
***From Mandate to Discretion: Re-evaluating the provision for
FIR under Section 173 of the Bharatiya Nagarik Suraksha
Sanhita, 2023***

Shraddha Seth, National Law University, Odisha.*

Abstract

The First Information Report (FIR) is the inviolable starting point of India's criminal machinery. The law under Section 154 of the Code of Criminal Procedure, 1973, as cemented by the Supreme Court in ***Lalita Kumari v. Government of Uttar Pradesh***, mandated the immediate registration of an FIR upon the disclosure of a cognizable offence to ensure effective access to justice. However, the new Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) creates a significant jurisprudential shift. Section 173 of the BNSS statutorily empowers the police to conduct a discretionary "*preliminary inquiry*" for a wide range of offences before registering an FIR, marking a departure from the established mandate.

This paper analyzes this legislative restructuring and its initial judicial interpretation in Imran ***Pratapgadhi v. State of Gujarat***, which suggests a preference for such inquiries in cases having implication on fundamental rights. The findings reveal a deep conflict: while intended as a safeguard against frivolous litigation, the provision grants unchecked discretion that risks becoming a procedural barrier to justice. It creates potential for delays, corruption, and disproportionate harm to marginalized communities who rely on the state for redress. The paper concludes that without a concrete external accountability, this new framework may undermine the victim's right to timely justice, tilting the system away from a victim-centric approach and reintroducing ambiguity at the most critical stage of the criminal process.

* The author has completed her B.A. LL.B. from University Law College, Utkal University & LL.M. from National Law University, Odisha and also qualified UGC-NET in June 2024.

The First Information Report (FIR) occupies an inviolable position within the edifice of India's criminal justice system. It is not merely a procedural formality but has been held as a mandate as it is the foundational document that triggers the state's investigative machinery, setting the entire criminal law in motion. For decades, the law governing this foundational basis, enshrined in Section 154 of the Code of Criminal Procedure, 1973 (CrPC), was interpreted as a victim-centric mandate. This interpretation was judicially cemented by the Supreme Court of India, which established a near-absolute obligation on the police to register an FIR upon receiving information disclosing a cognizable offence.¹ This framework aims to ensure immediate access to justice and curb the prevalent issue of police inaction. However, the recent reconstruct of India's criminal laws has introduced a significant jurisprudential shift. The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), which replaces the CrPC, has codified a new, more discretionary framework under its Section 173, statutorily empowering the police to conduct a "preliminary inquiry" before registering an FIR for a wide category of offences.

This paper argues that while Section 173(3) of the BNSS is a legislative attempt with an intention to strike a delicate balance between protecting the accused from potential misuse or abuse of the legal machinery and ensuring the efficient allocation of police resources, the literal interpretation of this codification of police discretion presents a profound departure from the principles established in the landmark case of *Lalita Kumari v. Government of Uttar Pradesh*². The recent judicial interpretation in *Imran Pratapgadhi v. State of Gujarat*³ further complicates this landscape by reflecting a judicial preference for such inquiries in cases implicating fundamental rights and duties, thereby creating a potential hierarchy of rights at the pre-investigative stage.⁴ This analysis will critically examine whether this new framework serves as a necessary safeguard against frivolous litigation or risks becoming a procedural technical barrier to justice, particularly for the most vulnerable sections of society who rely on the state's machinery for redress.

¹ JUSTICE CK THAKKER & MRS M.C. THAKKER, TAKWANI CRIMINAL PROCEDURE XXXX (5th ed. 2021) (1994).

² AIR 2014 SC 187.

³ 2025 LiveLaw (SC) 362; 2025 INSC 410

⁴ Justice Narayana Pisharadi, *Preliminary Enquiry Under Section 173(3) Of The BNSS -The Supreme Court Solves The Riddle*, LIVE LAW, Mar. 29, 2025, <https://www.livelaw.in/articles/supreme-court-judgment-imran-pratapgadhi-vs-state-of-gujarat-explains-preliminary-inquiry-section-173-bnss-287964?code=d3KTKDqFQjPmVFkz1sAudhCV2HHsdB>.

