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Preliminary Enquiry before FIR in India: A Critical Study of Lalita Kumari and the Limits of Police Discretion

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Abstract

The First Information Report is the doorway to the criminal process in India, and the police officer at the station is its keeper. For decades, courts disagreed on whether that officer could pause at the door and make inquiries before recording information about a cognizable offence. In *Lalita Kumari v. Government of U.P.*, a Constitution Bench answered that registration is mandatory, and that a preliminary enquiry is permissible only to determine whether a cognizable offence is disclosed, in a limited set of cases. This article examines the reasoning of that decision, the categories it created and the way it has been applied. It argues that the judgment struck a defensible balance between the complainant's right of access and the accused's interest in protection from frivolous prosecution, but left the boundaries of the exceptions vague and the remedies for refusal weak. Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 has now given the police a statutory power of preliminary enquiry for a wide band of offences, on a broader standard than *Lalita Kumari* allowed. The article considers how the Supreme Court has read that provision in *Imran Pratapgadhi v. State of Gujarat* and proposes safeguards to keep the new discretion within constitutional limits.

Keywords: First Information Report; preliminary enquiry; Lalita Kumari; police discretion; section 154 CrPC; section 173 BNSS; access to justice; cognizable offence

1. Introduction

Few documents in Indian criminal procedure carry as much weight as the First Information Report. It sets the investigation in motion, fixes the first account of the offence and often determines whether the complainant will ever be heard by the system at all. Yet the law has long been unsure about the officer's role at the moment of registration. Is the officer a clerk, obliged to record whatever information discloses a cognizable offence? Or is the officer a gatekeeper, entitled to check whether the information is genuine before setting the criminal law against a named person?

The question is practical as well as doctrinal. Refusal to register an FIR remains one of the most common complaints against the police in India, particularly from women, Dalits, Adivasis and poor complainants. At the same time, the criminal process can be used as a weapon in property, family and commercial disputes, and an FIR can damage reputation and liberty long before any court examines it. A rule that is too rigid ignores the second concern. A rule that is too loose ignores the first.

The Constitution Bench in *Lalita Kumari v. Government of U.P.* tried to resolve this tension in 2013.[1] A decade later, the Bharatiya Nagarik Suraksha Sanhita, 2023 has altered the statutory text on which the judgment was

[1] *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1.

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based. This article studies the judgment, its reception and its afterlife under the new Code, and asks whether the limits it placed on police discretion still hold.

2. The Text and the Earlier Case Law

Section 154(1) of the Code of Criminal Procedure, 1973 provided that every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing, read over to the informant, signed and entered in a book.[2] Section 157 allowed the officer to investigate where he had reason to suspect the commission of a cognizable offence, and the proviso to that section permitted him not to investigate where there was no sufficient ground for doing so.[3] The first provision governed registration; the second governed investigation. Much of the later confusion came from reading the two together.

The Privy Council had stressed early on that the police have a statutory right to investigate cognizable offences without interference.[4] In *State of Haryana v. Bhajan Lal*, the Supreme Court held that the condition for registration under section 154 is only that the information must relate to a cognizable offence, and that the officer cannot refuse to register it on the ground that the information is not reliable or credible.[5] The same position was taken in *Ramesh Kumari v. State (NCT of Delhi)* and *Parkash Singh Badal v. State of Punjab*.[6]

A different line of authority allowed preliminary enquiry, particularly against public servants. In *State of U.P. v. Bhagwant Kishore Joshi*, the Court accepted that an officer may make some preliminary enquiry before registering a case.[7] In *P. Sirajuddin v. State of Madras*, it emphasised that before a public servant is charged with corruption, there should be a suitable preliminary enquiry, given the damage that unfounded allegations can cause.[8] In *Rajinder Singh Katoch v. Chandigarh Administration*, the Court observed that the officer is not obliged to register an FIR on any and every information and may verify it first.[9] By the late 2000s, the law could be cited in either direction.

The difference between the two lines was not merely technical. Registration has consequences that an informal enquiry does not. Once an FIR is registered, a report must be sent forthwith to the magistrate, and the investigation proceeds under a degree of judicial supervision.[10] The FIR also becomes a document that can later be used to corroborate or contradict the informant at trial, which gives the earliest version of events a fixed and verifiable form. An enquiry before registration has none of these features. It takes place outside the formal record, and its results are known only to the police. Whether the law allowed such an enquiry was therefore a question about who controls the first account of a crime.

