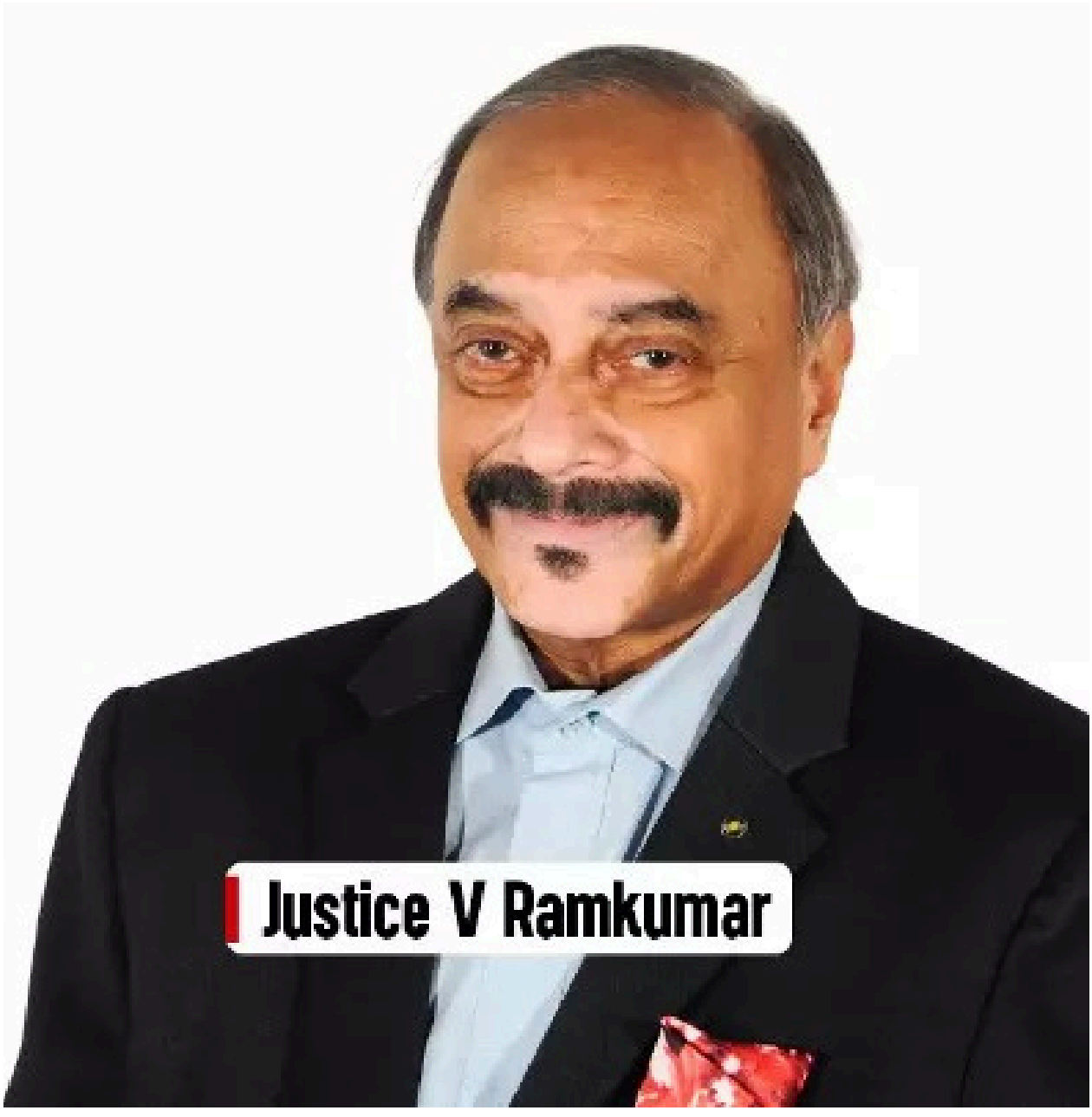
VASANTAM ASSOCIATES

Zero FIR

Justice V Ramkumar



"Zero FIR" is a concept which has already been prevailing in Indian law without any statutory backing now for a considerable length of time. The above concept allows the registration of a *"Zero FIR"* in any Police station within whose territorial limits a cognizable offence was not committed and subsequently transferring the FIR at the earliest to the appropriate police station having the jurisdiction. When a person approaches a police station with *"information"* pertaining to a *"cognizable offence"* particularly a *"sexual offence"* or an *"offence against a woman"* the officer-in-charge of a police station *("SHO" for short)* is required to register an FIR as *"Zero FIR"* ***"irrespective of the area where the offence was committed"*** and if such area happens to be within the local limits of another police station, to transfer the *"Zero FIR"* to that Police station which will re-register a regular FIR and commence the investigation. As per Circular No: 41/2020/PHQ dated 13-11-2020 the State Police Chief of Kerala had issued certain mandatory directions from the Police Headquarters, Thiruvananthapuram in cases of crimes against women. Those directions include the compulsory registration of FIR including *"Zero FIR" (in case the crime was committed outside the jurisdiction of the Police Station)* in the event of receipt of "information" about commission of a cognizable offence including cases of sexual assault on women. It was further reiterated that no Police station shall refuse to register such a case on the ground of want of jurisdiction. The Circular further states that after registration of the *"Zero FIR"* the case should be transferred to the Jurisdictional Police Station within 24 hours.

2. There has been a popular misconception that the revolutionary concept of *"Zero FIR"* was introduced through the recommendations of Justice Verma Committee Report dated 23-01-2013 and the consequent Criminal Law (Amendment) Act, 2013. I have even come across a Judgment dated 29-11-2019 in **Kirti Vashisht v. State and others** rendered by Justice Suresh Kumar Kait of Delhi High Court wherein there is an observation in paragraph 17 as follows:-

"It is not in dispute that the provision of "Zero FIR" came up as a recommendation in the Justice Verma Committee Report, in the new Criminal Law (Amendment) Act, 2013 after the heinous Nirbhaya case of December, 2012. The provision says : "A "Zero FIR" can be filed in any Police Station by the victim, irrespective of their residence or the place of occurrence of crime."

