deems fit to do so, he can order an investigation in the exercise of his powers under section 156(3).
- If the magistrate refuses to take cognizance of such a complaint, the complainant can even approach High Court under section 482 crpc.

But the judicial prudence requires the informant should not directly approach the High court under section 482 crpc as the High court would not allow such a petition unless the alternative remedies have already been exhausted by the informant.



**Copy of F.I.R.**

An occurrence report means the copy of F.I.R. which the officer in charge of the police station send forthwith to the area magistrate after the lodging of F.I.R. the object of an occurrence report is to keep the magistrate informed of the investigation of cognizable offence. The purpose of this is to make the magistrate aware of the offence as ultimately he will be the magistrate who has to take up the further proceedings.

**Delay in F.I.R.**

After lodging an F.I.R the police officer is required to submit that F.I.R in the form of an

occurrence report to the area magistrate. If a delay has been caused in sending that occurrence report to the magistrate, the court becomes suspicious about the role of the police and occurrence report. the magistrate can always seek an explanation about such delay, if the delay is explained by a police officer then it will not impact the eracity of F.I.R. but if the delay is not explained then the corroborate value of the F.I.R. will get affected.

However, the Supreme court in *the state of Punjab versus. Gurmit Singh 1996 SC* held that in cases of rape or other sexual offences if the delay has been caused in lodging of the F.I.R. then the delay is self-explained.

### ***Cross F.I.R.***

After an offence has been committed an F.I.R has been lodged by a person against another then it will be dealt with according i.e; investigation according to crpc. If one more F.I.R is lodged related to the same incident on the complaint of a person ( accused in another F.I.R ) against some other person ( complainant in the first F.I.R.) then it is a case of second F.I.R. on the same incident and therefore this will result into a situation of cross F.I.R's on the same incident.

### ***More than one informant***

When more than one person goes at or about the same time and makes statements to the police about the same cognizable offence than in such a situation the police officer will use common sense and record one of the statements as F.I.R.

### ***Evidentiary value of F.I.R***

Whenever an F.I.R is lodged as the commission of a cognizable offence then the lodging of F.I.R perse is not an initiation of investigation rather after lodging of an F.I.R a police officer will make up his mind to investigate that offence, therefore the movement of the police officer will make up his mind, the investigation will be said to have commenced. Though F.I.R is not substantive evidence it can be used to corroborate and contradict the informant under various sections of the Indian evidence act, 1872.

**Substantive use of F.I.R-** section 6- res gestae( same transaction) – when F.I.R. lodged in the same transaction after the offence had been committed then that F.I.R is considered to form part of the transaction and is a relevant fact.

- Section 8- when one party or any agent to any party gives in for, action about a cognizable offence and explains why he came to the police then it will be considered as party subsequent conduct.
- Section 21-F.I.R is used as an admission against the informer. there are two types of statements first, inculpatory, and second, exculpatory. The only inculpatory statement used against the informer.
- Section 27 confession – when the accused himself gives the information of commission of a cognizable offence to the police officer and deposed the discovery information than that F.I.R., may be proved.
- Section 32 dying declaration- F.I.R. will become admissible under section 32 IEA when a person deposing about the cause of his injuries had died( that is, dying declaration).

**Procedural use of F.I.R-** section 145- in cross-examination to contradict the evidence of the person giving the information (F.I.R).

- Section 157- F.I.R can be used to corroborate the statement of the information.
  - Section 159 & 160- F.I.R can be used for refreshing the informer's memory.
- However, the list is not exhaustive.

The F.I.R cannot be used for corroborating or contradicting any witness other than the one lodging the F.I.R.

### ***Multiple F.I.R/ subsequent F.I.R***

Multiple or subsequent F.I.R means more than one F.I.R has been lodged by the police. In such a case the only F.I.R which was lodged first would be retained and the rest of the F.I.R's would be quashed by the high court under section 482 crpc because the policy is not troubling the accused twice for the same offence and therefore he can move to the high court for quashing of subsequent F.I.R. under section 482 crpc.

### ***One F.I.R-same transaction***

- If several offences have been committed in the same transaction then they would fall in one case and the F.I.R will also be only one. However, if any subsequent F.I.R has been

lodged in the context of any one of that offences then that subsequent F.I.R will be quashed by the high court under section 482 crpc.

- However, if the various offences were committed in the different transactions then there will be as many F.I.R's as many offences would be committed separately.