3. The Road to the Constitution Bench

Lalita Kumari began as a writ petition under Article 32 filed on behalf of a minor girl whose father alleged that the police had failed to act on his complaint of her abduction. A two-judge bench, noting the conflicting

[2] Code of Criminal Procedure, 1973 (2 of 1974), s. 154(1).
[3] Code of Criminal Procedure, 1973, s. 157.
[4] *King Emperor v. Khwaja Nazir Ahmad*, AIR 1945 PC 18.
[5] *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335.
[6] *Ramesh Kumari v. State (NCT of Delhi)*, (2006) 2 SCC 677; *Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1.
[7] *State of U.P. v. Bhagwant Kishore Joshi*, AIR 1964 SC 221.
[8] *P. Sirajuddin v. State of Madras*, (1970) 1 SCC 595.
[9] *Rajinder Singh Katoch v. Chandigarh Administration*, (2007) 10 SCC 69.
[10] Supra note 3.

decisions, referred the question of whether registration is mandatory to a larger bench.[11] A three-judge bench, finding the issue important and the precedents divided, then referred it to a Constitution Bench.[12]

The arguments before the Constitution Bench tracked the two lines of authority. On one side, it was argued that the word "shall" in section 154 is mandatory, that the officer has no adjudicatory role, and that any discretion at the stage of registration would be misused to protect the powerful and to turn away the weak. On the other, it was argued that Article 21 protects the accused as well, that false FIRs are common, and that a short enquiry before registration would prevent harassment without real harm to genuine complainants.

4. What Lalita Kumari Decided

The Constitution Bench held that registration of an FIR is mandatory under section 154 if the information discloses the commission of a cognizable offence, and that no preliminary enquiry is permissible in such a situation.[13] The Court gave several reasons. The language of the section is mandatory. The Code deliberately distinguishes between the stage of registration and the stage of investigation, and gives the officer discretion only at the latter. Registration ensures that the information is recorded at once, before it can be altered or suppressed. It also protects the accused, because the case then proceeds under judicial oversight, with the FIR being sent to the magistrate.

The Court then marked out a limited space for preliminary enquiry. If the information received does not disclose a cognizable offence but indicates the necessity for an enquiry, a preliminary enquiry may be conducted only to ascertain whether a cognizable offence is disclosed. The Court was explicit that the scope of the enquiry is not to verify the veracity or otherwise of the information received.[14] The categories in which such an enquiry may be made were described as matrimonial or family disputes, commercial offences, medical negligence cases, corruption cases, and cases where there is abnormal delay in initiating criminal prosecution, for example, over three months without satisfactory explanation. The Court described the list as illustrative and not exhaustive.

The Court also attached procedural safeguards to the enquiry. It must be completed in a time-bound manner and should not exceed seven days. Every enquiry must be recorded in the General Diary. If the enquiry ends in closure, a copy of the entry closing the complaint must be given to the informant within a week, with brief reasons. Officers who fail to register an FIR where a cognizable offence is disclosed are liable to action.[15]

The Court did not ignore the interest of the accused. It reasoned that the danger of false complaints could be met by safeguards that operate after registration rather than before it. An FIR does not automatically lead to arrest, since the conditions on arrest in the Code must still be satisfied.[16] The accused may apply for anticipatory bail, may seek the quashing of proceedings that disclose no offence, and may prosecute an informant who gives false information to a public servant. In the Court's view, these remedies made a general power of preliminary enquiry unnecessary, and the risk of suppression of genuine complaints made it undesirable.

The judgment is best understood as a compromise. It accepts the complainant's claim that the gate cannot be shut at the officer's discretion, and it accepts the accused's claim that some categories of complaint are

[11] *Lalita Kumari v. Government of U.P.*, (2008) 7 SCC 164.
[12] *Lalita Kumari v. Government of U.P.*, (2012) 4 SCC 1.
[13] Supra note 1.
[14] Supra note 1.
[15] Supra note 1.
[16] *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

especially prone to misuse. It reconciles them by narrowing the purpose of the enquiry, rather than by banning it outright.