The above Judgment, *inter alia,* directed the *Commissioner of Police,* Delhi to issue circulars/standing orders to all Police Stations in the National Capital Territory of Delhi and all concerned that if a complaint of cognizable offence is received in a police station and the offence occurred in the jurisdiction of another police station a *"Zero FIR"* shall be allowed to be lodged by the Police station which has received the complaint and thereafter it shall be transferred to the Police station concerned.

3. It is true that the *"Nirbhaya case"* was a horrendous and devastating incident that shook the nation. In the night of 16-12-2012 a 22 year old physiotherapy intern and her male friend were tricked into boarding a bus making them believe that it was a public transport vehicle. While inside the bus the girl and her friend were assaulted by 6 men including the driver at a place called Munirka in South Delhi. The beastly animals in human form took turns in ravishing her and torturing her friend. The victims were beaten *"black and blue"* and finally thrown off the bus and left on the roadside in a severely wounded and naked state. The girl was initially treated in the Delhi Safdarjang Hospital and subsequently shifted for better treatment to Mount Elizabeth Hospital, Singapore where she succumbed to the injuries on 29-12-2012. It is also true that a committee headed by former Chief Justice of India Mr. Justice J S Verma as Chairman and Former Mrs. Justice Leila Seth and Senior Advocate Mr.

Gopal Subramanium as members, was constituted for proposing sweeping reforms to the laws on *"crimes against women"* and for suggesting broader definitions of *"rape"* and enhanced penalties, improved "*victims protection*" etc. But, regretfully, I do not find any recommendation in the said report nor any amendment proposed in the Criminal Law (Amendment) Act, 2013 for a *"Zero FIR"*. I have also not noticed any amendment to Section 154 of the Code of Criminal Procedure, 1973 *("Cr.P.C." for short)* incorporating the principle of *"Zero FIR"* therein. Section 154 Cr.P.C. remained as it was without any provision for *"Zero FIR"* till the entire Cr.P.C. was repealed with effect from 01-07-2024 by Section 531 (1) of the Bharatiya Nagrik Suraksha Sanhita, 2023 *("BNSS" for short).*