To navigate this complex jurisprudence, this paper will first revisit the previous procedural context of mandatory registration under Section 154 CrPC and the judicial legal position articulated in *Lalita Kumari*. It will then deconstruct the new paradigm under Section 173 BNSS, highlighting the altered scope and purpose of the preliminary inquiry. Subsequently, it will analyze the Supreme Court's first major interpretation technique of this provision in *Imran Pratapgadhi*. The paper will then delve into the underlying jurisprudential tensions between the procedural rights of the victim and the accused that this legislative change brings to the frontline. Finally, it will provide a detailed procedural analysis of the new remedial framework available to an aggrieved informant under Sections 173(4) and 175 of the BNSS and the existing alternatives, concluding with an assessment of the future of FIR registration in India.

The Jurisprudence of Mandatory Registration: *An Analysis of Section 154 CrPC and the Lalita Kumari Judgment*

The interpretation of procedural framework governing the initiation of criminal investigations under the CrPC was anchored in the legislative intention providing for mandatory registration. This mandatory doctrine, derived from the legislative language itself and reinforced by judicial interpretation, sought to eliminate police discretion at the threshold stage, ensuring that the criminal justice system was accessible to every complaint of a serious offence.

The Statutory Mandate of Section 154 CrPC

Section 154 of the Code of Criminal Procedure, 1973, laid down the procedure for recording information in cognizable cases. Section 154(1) stated that every information relating to the commission of a cognizable offence, if given to an officer in charge of a police station, "shall" be reduced to writing⁵. The word "shall" is the determinative factor of legislative intention, the object for which it has been used and the consequences that will follow from the infringement of the direction to register FIRs, all these factors clearly show that the word "shall" used in Section 154(1) needs to be given its ordinary meaning of being of "mandatory" character.⁶

⁵ CODE CRIMINAL PROCEDURE, 1973, Legis. No. Act No. 2 1974, Jan. 25, 1974, XXXX (India).

⁶ *Lalita Kumari v. Govt. of U.P.*, U.S., Nov. 12, 2013, (Writ Petition (Criminal) No. 68, S.C.R, at XXXX (India).

This interpretation was reinforced by the fact that the statute cautioned against refusal of recording of "information" on the basis of any qualifying adjectives such as "genuine", "credible," or "reliable".⁷ The police officer's role was not to adjudicate the veracity or genuineness of the complaint at this stage but simply to record the information as provided. The statutory scheme was clear: the moment information disclosing a cognizable offence was presented, the police had no option but to register an FIR, thereby setting the investigative process into motion.

The Judicial Cementing in *Lalita Kumari v. Govt. of U.P.*

Despite the clear statutory language, the practice of police refusing to register FIRs, often pending an informal "inquiry" to test the complaint's veracity, was rampant. This led to conflicting judicial opinions on the extent of police discretion. The Supreme Court sought to resolve this ambiguity definitively through a Constitution Bench in *Lalita Kumari v. Govt. of U.P.*⁸. The judgment became the locus classicus on the subject, laying down indisputable guidelines that governed FIR registration until the advent of the BNSS.

The Court's primary holding was a resounding affirmation of the mandatory registration doctrine. It declared that if the information received by the police discloses the commission of a cognizable offence, the registration of an FIR under Section 154 is compulsory, and no preliminary inquiry is permissible in such a situation. The Court reasoned that this would act as an "extremely valuable safeguard" against the excessive, mala fide and illegal exercise of investigative powers by the police⁹, which could consequently allow offenders to escape the claws of the law. The judgment clarified that the purpose of an FIR is merely to set the criminal law in motion and that its reliability or credibility is not a precondition for registration.

Addressing concerns about the rights of the accused, the Court undertook a balancing act. It concluded that the mandatory registration of an FIR as is a procedure established by law therefore confirm the right to life and liberty under Article 21 of the Constitution. The Court

⁷ Aleque Padamsee v UOI, SC, July 17, 2017, 11-15 of 2003, SCC, at XXXX (India).

