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THE MANDATORY REGISTRATION OF FIRST INFORMATION REPORTS IN INDIA: A JURISPRUDENTIAL ANALYSIS FROM LALITA KUMARI TO THE BHARATIYA NAGARIK SURAKSHA SANHITA, 2023

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Abstract

The registration of a First Information Report (FIR) constitutes the foundational step in the Indian criminal justice process, setting the machinery of investigation in motion. This paper provides a comprehensive doctrinal analysis of the legal framework governing FIR registration in India, tracing its evolution from the statutory mandate under Section 154 of the Code of Criminal Procedure, 1973 (CrPC) through the landmark Constitution Bench judgment in Lalita Kumari v. Government of Uttar Pradesh (2014) to the transformative changes introduced by the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). The paper examines the mandatory nature of FIR registration for cognisable offences, the limited exceptions permitting preliminary inquiry, and the critical shift under the BNSS that introduces discretion in registering offences punishable with imprisonment between three and seven years. It also analyses recent judicial pronouncements that have interpreted these provisions, identifies conceptual ambiguities in the new framework, and assesses the implications for access to justice and police accountability.

1.Introduction

The First Information Report (FIR) is the bedrock of criminal investigation in India. As the earliest recorded information about the commission of a cognisable offence, it serves the dual purpose of setting the criminal law in motion and providing the investigating authorities with foundational material to commence their inquiry. The significance of this document cannot be overstated: without an FIR, the police lack the statutory authority to investigate cognisable offences, and the Magistrate cannot take cognizance of offences requiring police investigation.

Despite its procedural importance, the registration of FIRs has historically been fraught with challenges. Police discretion at the pre-registration stage has often resulted in selective enforcement, arbitrary denials, and, as the Supreme Court observed in Lalita Kumari, a "class divide" where complaints from influential persons are registered "with supersonic jet speed"

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while those from marginalised sections are routinely ignored. This systemic dysfunction prompted judicial intervention, culminating in the Constitution Bench decision that sought to settle the law on mandatory FIR registration once and for all.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, which replaced the colonial-era CrPC with effect from July 1, 2024, represents a significant legislative intervention in this domain. While retaining the core principle of mandatory registration, the BNSS introduces nuanced provisions that codify the concept of preliminary inquiry and create new categories of discretion that depart from settled judicial precedent. This paper critically examines these developments, identifying areas of legal ambiguity and their implications for the administration of criminal justice.

2. The Statutory Framework: Understanding Cognisable and Non-Cognisable Offences

The classification of offences as cognisable or non-cognisable is fundamental to understanding the FIR registration regime. A cognisable offence is one in which a police officer may arrest without a warrant, while a non-cognisable offence requires a Magistrate's order before investigation can commence. This distinction, rooted in the First Schedule to the CrPC (and corresponding provisions under the BNSS), determines whether registration of an FIR is mandatory.

Under Section 154 of the CrPC, every information relating to the commission of a cognisable offence, if given orally to an officer in charge of a police station, must be reduced to writing, read over to the informant, and signed by the person giving it. Sub-section (2) mandates that a copy of such information shall be given forthwith, free of cost, to the informant. The use of the word "shall" throughout the provision indicates its mandatory character, leaving no room for discretion on the part of the police officer.

The BNSS substantially retains this framework through Section 173, while introducing significant modifications. Section 173(1) continues the mandatory duty to record information relating to cognisable offences, including provisions for information given orally or by electronic communication. The proviso to this section contains important safeguards for victims of sexual offences, requiring that such information be recorded by a woman police

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officer and, in cases involving mentally or physically disabled persons, at the victim's residence in the presence of an interpreter or special educator, with videography of the recording process.

3. The Lalita Kumari Mandate: Mandatory Registration and the Limits of Preliminary Inquiry

3.1 The Facts and Context

The genesis of the Lalita Kumari litigation lies in a tragic incident from 2008. Six-year-old Lalita Kumari went missing from outside her house in Ghaziabad, Uttar Pradesh. When her father, Bhola Kamat, filed a missing person report, the police took no action. Even after he was informed that his daughter had been kidnapped and filed a formal complaint, the police refused to register an FIR. It was only on the direction of the Superintendent of Police that an FIR was registered, and even thereafter, the investigation proceeded sluggishly.