4. Section 173 of BNSS *(corresponding to Section 154 Cr.P.C.),* no doubt, for the first time purports to introduce the concepts of *"Zero FIR"* by stating that every information relating to the commission of a cognizable offence **irrespective of the area where the offence is committed**, may be given orally or by electronic communication to an officer-in-charge of a Police station. The Section does not, however, use the expression *"Zero FIR"* even though what is alluded to therein is *"Zero FIR"*. But, the important aspect of transferring the *"Zero FIR"* to the appropriate Jurisdictional Police station for re-registering a regular FIR and for urgent follow-up action etc., is not seen incorporated in Section 173 of BNSS. If an FIR is given before a Police Station within whose limits the crime was not committed, Section 173 of BNSS *(by and large corresponding to Section 154 of Cr.P.C.)* obligates the officer-in-charge of a Police Station *("SHO" for short)* to register the FIR by entering the substance thereof in the FIR Book/ FIR Register. Going by Section 175 (1) of BNSS *(corresponding to Section 156 (1) of Cr.P.C.)* the power and jurisdiction of the officer-in-charge of the Police Station for conducting an investigation is co-extensive with that of the Court having the power of inquiring into or trying the offence. This means that only an SHO within whose jurisdiction the offence was committed, alone can ordinarily investigate the offence. To give an example, if a cognizable offence is

committed in Kochi in the State of Kerala, that offence can be investigated only by the SHO of the police station at Kochi having jurisdiction. But if the FIR, as enabled by Section 173 of BNSS, was lodged not before the Police station at Kochi but before a Police station in Punjab, then going by the statutory scheme under Section 173 of BNSS the SHO of the Police station at Punjab will have to register the FIR and commence investigation. If the offence is a cognizable offence punishable with imprisonment for a term between 3 years and 7 years, the very same SHO will have the power to conduct a "*preliminary enquiry*" in order to ascertain whether there exists a *prima facie* case for proceeding further. In case there exists a *prima facie* case, the very same SHO will have to ***"continue the investigation"*** as provided under Section 173 (3) of BNSS. But, the power of the SHO of the jurisdictional police station to conduct investigation conferred Section 156 (1) of Cr.P.C. is kept intact under the corresponding Section 175 (1) of BNSS as well. The patent contradiction as above, could have been avoided by providing in Section 173 itself that soon after the registration of a *"Zero FIR"* the SHO shall transfer the same to the jurisdictional police station for registering a regular FIR and for taking further steps. The Ministry of Home Affairs, Government of India, has, however, issued a ***"Standard Operating Procedure"*** *("SOP" for short)* for the effective implementation of *"Zero FIR"* and *"e-FIR"* provided for in Section 173 of BNSS. While in Section 173 of BNSS, there is no provision obligating the SHO to transfer the *"Zero FIR"* to the Police station having jurisdiction, as per Steps 4 and 5 in the said SOP, the first police station is to register the *"Zero FIR*" and then transfer the same to the jurisdictional police station which is to re-register the *"Zero FIR*" as a regular FIR. In the *"preface"* to the SOP it is stated that the SOP is only a *"suggestive guideline"* which is being shared for the use of police and enforcement units in the State and Central Organizations. If so, in the absence of a substantive provision in the BNSS particularly in Section 173 thereof, a question may arise whether the SOP can have the effect of amending Section 173 of BNSS.

5. Incidently, it may be recalled that as per the law laid down by the Constitution Bench in **Lalita Kumari v. Govt. of U. P. AIR 2014 SC 187 = (2014) 2 SCC 1 –** *5 Judges – P. Sathasivam – CJI,* a *"preliminary enquiry"* by the SHO is to be conducted before the formal registration of an FIR and the purpose of such enquiry is not to

ascertain the *"veracity"* or *"genuineness"* of the *'information"* but only to find out whether a *"cognizable offence"* is made out or not. But, as per Section 173 (3) of BNSS, the *"preliminary enquiry"* is to be conducted by the SHO after the registration of the FIR and the purpose of such enquiry is to find out whether there is a ***prima facie case*** for proceeding in the matter. In case, the *"preliminary inquiry"* so conducted reveals a *"prima facie case",* Section 173 (3) (ii) of BNSS says that the SHO shall ***"continue the investigation"***. This means that as soon as registering the *"Zero FIR",* the SHO of the first police station *(having no territorial jurisdiction)* should enter on *"investigation" (whether or not he has "reason to suspect the commission of the offence" within the meaning of Section 176 (1) of BNSS corresponding to Section 157 (1) Cr.P.C.).*After the *"preliminary inquiry"*, upon finding that there is a *"prima facie case"* for proceeding, the SHO has to ***"continue the investigation".*** This provision in Section 173 (3) of BNSS, apart from going against the verdict in **Lalita Kumari's case**, also contradicts with Section 176 (1) of BNSS itself which lays down the obligations of an SHO *(who can only be a Police Officer authorised under Section 175 (1) f BNSS corresponding to Section 156 (1) of Cr.P.C.).*To the above extent Section 173 (3) of BNSS makes a significant departure from **Lalita Kumari's case**. That apart, Section 173 (3) of BNSS makes a self-destructive departure from Sections 175 and 176 of BNSS *(corresponding to Sections 156 and 157 of Cr.P.C.).*