⁸ (2014) 2 SCC 1

⁹ SUPREME COURT REPORTS, [2013] 14 S.C.R., at XXXX (2013), https://cdnbbsr.s3waas.gov.in/s3ec0490f1f4972d133619a60c30f3559e/documents/aor_notice_circular/31.pdf.

reasoned that the CrPC itself contained sufficient safeguards, such as the provisions for anticipatory bail under Section 438. The Code gives power to the police to close a matter both before and after investigation. A police officer can foreclose an FIR before an investigation under Section 157 of the Code, if it appears to him that there is no sufficient ground to investigate the same. The police officer can also, in a given case, investigate the matter and then file a final report under Section 173 of the Code seeking closure of the matter¹⁰. The High Court has the power to quash a malicious FIR under Section 482, to protect an individual from false implication. The judgment thus prioritized the victim's right to have their complaint investigated, viewing the act of registration as a crucial first step toward justice.

The Narrowly Carved Exceptions for Preliminary Inquiry

While establishing a rigid rule, the *Lalita Kumari* court pragmatically acknowledged that a blanket mandate could be misused in certain types of cases prone to malicious complaints and that a delicate balance has to be done. It therefore carved out a narrow set of exceptions where a preliminary inquiry of limited was permissible. These categories included: Matrimonial and family disputes; Commercial offences; Medical negligence cases; Corruption cases; Cases involving abnormal delay (e.g., over 3 months) in reporting without a satisfactory explanation.

The Court strictly defined the scope and timeline of this inquiry. Its purpose was only to ascertain *whether the information revealed a cognizable offence at all* not to verify the truthfulness of the allegations. This was a jurisdictional check, not a mini-investigation into the merits of the case. Furthermore, the Court mandated a time-bound inquiry that is to be completed within seven days. This judicial framework was a direct response to the systemic issue of police arbitrariness. By making registration the default rule and inquiry the rare, time-bound exception, the Supreme Court decisively shifted the balance of power in favor of the informant, ensuring that access to the criminal justice system was not throttled at its very inception.

¹⁰ *Lalita Kumari v. Govt. of U.P.*, U.S., Nov. 12, 2013, (Writ Petition (Criminal) No. 68, S.C.R, at XXXX (India).
pg. 5

A Legislative Focal point: Deconstructing the Preliminary Inquiry under Section 173(3) BNSS

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023, represents a fundamental re-engineering of the provisions governing the procedure of FIRs. While it incorporates certain progressive, victim-centric substantive equality features, its most significant departure from the former regime is the statutory introduction of a wide discretionary power for the police to conduct a preliminary inquiry, thereby legislatively overturning the core mandate of the *Lalita Kumari* judgment.

Textual and Comparative Analysis of Section 173 BNSS

Section 173¹¹ of the BNSS, the successor to Section 154 CrPC, begins by codifying several modern procedural advancements. Section 173(1) gives statutory recognition to the concept of a "Zero FIR," mandating the registration of an FIR irrespective of the territorial jurisdiction where the offence was committed. It also introduces the mechanism of an "e-FIR," allowing information to be given via electronic communication, which must be signed by the informant within three days¹². These provisions are designed to enhance effective accessibility and remove procedural barriers for victims.

However, the most transformative and contentious provision is Section 173(3)¹³. A meticulous textual analysis reveals its three critical components:

The provision is applicable upon receipt of information relating to a cognizable offence that is punishable with imprisonment for "three years or more but less than seven years." This is a vast category that covers a significant portion of offences.

There is procedural pre-requisite that, the officer in charge of the police station can exercise this power only with "prior permission from an officer not below the rank of Deputy Superintendent of Police (DSP)," introducing a layer of supervisory oversight.

¹¹ BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, Act No. 46 2023, Dec. 25, 2023, XXXX (India), <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>.

¹² Id.

¹³ Id.

Upon receiving such permission, the officer "*may*", considering the "nature and gravity of the offence," choose one of two paths: (i) "proceed to conduct preliminary enquiry... within a period of fourteen days," or (ii) "proceed with investigation when there exists a *prima facie* case."¹⁴

This design legislatively creates a critical juncture that did not exist under the *Lalita Kumari* framework. It grants the police the option to pause and inquire, even when the information clearly discloses a cognizable offence, something the Supreme Court had explicitly restricted.