The matter eventually reached the Supreme Court, which expressed "grave anguish" at the non-registration of the FIR even in a cognisable offence. The Court issued notices to all Chief Secretaries of States and Administrators of Union Territories, and after extensive hearings, referred the matter to a Constitution Bench to settle the conflicting views on whether preliminary inquiry was permissible before FIR registration.

3.2 The Constitution Bench Decision

The five-judge Constitution Bench delivered its judgment in 2014, laying down comprehensive guidelines that remain the touchstone on this subject. The Court held:

"The registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognisable offence and no preliminary inquiry is permissible in such a situation".

However, the Court recognised that where the information received does not disclose a cognisable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted solely to ascertain whether a cognisable offence is disclosed. The scope of such inquiry is limited: it is not to verify the veracity or credibility of the information but only to ascertain whether the information reveals any cognisable offence.

The Court provided illustrative categories where preliminary inquiry may be warranted, including matrimonial disputes, commercial offences, medical negligence cases, corruption cases, and cases where there is abnormal delay in reporting the matter. Significantly, the Court directed that any preliminary inquiry must be time-bound and in any case should not exceed seven days (later clarified to twenty-one days).

3.3 The Discretion Embedded in Lalita Kumari

While often celebrated as a judgment that mandated FIR registration, a critical reading of Lalita Kumari reveals that it did not eliminate police discretion entirely. By holding that FIRs must be registered only "if the information discloses commission of a cognisable offence," the Court acknowledged that police officers exercise significant discretion at the pre-registration stage in determining whether the information, as presented, indeed discloses such an offence.

This determination involves complex legal judgment: the police must assess whether the facts alleged constitute the ingredients of a penal offence, considering questions of mens rea and actus reus. The Court did not address how this discretion should be exercised or what safeguards should govern it, leaving considerable room for subjective decision-making. This lacuna becomes particularly significant in light of the changes introduced by the BNSS.

4. *The Transition to BNSS: Codification and Departure*

4.1 The Statutory Framework of the BNSS

The BNSS, which came into effect on July 1, 2024, represents a comprehensive overhaul of criminal procedure. Section 173 of the BNSS is the counterpart to Section 154 of the CrPC, and while it retains the mandatory character of FIR registration, it introduces several novel features:

1. **Electronic Communication**: Section 173(1)(ii) explicitly provides that information may be given by electronic communication, which shall be taken on record and signed by the informant within three days.
2. **Zero FIR**: The BNSS codifies the concept of Zero FIR, permitting registration of an FIR regardless of the territorial jurisdiction where the offence was committed. Such FIRs are to be transferred to the police station having proper jurisdiction.
3. **Victim-Centric Safeguards**: Enhanced protections for victims of sexual offences, including mandatory recording by a woman police officer, videography of the recording process, and recording at the victim's residence for persons with disabilities.

4.2 The Critical Departure: Section 173(3)

The most significant departure from the Lalita Kumari framework is contained in Section 173(3) of the BNSS. This provision permits the police, with prior permission from an officer not below the rank of Deputy Superintendent of Police, to conduct a preliminary inquiry in cognisable offences punishable with imprisonment of three years or more but less than seven years, considering the nature and gravity of the offence.

The provision states that the police may either:

(i) proceed to conduct a preliminary inquiry within a period of fourteen days to ascertain whether there exists a prima facie case for proceeding in the matter, or

(ii) proceed with investigation when there exists a prima facie case.

This represents a clear departure from Lalita Kumari, which held that no preliminary inquiry is permissible when information discloses a cognisable offence. Under the BNSS, even where information discloses a cognisable offence, the police now have the discretion to conduct a preliminary inquiry for offences in this intermediate sentencing category.

4.3 Judicial Interpretation of Section 173(3)

The Supreme Court, in Imran Pratapgadhi v. State of Gujarat (2025 SCC OnLine SC 678), interpreted the scope of Section 173(3). The Court held that where the alleged cognisable offence is punishable with imprisonment of three years or more but less than seven years, even if the information received discloses a cognisable offence, the police are not obligated to immediately file an FIR. They have the discretion to conduct a preliminary inquiry to determine whether a prima facie case exists.

The Court further clarified that if the police conclude that a prima facie case exists, they must proceed to register the FIR and investigate. If they conclude otherwise, they must inform the informant, who may pursue other remedies, including approaching the Magistrate under Section 175(3) of the BNSS.