6. I do not know whether certain verdicts of the Constitutional Courts have influenced the framers of BNSS in not providing for transfer of *"Zero FIR"* to the jurisdictional police station. If it is so, with utmost respect, I am of the view that those judicial verdicts which insist that the non-jurisdictional Police station which has entertained the *"Zero FIR"* has to itself conduct investigation without raising any objection regarding want of territorial jurisdiction, do not lay down the law correctly. We will presently see the trend of judicial interpretation in cases where FIRs have been received and registered by Police stations not having the requisite jurisdiction.

7. In **State of A. P. v. Punati Ramulu AIR 1993 SC 2644 = 1993 Cri.L.J. 3684 –** *Dr. A S Anand, N P Singh – JJ,* it was held that it is not open to the SHO to refuse to record the FIR on the ground that he has no territorial jurisdiction, but that after recording the

information he should forward the same to the police station having jurisdiction over the area. Even though *"Zero FIR"* is not mentioned in the above verdict, according to me, this is the first case where the Supreme Court held that notwithstanding the lack of territorial jurisdiction, the Police were bound to record the FIR and then transfer the case to the Jurisdictional Police station. This should be the proper approach to be taken in such situations.

8. In **Satvinder Kaur v. State (NCT of Delhi) AIR 1999 SC 3596 = (1999) 8 SCC 728** – *K. T. Thomas,* ***M. B. Shah - JJ*****,** another 2 Judges Bench also held that the SHO cannot refuse to record the FIR on the ground of lack of territorial jurisdiction and that the Police are bound to record the same and then forward it to the police station concerned. But, with due respect, I find myself unable to agree with the further observation in that verdict to the effect that in a case which requires investigation, the Police officer cannot refuse to conduct an investigation on the ground of lack of territorial jurisdiction. This latter observation, apart from being contrary to the law laid down in **Punati Ramulu** (Supra – AIR 1983 SC 2244), is also violative of the scheme under Section 175 (1) of BNSS *(corresponding to Section 156 (1) of Cr.P.C.).* To cite an example, if a cognizable offence was committed in Kochi in the State of Kerala, but a Police station in Punjab were to register an FIR as enabled by Section 173 (1) of BNSS and could also conduct the investigation, it may result in disastrous consequences. Apart from patent breach of Sections 175 (1) and 176 (1) of BNSS *(corresponding to Sections 156 (1) and 157 (1) of Cr.P.C.)* the *"distance factor"* and the *"language barrier"* involved, the investigation by the Punjab Police is bound to cause many hurdles resulting in delay and a discrimination as between the SHO and the Court competent to try the offences.

9. In **Asit Bhattacharjee v. Hanuman Prasad Ojho AIR 2007 SC 1925 = (2007) 5 SCC 786 –** ***S. B. Sinha,*** *C K Thakker – JJ,* the cause of action arose within the limits of a Police Station in Kolkatta and a Police Station in Uttar Pradesh. The complaint was filed before the Chief Metropolitan Magistrate *(CMM)*, Kolkatta who forwarded the same to the SHO of Shakespeare Sarani Police Station in Kolkatta. The accused moved the Allahabad High Court seeking a transfer of the case to the appropriate

Police Station in U.P. Even though a Division Bench of the Allahabad High Court did not quash the FIR, it, however, directed the FIR to be transferred to the appropriate Police Station in U.P. through the Home Secretary of West Bengal. Apart from the fact that the above direction by the Allahabad High Court was uncalled for, it was an extra-territorial direction which could not be be sustained. The Supreme Court set aside the said direction holding that since a part of the cause of action had occurred within the territorial limits of the Police Station at Kolkatta, the CMM at Kolkatta had the jurisdiction to try the case and consequently to direct the SHO of Shakespeare Sarani Police Station to investigate the offence fully.