The Altered Scope of the Preliminary Inquiry

The distinction between the preliminary inquiry under the BNSS and the one permitted by *Lalita Kumari* is a substantive one and not merely technical. The stated purpose of the inquiry under Section 173(3) is to ascertain "whether there exists a *prima facie* case for proceeding in the matter"¹⁵. This is a significantly higher and more ambiguous threshold than the *Lalita Kumari* standard, which was limited to determining if a cognizable offence was disclosed on the face of the information¹⁶.

The term "*prima facie* case" is traditionally a judicial standard, employed by courts at the stage of taking cognizance; or after that at framing charges to assess whether there is sufficient material to proceed to trial. Introducing this standard at the pre-registration stage, the legislature has granted police a quasi-judicial, gatekeeping function. This inquiry is no longer a simple jurisdictional check; it potentially necessitates the credibility of the information, a preliminary evaluation of the evidence, and the overall genuineness of the complaint, precisely the functions the Supreme Court had ring-fenced as being outside the police's purview at this stage. The inquiry has been transformed from a tool to identify the nature of the offence into a mechanism to assess its merits.

¹⁴ 14 BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, Act No. 46 2023, Dec. 25, 2023, XXXX (India), <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>.

¹⁵ Id.

¹⁶ *Lalita Kumari v. Govt. of U.P.*, U.S., Nov. 12, 2013, (Writ Petition (Criminal) No. 68, S.C.R, at XXXX (India).
pg. 7

Factual Matrix and Ruling in Imran Pratapgadhi v. State of Gujarat¹⁷

The case originated from an FIR registered against Imran Pratapgarhi, a Member of Parliament, for posting a video clip on social media that featured a poem recited in the background. The complaint alleged that the poem incited communal disharmony and promoted enmity between communities, attracting offences under the Bharatiya Nyaya Sanhita (BNS). The appellant sought the quashing of the FIR, arguing, among other things, that the police had failed to conduct the preliminary inquiry mandated for such offences under Section 173(3) of the BNSS¹⁸.

The Supreme Court, in a significant ruling, quashed the FIR. While the Court found that no prima facie case was made out even on a plain reading of the poem, a substantial portion of its reasoning was against the overzealous attitude of police in lodging the FIR and their failure to exercise the option of a preliminary inquiry and directed the police officer to abide by the Constitution and respect the ideals. This procedural analysis has set a crucial precedent for the interpretation of Section 173(3)¹⁹.

The Preliminary Inquiry as a Constitutional Safeguard for Free Speech

The Court's most profound contribution was framing the preliminary inquiry not as a procedural impediment for the victim by applying literal interpretation, but through the lens of purposive interpretation construing it as a vital constitutional safeguard for the accused, especially in cases implicating the fundamental right to freedom of speech and expression under Article 19(1)(a) of the Constitution²⁰. The judgment reasoned that offences based on spoken or written words are particularly susceptible to misuse, and the mechanical registration of FIRs in such cases could have a significant "chilling effect" on legitimate expression and dissent.

¹⁷ Case Title – Imran Pratapgadhi v. State of Gujarat, U.S., Mar. 28, 2025, CrI.A. No. 1545/2025, LiveLaw, 2025 LiveLaw (SC) 362, at XXXX (India), https://www.livelaw.in/pdf_upload/362-imran-pratapgadhi-v-state-of-gujarat-28-mar-2025-594470.pdf.

¹⁸ Id.

¹⁹ Id.

²⁰ Justice Narayana Pisharadi, *Preliminary Enquiry Under Section 173(3) Of The BNSS -The Supreme Court Solves The Riddle*, LIVE LAW, Mar. 29, 2025, <https://www.livelaw.in/articles/supreme-court-judgment-imran-pratapgadhi-vs-state-of-gujarat-explains-preliminary-inquiry-section-173-bnss-287964?code=d3KTKDqFQjPmVFkz1sAudhCV2HHsdB>.