5. Conceptual Ambiguities and Challenges Under BNSS

5.1 The "Prima Facie Case" Threshold

The introduction of the "prima facie case" threshold in Section 173(3) raises fundamental conceptual questions. The Supreme Court has repeatedly clarified that the credibility or merits of information is not a precondition for registering an FIR; these are matters to be tested during investigation. Yet the BNSS appears to require the police to determine whether a prima facie

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case exists before registering an FIR for certain categories of offences.

The term "prima facie case" itself is not defined in the BNSS, nor is it explained how it differs from the existence of information disclosing a cognisable offence. This ambiguity creates several challenges:

- What principles should police apply to determine whether a prima facie case exists?
- Can the police examine documents, summon persons, or call potential accused persons during this preliminary inquiry?
- What is the legal status of any such requests for documents or oral clarifications, given that preliminary inquiry is not defined in the procedural code?

The risk is that the police may use this provision to conduct a merits-based assessment at the pre-registration stage, effectively acting as a gatekeeper rather than a facilitator of the criminal justice process. This could result in arbitrary denials of FIR registration, particularly in cases where the informant lacks the resources or influence to pursue the matter further.

5.2 Impact on Informant's Rights

The ambiguity surrounding preliminary inquiries also affects the rights of informants who approach the Magistrate under Section 175(3) of the BNSS when the police refuse to register an FIR. The Magistrate is now statutorily mandated to consider the police's submissions explaining their refusal before issuing any direction to investigate (as affirmed by the Supreme Court in Om Prakash Ambadkar v. State of Maharashtra, 2025 SCC OnLine SC 238).

In cases where the police have refused to register an FIR for offences punishable with 3-7 years' imprisonment, they will be required to explain how a prima facie case did not exist. However, until the contours of "prima facie case" are defined, it is unclear how the Magistrate will evaluate the correctness of the police's reasons for refusal. This places informants in a difficult position: they may be unable to effectively challenge the police's refusal without clear legal guidance on what constitutes a prima facie case.

5.3 The Rationale for the Distinction

It is unclear why a distinction has been created between cognisable offences punishable with imprisonment of three years or more but less than seven years and other cognisable offences. The legislative rationale behind this classification is not evident from the text of the BNSS. This creates concerns about whether the provision serves a legitimate criminal justice purpose or merely introduces an avenue for diluting the mandatory FIR registration regime.

6.Subsequent Developments and Recent Judicial Pronouncements

6.1 Pradeep Nirankarnath Sharma v. State of Gujarat (2025)

In this case, the Supreme Court reaffirmed the continuing relevance of the Lalita Kumari principles. The appellant, a retired IAS officer, sought a preliminary inquiry before registration of FIRs against him for corruption and abuse of official capacity. The Court held that Section 154 CrPC mandates the registration of an FIR when information discloses a cognisable offence, and no preliminary inquiry is required except in limited categories of cases such as matrimonial or medical negligence disputes.

The Court rejected the argument that public servants should be entitled to a preliminary inquiry before FIR registration, observing that granting such a direction would amount to a blanket protection against investigation and would be contrary to the statutory framework. The Court emphasised that the appellant had adequate remedies under the law, including seeking quashing of frivolous FIRs under Section 482 CrPC and applying for bail.

6.2 State of Karnataka v. T.N. Sudhakar Reddy (2025)

In this case concerning a disproportionate assets matter under the Prevention of Corruption Act, the Supreme Court held that a preliminary inquiry is not mandatory before registering an FIR if a cognisable offence is made out prima facie. The Court observed that a detailed and well-reasoned source information report may itself serve as a substitute for a preliminary inquiry.

6.3 Kuldeep Singh v. State of Punjab (2026)

The Supreme Court in this case reaffirmed the principle that attempted compromise cannot obstruct FIR registration or investigation in serious offences. The Court held that offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 involve significant public interest considerations and cannot be diluted through private settlement efforts. The judgment further clarified that an FIR may validly be based on a police officer's statement rather than the complainant's complaint, particularly in cases where victims may be deterred from directly reporting due to social pressure or intimidation.

7. Compromise and FIR Registration: Intersection of Private Settlement and Public Justice

7.1 The Compoundable and Non-Compoundable Distinction

The relationship between private settlements and FIR registration continues to generate debate. Section 320 of the CrPC contains an exhaustive list of offences that may be compounded, either with or without court permission. By necessary implication, offences not included within Section 320 are non-compoundable.