10. Naresh Kavarchand Khatri v. State of Gujarat AIR 2008 SC 2180 = (2008) 8 SCC 300 – *S B Sinha,* *Lokeshwar Singh Panta – JJ,* was also a case where the cause of action arose within the limits of 2 police stations – District Crime Branch Police Station, Vadodara City in Gujarat and Waghodia Police Station in Delhi. FIR was registered and investigation started in the Vadodara Police Station. At the instance of the accused, the High Court of Gujarat transferred the investigation to Waghadia Police Station in Delhi. The Supreme Court set aside the transfer order and directed re-transfer of the case back to the District Crime Branch Police Station, Vadodara. Since the cause of action had also arisen within the limits of the Police Station at Vadodara, the investigation by the SHO of that Police Station could not have been called into question in view of Section 156 (2) Cr.P.C.

11. In **Rasiklal Dalpatram Thakker v. State of Gujarat AIR 2010 SC 715 = (2010) 1 SCC 1 – *Altamas Kabir****,*** *Cyriac Joseph,* the question was whether the SHO of a Police Station at Ahmadabad *(in the State of Gujarat)* to whom a complaint was forwarded under Section 156 (3) Cr.P.C. could unilaterally decide not to conduct an investigation and could submit a report to the effect that since the offence was committed at Mumbai, the investigation should be transferred to the Police Station at Mumbai. Here the Supreme Court as a matter of fact, held that the major part of the cause of action had taken place in the State of Gujarat and hence by virtue of Section 181 Cr.P.C. the SHO at Ahmadabad was bound to conduct the investigation ordered by the Court. Reliance placed by the Supreme Court on Section 156 (2) Cr.P.C.

(corresponding to Section 175 (2) of BNSS) is really misconceived. The said provision is not intended to confer jurisdiction on a Police Station which does not have the jurisdiction under Section 156 (1) Cr.P.C. Section 156 (2) Cr.P.C. *(corresponding to Section 175 (2) of BNSS)* is really a provision intended to ratify an investigation conducted by an SHO under a mistaken belief that he has jurisdiction to do so.

12. There is yet another angle in which the matter has to be approached. In the Illustration mentioned in paragraph 8 above, if the Punjab Police could register an FIR and conduct the investigation of a cognizable offence committed in Kochi *(in the State of Kerala),* an anomalous situation that may ensue is that while the jurisdictional court in Kerala alone can grant bail to the accused in view of Section 167 (2) Cr.P.C. *(corresponding to Section 187 (2) of BNSS)* the SHO of a non-jurisdictional Police Station at Punjab will have the power to grant bail to the accused. It is difficult to believe that the law-maker intended such a consequence to follow.

13. As per Section 183 of BNSS *(by and large corresponding to Section 164 of Cr.P.C.)* a *"confession"* or a *"statement"* is to be recorded by a Magistrate of the ***"district in which the information about the Commission of any offence has been registered"***. If, as enabled by Section 173 of BNSS an FIR pertaining to the commission of a cognizable offence which took place at Kochi in the State of Kerala could be registered before a Police Station at Punjab in the territorial limits of which the offence was ***not*** committed and if there is no corresponding provisions for transfer of the FIR to the jurisdictional police station, then a Magistrate recording a *"confession"* or a *"statement"* under Section 183 of BNSS *(corresponding to Section 164 of Cr.P.C.)* will have to be from the district in Punjab where the FIR was registered. For this reason also, Section 173 of BNSS should contain a provision for transfer of the *"Zero FIR"* to the appropriate Police Station having jurisdiction under Section 175 (1) of BNSS. Similarly, Section 183 of BNSS should be amended enabling a Magistrate of the district in which the occurrence took place, to record a *"confession"* under Section 183 (1) of BNSS and a *"statement"* under Section 183 (5) of BNSS.

14. I am, therefore, of the considered opinion that the framers of BNSS, having included the concept of *"Zero FIR"* in Section 173 (1) of BNSS should have also provided for transfer of the *"Zero FIR"* to the Police Station having jurisdiction under Section 175 (1) of BNSS in conformity with "*Standard Operating Procedure" (SOP)* laid down by the Central Government as referred to in paragraph 4 above.

Author is Former Judge, High Court of Kerala. Views Are Personal