5. The Categories Examined

The five categories have been the most contested part of the judgment. Each of them reflects a concern that predates *Lalita Kumari*, but none is defined with precision.

Medical negligence is the clearest. In *Jacob Mathew v. State of Punjab*, the Supreme Court had already held that a private complaint against a doctor should not be entertained without credible opinion from another competent doctor, and that the investigating officer should obtain an independent medical opinion before proceeding.[17] The category in *Lalita Kumari* simply carried this approach forward.

Corruption is similar. The concern in *P. Sirajuddin* about reputational harm to public servants was reflected in the CBI Crime Manual and has since been given statutory form by section 17A of the Prevention of Corruption Act, 1988, which requires prior approval before any enquiry or investigation into decisions taken by a public servant in the discharge of official functions.[18] In *Charansingh v. State of Maharashtra*, the Court held that a preliminary enquiry in a corruption case is meant to assess whether there is material to proceed and is not an investigation.[19]

Matrimonial disputes are more troubling. The inclusion of this category reflects a long-standing judicial view that section 498A of the Indian Penal Code was being misused. But the same complaints often involve real cruelty and violence, and an enquiry in such cases can delay protection to a woman at precisely the moment she most needs it. The Court's own later experience illustrates the difficulty. In *Rajesh Sharma v. State of U.P.*, a two-judge bench directed that complaints under section 498A be screened by Family Welfare Committees before arrest,[20] and within a year a three-judge bench withdrew that direction in *Social Action Forum for Manav Adhikar v. Union of India*, holding that it amounted to judicial legislation.[21]

Commercial offences and delayed complaints raise a different problem. The terms are elastic. Almost any dispute involving money can be framed as commercial, and a three-month delay is common in complaints by the poor, who may not know how to approach the police or may fear doing so. Because the list was expressly illustrative, the categories invited officers to treat them as an invitation rather than an exception. The Supreme Court has since had to clarify that *Lalita Kumari* does not create an absolute rule requiring a preliminary enquiry in every case falling near these categories. In *Pradeep Nirankarnath Sharma v. State of Gujarat*, it refused to direct a preliminary enquiry before further FIRs against a former civil servant, holding that where information discloses a cognizable offence, the police have no discretion to conduct one.[22]

What the categories share is a judgment about trust. In each of them, the Court assumed that complainants were more likely than usual to exaggerate or to use the criminal law for private ends. That assumption may be sound in some cases, but it is applied by category rather than by evidence about the particular complaint. A complainant in a commercial dispute who has been defrauded of her savings is treated with the same

[17] *Jacob Mathew v. State of Punjab*, (2005) 6 SCC 1.
[18] Prevention of Corruption Act, 1988 (49 of 1988), s. 17A, inserted by the Prevention of Corruption (Amendment) Act, 2018 (16 of 2018).
[19] *Charansingh v. State of Maharashtra*, (2021) 5 SCC 469.
[20] *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472.
[21] *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443.
[22] *Pradeep Nirankarnath Sharma v. State of Gujarat*, (2025) 4 SCC 818 : 2025 INSC 350.

suspicion as a business rival seeking leverage. The better approach would have been to require reasons, specific to the complaint, for any enquiry.

6. The Gap Between Rule and Practice

A mandatory rule is only as strong as the remedy for its breach. Here the law has always been weak. The informant whose complaint is refused may send the substance of the information to the Superintendent of Police,[23] or approach the magistrate under section 156(3) for a direction to investigate.[24] In *Priyanka Srivastava v. State of U.P.*, however, the Court required that such applications be supported by an affidavit, in order to discourage frivolous use of the magistrate's power.[25] Each of these steps takes time, money and knowledge that many complainants do not have.

Criminal liability for refusal is narrow. Section 166A of the Indian Penal Code, inserted in 2013, made it an offence for a public servant to fail to record information relating to certain offences against women.[26] It does not cover refusal in general. Departmental action, which *Lalita Kumari* contemplated, depends on the willingness of senior officers to discipline juniors for a practice that is often tolerated or encouraged in order to keep crime figures low.

The burden of refusal is not evenly distributed. A complainant with money, education or political connections can usually secure registration, either by pressure at the station or by approaching a superior officer or a court. A woman reporting violence by a family member, a Dalit labourer reporting an assault by an employer from a dominant caste, or a migrant worker reporting theft of wages is far less likely to have these resources. For such complainants, an officer's decision to "look into the matter first" is often the end of the matter. The rule in *Lalita Kumari* was valuable precisely because it removed that decision from the officer, at least in law.