In this context, the Court held that for offences falling under the restrictions on free speech in Article 19(2), where the punishment is between three and seven years, it is "always appropriate" for the police to conduct a preliminary inquiry under Section 173(3). This approach, the Court argued, would prevent the criminal justice system from being weaponized to suppress constitutionally protected speech.

Reconciling *Imran Pratapgadhi* with *Lalita Kumari*

The *Imran Pratapgadhi* judgment does not overrule *Lalita Kumari*; it rather navigates the new legislative landscape created by the BNSS. The *Lalita Kumari* bench was interpreting nature of Section 154 CrPC, a provision that contained no statutory basis for a preliminary inquiry when a cognizable offence was already disclosed. In contrast, the *Imran Pratapgadhi* bench was confronted with Section 173(3) BNSS, a provision that legislatively grants the power to conduct such an inquiry.

The Court in *Imran Pratapgadhi* acknowledged the legislative change, describing Section 173(3) as a "notable exception" to the general principle of immediate FIR registration. The Court further provided a constitutional rationale for its existence and application. It tied the exercise of this new statutory discretion to the protection of another fundamental right freedom of speech. The judgment harmonizes the legislative intent of Section 173(3) with constitutional principles.

The judgment has thus initiated a "jurisprudence of exceptions." While Section 173(3) provides a uniform discretionary power for all offences in the 3-7 year punishment bracket, the Supreme Court has possibly created a judicially-preferred sub-category of speech-related offences. This has been done by linking the police's procedural choice to their fundamental duty under Article 51-A(a) to abide by the Constitution and respect its ideals, including the liberty of thought and expression.²¹ This creates a potential for a fragmented application of procedural law, where an individual accused of an economic offence like cheating might not be afforded the same procedure of a preliminary inquiry even if it falls within the same statutory category of Section

²¹ Id.

173(3). This raises complex questions of equal protection and procedural fairness that future jurisprudence will need to address.

The Victim vs. Accused Dichotomy

The legislative shift towards allowing preliminary inquiries under Section 173(3) BNSS is not merely a procedural tweak; it is a readjusting approach of the delicate balancing between the competing rights and interests of the victim and the accused. This debate is a microcosm of the broader jurisprudential tension in criminal law, but it must also be viewed through the lens of historical basis of Indian criminal justice system.

The system majorily being inherited from the British model, has long been characterized by an adversarial approach that is extensively accused-focused. The procedural framework based on the constitutional principles has prioritized safeguarding the rights of the accused, such as the presumption of innocence, the right to a fair trial, and protection against self-incrimination. While these protections are the cornerstones of fair and reasonable procedure, this accused-centric focus has historically marginalized and overlooked the very individuals who have suffered the consequences of the crime. Victims have often been relegated to the role of mere witnesses for the prosecution, their participation limited and their own needs for justice largely ignored.²² This imbalance has been described as inflicting a "second wound" on the victim, perpetuating a framework that can feel unjust and disempowering.

In recent decades, a paradigm shift towards victim-centered approaches has sought to rectify this historical imbalance, spurred by international standards like the UN Declaration of Basic Principles of Justice for Victims and a more proactive judiciary. This movement aims to recognize victims as key stakeholders in the justice process. However, while the new laws aim to address legislative gaps and create a more citizen-centric structure, the provision for a discretionary preliminary inquiry under Section 173(3) appears to mirror the earlier accused-centric approach. By creating a potential 14-day delay before an investigation formally begins,

²² Shruti Gattani, *VICTIM-CENTERED APPROACHES IN THE CRIMINAL JUSTICE PROCESS: EMPOWERING AND PROTECTING CRIME VICTIMS*, V INDIAN J. INTEGRATED RSCH. L. 768, XXXX (2025), <https://ijirl.com/wp-content/uploads/2025/02/VICTIM-CENTERED-APPROACHES-IN-THE-CRIMINAL-JUSTICE-PROCESS-EMPOWERING-AND-PROTECTING-CRIME-VICTIMS.pdf>.

it introduces a procedural barrier that critics argue primarily serves the interests of the potential accused, running counter to the victim's right to swift and unimpeded access to justice

The Jurisprudential Fulcrum: Balancing Societal Security and Individual Liberty

The introduction of Section 173(3) and its subsequent judicial interpretation in *Imran Pratapgadhi* brings a long-standing jurisprudential conflict to the forefront: the delicate balance between the state's duty to ensure societal security by promptly investigating crime and its obligation to protect individual liberty from the arbitrary exercise of state power. The debate over the preliminary inquiry serves as a fulcrum upon which the competing rights of the victim and the accused are weighed.