### ***Quashing of F.I.R***

- An F.I.R can be quashed by the high court under section 482 crpc, even if the charge sheet is filed during the pendency of the petition for quashing.

Section 482 crpc is not only restricted to the stage of F.I.R because the very purpose of this section is to prevent the abuse of the process of the court.

- Even the F.I.R cannot be quashed on the ground that a civil case is pending on the same subject matter between the same parties.
- The high court shall give a reason for allowing or rejecting the petition filed under section 482 crpc.
- The high court cannot act as an appellate court to determine whether a prima facie cognizable offence is disclosed by the F.I.R or not.
- The high court can quash the F.I.R of noncompoundable offence also.

the high court is required to consider the antecedents of the accused, whether the accused was absconded and how he had vanished with the complainant to enter into the compromise etc.

However, the above power cannot be exercised by the high court for the offences which create an atmosphere of insecurity in the society i.e; the offences of murder, rape, dacoity, etc.

Similarly, such power cannot be exercised by the high court for the offences under special laws like the prevention of corruption act, etc.

### ***Telephonic information***

- To be an F.I.R the telephonic information has to be in detail and the informant should be willing to disclose his identity and even to sign the documents as well ( the signature of the informant can be taken later on also). the intention of the informant has to examine whether he was just informing the police about the offence or he wants to set the law into motion.



- If the information is not clear i.e; vague/ cryptic and the purpose has been only to convey information to the police.
- If the informant is unwilling to disclose his identity then also F.I.R is not possible but the police always record such statements in a daily diary.
- If telephonic information is converted into an F.I.R and then the police officer proceeds to the spot and starts recording the statement of a witness during the investigation then in such case the F.I.R will not be hit by section 162 crpc.

But after receiving the information if the police proceed to the spot and formally starts an investigation and then record the statement of the witness then in such case since the statement was recorded after the investigation has commenced, now such F.I.R will be hit by section 162 crpc.

*Is F.I.R a presumed document?- NO*

***It is compulsory to lodge the F.I.R?***

- The police officer is duty-bound to record the F.I.R if the information discloses the commission of a cognizable offence to prevent foul play on the part of the police officer. In section 154 crpc no where the term credible term has been used whereas section 41 A crpc uses such words. Thus the intention of the legislature seems to be clear that they don't want to give the discretion to a police officer to examine the credibility of the information at the stage of lodging of F.I.R.
- However, if the police officer receives information that prima facie does not reveal the commission of a cognizable offence then the police officer can always conduct an inquiry and preliminary investigation to decide whether the offence is cognizable or not. The court held that the preliminary investigation shall be done within 7 days but later on upon a review of this period it was extended from 7 to 15 days.
- *Lalita Kumari v. State of Uttar Pradesh 2013 SC* the police officer at the stage of F.I.R cannot go into the details of information to conclude the genuineness of the F.I.R. after forwarding of an F.I.R. the police officer may refuse to investigate the case. The lodging of F.I.R does set the criminal law into motion as it is a very first step towards justice on its own and it always makes documentation of initial facts so that the police officer is not able to make any alteration to the initial facts. The less is the F.I.R lodged the more will be the situation of lawlessness.

***F.I.R after the order of investigation under section 156(3) crpc***

Whenever the police officer does not investigate the case he has lodged the F.I.R, the informant/complainant has the option of going to the High court but that is not required as in such a situation the magistrate also can pass incidental orders. The magistrate has ancillary powers implicit in the express power itself and therefore the magistrate can always pass necessary subsequent orders under section 156(3) crpc to make his express powers effective. on an order of the magistrate, an F.I.R has to be lodged, it is essential for the police officer first to lodge the F.I.R and thereafter to investigate such case upon the order of the magistrate under section 156(3) crpc. the criminal complaint or suo motu case may convert into an F.I.R case after the order of the magistrate under section 156(3) crpc.

***Conclusion***

An F.I.R is the first incidental report of the commission of a cognizable offence. hence, it is a very important procedure to set criminal law into motion.

***References***

- 1) LexisNexis universal's
- 2) R.V. Kelkar criminal procedure textbook
- 3) Lalita Kumari v. State of Uttar Pradesh 2013 SC
- 4) state of Punjab versus. Gurmit Singh 1996 SC
- 5) state of Haryana v. bhajan lal,1992 supp(I) SCC335