Practices of avoidance have adapted to the rule. Complaints are recorded as non-cognizable reports, entered as general diary entries or converted into "enquiries" under labels that do not appear in the categories. The direction in *Youth Bar Association of India v. Union of India* that FIRs be uploaded on police websites within twenty-four hours improved transparency after registration,[27] but it does nothing for complaints that are never registered. The deeper difficulty is that the decision not to register leaves no trace unless the complainant insists on creating one.

7. The BNSS and the Statutory Return of Discretion

The Bharatiya Nagarik Suraksha Sanhita, 2023 replaced section 154 with section 173, which came into force on 1 July 2024. Several of its features strengthen access. Information may be given at any police station regardless of where the offence was committed, giving statutory recognition to the "zero FIR", and it may be given electronically, subject to signature within three days.[28] The informant or victim is entitled to a free copy of the FIR.[29]

[23] Code of Criminal Procedure, 1973, s. 154(3).
[24] *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409.
[25] *Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287.
[26] Indian Penal Code, 1860 (45 of 1860), s. 166A(c), inserted by the Criminal Law (Amendment) Act, 2013 (13 of 2013); now Bharatiya Nyaya Sanhita, 2023 (45 of 2023), s. 199(c).
[27] *Youth Bar Association of India v. Union of India*, (2016) 9 SCC 473.
[28] Bharatiya Nagarik Suraksha Sanhita, 2023 (46 of 2023), s. 173(1).
[29] *Id.*, s. 173(2).

Section 173(3), however, marks a clear departure from *Lalita Kumari*. For cognizable offences punishable with imprisonment of three years or more but less than seven years, the officer in charge may, with the prior permission of an officer not below the rank of Deputy Superintendent of Police, conduct a preliminary enquiry within fourteen days to ascertain whether there exists a prima facie case for proceeding, or proceed with investigation where such a case exists.[30] Three differences from the judgment stand out. The enquiry is now available even where the information discloses a cognizable offence. Its purpose is to test for a prima facie case, which necessarily involves some assessment of the truth of the information. And its scope is defined not by subject matter but by the punishment band, which covers a large number of offences in the Bharatiya Nyaya Sanhita.

The Supreme Court considered the provision in *Imran Pratapgadhi v. State of Gujarat*, where an FIR had been registered against a Member of Parliament over a poem posted on social media.[31] The Court held that section 173(3) is an exception to section 173(1), that the preliminary enquiry contemplated by it is conducted before registration, and that the provision departs from the position in *Lalita Kumari*. It also held that where the alleged offence concerns speech and expression and falls within the three-to-seven-year band, the officer should ordinarily conduct a preliminary enquiry before registering an FIR, so that the guarantee in Article 19(1)(a) is not undermined by mechanical registration. Read together with *Pradeep Nirankarnath Sharma*, decided only days earlier under the old Code, the position appears to be that *Lalita Kumari* continues to govern offences outside the band, while section 173(3) creates a statutory discretion within it.[32]

The provision raises practical concerns that the judgment did not need to address. The punishment band of three to seven years includes a wide range of offences, from cheating and criminal breach of trust to several offences against the person. The requirement of permission from a Deputy Superintendent of Police assumes that such an officer is readily available, which may not be true in rural districts. Most importantly, an enquiry into whether a prima facie case exists invites the officer to weigh evidence before any investigation has begun. In the meantime, evidence may be lost, witnesses may be influenced and the accused may be alerted. Since the enquiry precedes registration, none of this activity is subject to the reporting requirement that follows an FIR.

The magistrate's power has also been reshaped. Under section 175(3) of the BNSS, an application for a direction to investigate must be supported by an affidavit, and the magistrate may make such enquiry as he thinks necessary and must consider the submissions of the police officer before passing an order.[33] This codifies *Priyanka Srivastava* and adds a further layer before the complainant obtains relief.[34]

8. Restoring the Limits of Discretion

Section 173(3) is not unconstitutional merely because it departs from *Lalita Kumari*. The Constitution Bench was interpreting a statute, and Parliament is free to change that statute. The question is whether the new discretion is exercised within limits that respect both the complainant's access to justice and the accused's liberty. Several safeguards would help.