The doctrinal basis for this distinction is that compoundable offences generally involve private disputes with limited societal impact, while non-compoundable offences are treated as wrongs against society and public order. Indian courts have consistently maintained that serious offences involving violence, corruption, sexual crimes, or organised crime cannot ordinarily be extinguished through private settlement.

7.2 The Limits of Compromise

The Supreme Court, in Gian Singh v. State of Punjab, clarified that criminal proceedings may be quashed on settlement grounds only where the dispute is predominantly civil or personal in nature and the offence does not have serious societal consequences. Similarly, in Narinder Singh v. State of Punjab, the Court reiterated that settlement cannot erase serious criminality affecting society at large.

The jurisprudence therefore distinguishes between private wrongs capable of settlement and public wrongs where prosecution serves a broader societal function. This distinction is particularly significant in cases involving caste-based violence, sexual offences, and organised crime, where permitting private settlements would undermine deterrence, encourage coercive settlements, enable abuse of power, and weaken public confidence in the justice system.

7.3 FIRs Based on Police Information

Indian criminal procedure does not require that an FIR originate exclusively from the victim's complaint. Police officers may themselves register FIRs upon receiving credible information regarding a cognisable offence. This principle assumes particular significance in cases where victims may hesitate to approach authorities due to fear, coercion, or social stigma.

Police-generated FIRs ensure that the criminal justice system remains capable of protecting vulnerable persons even where direct complaints are absent.

8.Analysis and Recommendations

8.1 The Continuing Relevance of Lalita Kumari

Despite the legislative changes introduced by the BNSS, the Lalita Kumari principles remain the authoritative interpretation of the core duty to register FIRs for cognisable offences. For cognisable offences outside the 3-7year sentencing category, the mandatory registration regime continues to apply without exception. Recent judicial pronouncements have consistently reaffirmed the obligation of police officers to register FIRs where information discloses cognisable offences, rejecting attempts to introduce preliminary inquiries as a matter of course.

8.2 Addressing Ambiguities in the BNSS Framework

The introduction of preliminary inquiry provisions under Section 173(3) of the BNSS has created significant legal uncertainty. To address this, there is a pressing need for:

1. Guidelines from the Supreme Court clarifying the scope and contours of the "prima facie case" threshold under Section 173(3), including what materials may be considered during the preliminary inquiry and what principles should guide the determination.
2. Clear criteria distinguishing between a finding that information does not disclose a cognisable offence and a finding that no prima facie case exists.
3. Procedural safeguards ensuring that preliminary inquiries are conducted in a transparent, time-bound manner and that informants are informed of the reasons for any decision not to register an FIR.
4. Judicial oversight mechanisms to prevent abuse of the discretion conferred on police officers, including robust review by Magistrates under Section 175(3) of the BNSS.

8.3 Strengthening Informant Rights

The BNSS has enhanced informant rights in several respects, including the provision for electronic filing of FIRs, the Zero FIR mechanism, and the right to approach the Magistrate if the police refuse to register an FIR. These provisions should be operationalised effectively through clear protocols and guidelines, particularly regarding the timeline for responding to electronic complaints and the procedures for transferring Zero FIRs to the appropriate police station.

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The BPRD's Standard Operating Procedure on FIR registration provides useful guidance on these aspects, and its recommendations should be implemented uniformly across states.

9.Conclusion

The registration of First Information Reports constitutes the gateway to the criminal justice system in India. The mandatory nature of FIR registration for cognisable offences, established through judicial interpretation in Lalita Kumari v. Government of Uttar Pradesh and codified in both the CrPC and the BNSS, represents a fundamental safeguard against arbitrary police discretion and ensures that the criminal law machinery is not thwarted at the very threshold.

The transition to the BNSS represents both continuity and change. While retaining the core principle of mandatory registration, the new legislation has introduced a preliminary inquiry regime for certain categories of cognisable offences that departs from the Lalita Kumari framework. The full implications of this departure are yet to be realised, and the conceptual ambiguities surrounding the "prima facie case" threshold require urgent judicial clarification.

Recent judicial pronouncements have reaffirmed that the duty to register FIRs cannot be avoided through compromise settlements or demands for preliminary inquiries, particularly in cases involving serious offences against vulnerable communities. The criminal justice system must remain accessible, transparent, and accountable to all citizens. The jurisprudence on FIR registration reflects a careful balance between facilitating access to justice and preventing abuse of the criminal process. Maintaining this balance, while addressing the practical challenges that arise, remains a continuing task for courts, legislatures, and law enforcement agencies alike.

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