Arguments for Discretion: The Preliminary Inquiry as a Shield

Proponents of the discretionary preliminary inquiry frame it as a necessary shield against the misuse of the criminal justice system. The registration of an FIR is not a trivial matter; it sets in motion a coercive process with "serious consequences" for the individual named as the accused, affecting their reputation, liberty, and peace of mind. The arguments in favour of a preliminary inquiry rest on several key pillars: the primary justification is that the inquiry acts as a crucial filter to weed out complaints that are frivolous, vexatious, or designed to settle personal scores; An immediate and mechanical registration of an FIR based on any complaint, regardless of its credibility, can lead to the harassment of innocent individuals. The preliminary inquiry is thus seen as a procedural safeguard that protects the liberty and dignity of a person, aligning with the procedural protections under Article 21 of the Constitution. Law enforcement agencies operate with finite resources. A preliminary inquiry prevent from statutory compulsion of investigation of every allegation that technically discloses a cognizable offence and allows to conduct a swift assessment and prioritize investigations into credible and serious matters.

Potential for Abuse and Corruption

Authorizing police's discretion to delay or refuse FIR registration invites the possibility of its abuse and creates an opening for corruption and extraneous influences. These apprehensions

are not theoretical but are well-documented history of police inaction. In the landmark *Lalita Kumari* judgment, the Supreme Court itself, referencing the V.S. Malimath Committee on Reforms of Criminal Justice System and National Crime Record Bureau statistics, remarked that the number of FIRs not registered is approximately equal to the number of FIRs that are actually registered. It was also found that in numerous cases where FIRs were eventually registered, the police would deliberately minimize the offences by applying non-cognizable sections.²³

It is an established object of insisting for prompt lodging of the report so as to obtain early information regarding the circumstances in which crime was committed. Delay results in embellishment, danger of introduction of coloured version, exaggerated account as a result of deliberation and consultation.²⁴ Delays can also cause memories to fade, leading to inaccurate or incomplete factual narration of events by witnesses, which can directly hamper the quality of the investigation and subsequent prosecution.

Disproportionate Impact on Marginalized Communities

The discretion is rarely neutrally exercised, therefore any abuse of the power granted by Section 173(3) is bound to disproportionately affect complainants from marginalized and vulnerable communities. Individuals who are economically disadvantaged, belong to religious or ethnic minorities, are migrants, or come from historically marginalized communities often lack the social, economic, or political capital to assert their rights effectively. For them, the preliminary inquiry can become an insurmountable barrier, reinforcing existing societal inequalities. This concern is substantiated by multiple studies. A research project sponsored by the Bureau of Police Research & Development identified that victims of non-registration of crimes are predominantly individuals from poor or marginalized sections, particularly women and low-income groups.²⁵

²³ Abhay Shetty, *The perils of unchecked discretion: Examining the power(s) of preliminary inquiry under the BNSS, 2023* | *Law and Other Things*, LAW AND OTHER THINGS: BNSS CRIMINAL LAW (Sept. 2, 2025), <https://lawandotherthings.com/the-perils-of-unchecked-discretion-examining-the-powers-of-preliminary-inquiry-under-the-bnss-2023/>.

²⁴ S. MISHRA, *THE CODE OF CRIMINAL PROCEDURE*, 1973, at XXXX (21st ed. 2019) (1975).