[30] *Id.*, s. 173(3).
[31] *Imran Pratapgadhi v. State of Gujarat*, 2025 INSC 410 (decided on 28 March 2025).
[32] Supra note 22.
[33] Bharatiya Nagarik Suraksha Sanhita, 2023, s. 175(3).
[34] Supra note 25.

First, the permission of the Deputy Superintendent of Police should be given in writing, with reasons, and a copy should be given to the informant. A decision taken in a closed office, without reasons, is exactly the kind of unstructured discretion that *Lalita Kumari* sought to prevent.[35]

Secondly, the fourteen-day limit should be treated as mandatory, and the informant should be told the outcome in writing within that period, as the Constitution Bench required for closures.[36] A failure to complete the enquiry in time should result in registration.

Thirdly, certain categories of offence should be excluded from preliminary enquiry by rule or amendment. Parliament has already shown how this can be done. After the Supreme Court in *Subhash Kashinath Mahajan v. State of Maharashtra* allowed a preliminary enquiry before registering cases under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989,[37] Parliament inserted section 18A, which provides that no preliminary enquiry is required for registration under that Act, and the Court upheld the amendment.[38] A similar exclusion for offences against women and children within the three-to-seven-year band would prevent delay in cases where it is most dangerous.

Fourthly, every preliminary enquiry should be recorded in a digital register linked to the Crime and Criminal Tracking Network and Systems, so that the number of enquiries, their duration and their outcomes can be monitored. Without such data, it is impossible to know whether section 173(3) is being used to protect free expression, as *Imran Pratapgadhi* envisaged, or simply to turn away inconvenient complaints.[39]

Finally, the remedy for wrongful refusal must be made more effective. Section 199 of the Bharatiya Nyaya Sanhita should be extended to cover any wilful failure to record information disclosing a cognizable offence outside the permitted exception, and police accountability bodies should be empowered to entertain complaints of refusal directly.[40]

In addition, the magistrate's power under section 175(3) should be made a genuinely quick remedy. Where an informant alleges that the police have refused registration or have misused section 173(3), the application should be heard within a fixed period, and the magistrate should be required to record why registration is or is not warranted. Training is also necessary. The Court in *Imran Pratapgadhi* observed that police officers need sensitisation about the constitutional value of free expression.[41] The same is true of their obligations to complainants. A discretion exercised by officers who do not understand its limits will drift toward convenience.

9. Conclusion

Lalita Kumari answered a question that had divided the Supreme Court for decades, and it answered it in favour of the complainant. Its insistence that registration is mandatory, and that any preliminary enquiry is limited to finding whether a cognizable offence is disclosed, gave legal force to a simple idea: that the police station must not decide in advance whose grievance deserves to be recorded. Its weaknesses lay in the openness of its categories and in the absence of strong remedies, both of which allowed old habits of refusal to continue.

[35] Supra note 1.
[36] Supra note 1.
[37] *Subhash Kashinath Mahajan v. State of Maharashtra*, (2018) 6 SCC 454.
[38] Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (33 of 1989), s. 18A, inserted by Act 27 of 2018; *Prathvi Raj Chauhan v. Union of India*, (2020) 4 SCC 727.
[39] Supra note 31.
[40] Supra note 26.
[41] Supra note 31.

The BNSS has reopened the question by granting a broad statutory discretion for a large band of offences. The courts have so far read that discretion as a protection against misuse of the criminal law, particularly in cases involving speech. That is a legitimate purpose. But a discretion created to protect the accused can just as easily be used to delay the victim. Whether section 173(3) becomes a shield or a gate will depend on the safeguards built around it. The lesson of *Lalita Kumari* is that the law at the threshold of the criminal process must be clear, recorded and accountable, because it is at the threshold that the weakest complainants are most easily turned away.

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Author Contributions

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[17] *Rajesh Sharma v. State of U.P.*, (2018) 10 SCC 472.

[18] *Social Action Forum for Manav Adhikar v. Union of India*, (2018) 10 SCC 443.

[19] *Pradeep Nirankarnath Sharma v. State of Gujarat*, (2025) 4 SCC 818 : 2025 INSC 350.

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[21] *Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409.

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