²⁵ Abhay Shetty, *The perils of unchecked discretion: Examining the power(s) of preliminary inquiry under the BNSS, 2023* | *Law and Other Things*, LAW AND OTHER THINGS: BNSS CRIMINAL LAW (Sept. 2,

Furthermore, the "Status of Policing in India Report 2025," published by Common Cause, reveals prejudices within the police force itself. The report found that significant proportions of police personnel believe that Muslims, slum dwellers, individuals from Dalit and Adivasi communities, and migrants are 'naturally prone' to committing crimes. Such inherent biases mean police are less likely to intervene or act on complaints filed by these individuals, and the discretionary inquiry process could serve to legitimize this prejudicial policing.²⁶

Justice delayed can be justice denied. The 14-day window for inquiry, which can be further extended by the lack of a timeline for seeking DSP permission, provides a crucial period during which evidence can be tampered or destroyed, witnesses can be threatened or influenced, and alike. The fading of memories over time can also gravely prejudice the victim's case during the proceedings.

Analysis of Sections 173(4) and 175(3) BNSS: The Aggrieved Informant's Path to Justice

The BNSS also redesigns the remedial framework for an informant who is aggrieved by a police refusal to register an FIR. This new structure, primarily housed in Sections 173(4) and 175(3), aims to create a system of oversight, particularly at the judicial level, to act as a counterbalance to the enhanced police discretion.

The Procedural Ladder for the Aggrieved Informant

The BNSS lays out a clear, hierarchical path for seeking redress for an informant whose complaint is not registered, either through an unqualified refusal or after a preliminary inquiry concludes that no prima facie case is made out.

Step 1: Remedy via the Superintendent of Police (S. 173(4)): The first recourse for the aggrieved person is to send the substance of their information in writing to the concerned Superintendent of Police (SP). This provision serves as an internal check within the police

2025), <https://lawandotherthings.com/the-perils-of-unchecked-discretion-examining-the-powers-of-preliminary-inquiry-under-the-bnss-2023/>.

²⁶ Id.

hierarchy. If the SP is satisfied that the information discloses a cognizable offence, they can either investigate the case themselves or direct an investigation by a subordinate officer.²⁷

Step 2: Judicial Remedy via the Magistrate (S. 175(3)): If the informant receives no relief from the SP, or if the SP concurs with the decision of the station house officer, the informant's final recourse is to approach the jurisdictional Magistrate. This judicial remedy is provided under Section 175(3) of the BNSS. It is at this stage that the BNSS introduces its most significant procedural innovations.²⁸

A Strengthened Magisterial Oversight? Analyzing Section 175(3) BNSS

Section 175(3)²⁹ of the BNSS retains the Magistrate's power to order an investigation introduces several new procedural safeguards that were previously either absent or only established through judicial pronouncements. A comparative analysis with Section 156(3) CrPC reveals these critical changes:

Mandatory Affidavit: Section 175(3) explicitly requires that the application made to the Magistrate must be "supported by an affidavit." This codifies the requirement laid down by the Supreme Court in *Priyanka Srivastava v. State of U.P.* (2015)³⁰. The issue in the case was frivolous complaints being filed before the Magistrate only to harass people, therefore it was directed all applications before the Court where Section 156(3), CrPC applications are made must be supported by an affidavit duly sworn by the applicant. The purpose is to ensure the accountability of the complainant and deter the filing of false or malicious allegations, as a false affidavit is a prosecutable offence.³¹

Magistrate's Inquiry: The provision gives the Magistrate statutory backing to look beyond the face of the complaint and conduct a preliminary examination before ordering an

²⁷ BHARATIYA NAGARIK SURAKSHA SANHITA, 2023, Act No. 46 2023, Dec. 25, 2023, XXXX (India), <https://www.mha.gov.in/en/commoncontent/new-criminal-laws>.

²⁸ Id.

²⁹ Id.

³⁰ (2015) 6 SCC 287

³¹ Sucheta, *SC clarifies prospective nature of direction in 2015's Priyanka Shrivastava case on Section 156(3) CrPC applications being supported by affidavit*, SCC TIMES (Feb. 25, 2025), <https://www.scconline.com/blog/post/2025/02/28/prospective-operation-direction-section1563-crpc-applications-clarified-sc-legal-news/>.

investigation by empowering the Magistrate, after considering the application, to make "such inquiry as he thinks necessary."

In a groundbreaking departure from the previous regime, Section 175(3) requires the Magistrate to consider the "submission made in this regard by the police officer" before ordering an investigation. Under the CrPC, Magistrates often issued directions under Section 156(3) based solely on the complainant's application. The BNSS now requires the court to hear the police's side of the story, providing an opportunity for the investigating agency to justify its refusal to register the FIR.

The structured chain creates a formalized system of hierarchical review. While this process may enhance transparency and prevent Magistrates from mechanically ordering FIRs, it also introduces multiple potential points of delay. The ultimate effectiveness of this new balance will depend entirely on how robustly magistrates utilize this power to scrutinize police decisions, ensuring that the hearing of the police officer does not become a mere formality that rubber-stamps the executive's conclusion.

Conclusion and Recommendations: Navigating the New Frontier of Police Discretion

The enactment of Section 173 of the Bharatiya Nagarik Suraksha Sanhita, 2023, marks a watershed moment in Indian criminal procedure by altering the legal landscape of FIR registration from legislative rigid mandate of compulsory registration, as enshrined in the *Lalita Kumari* doctrine, to a more nuanced but potentially perilous discretionary regime. This paper has traced this shift by analyzing how the statutory introduction of a preliminary inquiry under Section 173(3) reverses the earlier legislative and judicial mandate that was designed to curb police inaction and empower victims.

The legislative intent appears to shield individuals from the harassment of frivolous criminal proceedings and to enable law enforcement to better manage its resources. However, as this analysis has shown, this new-found discretion is a double-edged sword. It carries the significant risk of becoming a tool for delay, corruption, and the denial of effective access to justice, with a disproportionately impact on the most vulnerable and marginalized sections of society. The judiciary's initial engagement with this provision in *Imran Pratapgadhi v. State of Gujarat* has already begun the complex task of interpreting this new landscape, creating a hierarchy of

rights by treating the preliminary inquiry as a constitutional duty in cases involving freedom of speech. This has introduced further complexity, raising questions about procedural equality for other categories of offences.

The success of this new framework is not guaranteed by the statutory text alone. It hinges on the development of a clear jurisprudence that provides objective guidelines for the exercise of police discretion. The interplay between the new power granted under Section 173(3) and the strengthened judicial oversight under Section 175(3) creates a system of checks and balances on paper. However, its ability to strike a fair and "delicate balance" between the rights of the victim and the accused in practice remains contingent on the institutional integrity of the police and, most critically, on vigilant and proactive judicial scrutiny.

To ensure that the new procedural framework enhances justice rather than obstructs it. Courts must develop clear and objective criteria for what constitutes a "prima facie case" in the context of a preliminary inquiry under Section 173(3). This is essential to prevent the inquiry from devolving into a mini-trial and to ensure a uniform standard is applied across jurisdictions.

Magistrates should be encouraged to rigorously apply their new powers under Section 175(3). The hearing of the police officer should not merely be a procedural formality but a substantive review of the reasons for not registering an FIR.

The Central and State Governments should frame binding statutory rules or issue enforceable guidelines under the BNSS to govern the conduct of preliminary inquiries. Advisory Standard Operating Procedures (SOPs) are insufficient to prevent misuse. These rules must clearly define ambiguous terms like "nature and gravity of the offence" to limit subjective interpretation.

Police departments must establish transparent, documented, and auditable internal mechanisms for the approval process of preliminary inquiries. Every decision to conduct an inquiry, and its subsequent outcome, must be recorded with clear reasoning. Comprehensive training programs must be implemented for police officers at all levels to sensitize them to the nuanced responsibilities that come with this new discretion.

Ultimately, the transition from a system of mandate to one of discretion places a greater burden of responsibility on every stakeholder in the criminal justice system. Without a concerted effort to build a culture of accountability, transparency, and constitutional propriety, the intended shield of the preliminary inquiry could very well become an insurmountable barrier for those who need justice the most.