

## REFUSAL BY THE POLICE TO REGISTER THE FIR- THE LEGAL REMEDIES AVAILABLE

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### ABSTRACT

An FIR, formally known as a First Information Report, is a **written document** meticulously crafted by law enforcement upon receiving intel about the occurrence of a **cognizable offense** within their jurisdiction. The designation "**First Information Report**" derives from its role as the inaugural account of the incident relayed to the police. Traditionally, an FIR is a formal complaint submitted to the police, initiated either by the **victim of the offense or a representative acting on their behalf**. Importantly, it's an open avenue for any concerned individual to report a cognizable offense to law enforcement, whether through spoken or written means. It's noteworthy that the term "**FIR**" lacks a precise definition in key legal texts like the **Indian Penal Code (IPC) or the Code of Criminal Procedure (CrPC) of 1973, or any other legislative acts**. However, within police regulations and guidelines, information documented in compliance with **Section 154 of the CrPC is recognized as the First Information Report (FIR)**. Breaking down its essential elements, an FIR must encompass the following:

1. The information shared must directly pertain to the **commission of a cognizable offense**.
2. This information should be conveyed in either **written form or verbally** to the officer in charge at the police station.
3. The details provided must be meticulously transcribed and **bear the signature of the informant**, with a condensed version of the **report logged in the police station's daily record**.

### INTRODUCTION

Generally, when information regarding a cognizable offence is received by the police, the police must write it down. In the context of the Criminal Procedure Code (CrPC) in India, "FIR" stands for "First Information Report." FIR is a written document prepared by a Police officer based on information about the commission of a cognizable offense. As the name

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suggests, the First Information Report is the first information that reaches the Police after an offense is committed. In common terms, it is a complaint lodged with the Police by an aggrieved of a cognizable offense or any other person who has information about the commission of the offence<sup>1</sup>.

### **IS THE FILING OF AN FIR MANDATORY IN NATURE?**

According to Section 154 (1) of the Criminal Procedure Code<sup>2</sup>, the police are obliged to register the FIR on receiving information of a cognizable offence. The use of the word "shall" in Section 154(1) of the Code<sup>3</sup> clearly shows the legislative intent that it is mandatory to register an FIR if the information given to the police discloses the commission of the cognizable offence. Therefore, the police cannot argue or refuse or delay in registering the FIR. In the case of *Lalita Kumari vs Govt of U.P. and Ors*<sup>4</sup>, It was ruled that lodging of the F.I.R. as per Section 154 of the Code is compulsory and that no preliminary inquiry is permissible. If a cognizable offense is divulged, the police officer cannot escape his obligation to record the offense. If evidence gathered by him reveals a cognizable offense, strict actions will be taken against defaulting officers who refuse or fail to register the F.I.R.

### **REMEDIES AVAILABLE AFTER THE POLICE REFUSE TO REGISTER THE FIR**

- **Approaching the police officers of higher ranks:** Sciences

#### **Section 154(3) of the Code of Criminal Procedure, 1973 (hereinafter referred to as CrPC):**

If the police refuse to lodge an FIR, a complaint can be made before the Superintendent of the Police or Commissioner of Police as per section 156(3) of the Code of Criminal Procedure (CrPC)<sup>5</sup>. In this complaint, you have to mention that there was the commencement of a cognizable offence, and the concerned police officer has refused to register the FIR for the same. Thereafter, if such officers are satisfied that the information discloses the commission of a cognizable offence, they shall investigate themselves or direct an officer subordinate to them to investigate, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. It can also be claimed by the aggrieved party that the

<sup>1</sup> Shweta Singh, How Do I File an F.I.R. (First Information Report)? <<https://restthecase.com/knowledge-bank/how-do-i-file-an-f-i-r-first-information-report>> Accessed 25 October 2023.

<sup>2</sup> The Code Of Criminal Procedure, 1973, Section 154(1).

<sup>3</sup> Ibid.

<sup>4</sup> *Lalita Kumari vs Govt of U.P. & Ors* (2014) 2 SCC 1.

<sup>5</sup> The Code Of Criminal Procedure, 1973, Section 156(3).

concerned police officer shall be punished under section 166A(c) of the Indian Penal Code, 1860<sup>6</sup> (hereinafter referred to as IPC). As per section 166A of the IPC, the concerned police officer who refused to register the FIR in case of cognizable offence shall be punished with rigorous imprisonment for a term which shall not be less than six months, but which may extend to two years, and shall also be liable to fine.]

**Section 36 of the CrPC:** A police officer's superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such an officer within the limits of his station. They can start the investigation on their own or direct any subordinate officer to register the FIR and start an investigation on the same. The Superintendent of Police (SP) may also take action against the concerned police officer who initially refused to register the FIR. Whether the FIR is registered or not, the aggrieved party must follow this procedure, otherwise, the party cannot approach the court directly to start the proceedings.

- **Approaching the Judicial Magistrate of First Class:**

However, in the event, that no investigation is conducted by the SP/CP, nor is it directed to be conducted through a subordinate officer, the remedy available to the informant/complainant is to approach a Judicial Magistrate of First Class [JMFC] under section 156(3) read with section 190 of the CrPC<sup>7</sup>. The JMFC has jurisdiction over the police station concerned before which an initial attempt to lodge an FIR was made. To avail this remedy, the informant/complainant is required to make an application/complaint before the court of JMFC stating the necessary facts which constitute an offence of cognizable nature. It is important to note that the said application under section 156(3)<sup>8</sup> must also be accompanied by copies of the complaints made by the informant/complainant, initially before the concerned police station and thereafter before the SP/CP, to demonstrate that the informant/complainant has exhausted their local remedies and only then has approached the court of law. The Judicial Magistrate, upon receipt of such an application under section 156(3) of CrPC<sup>9</sup>, peruses the same to test the veracity of the facts mentioned in the application/complaint and to arrive at a conclusion whether the said facts constitute an offence of cognizable nature and whether registration of an FIR is warranted, depending upon the facts and circumstances of each case. Upon such perusal of the contents of

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<sup>6</sup> Indian Penal Code, 1860, Section 166A (c).

<sup>7</sup> *Supra* note 5.

<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

the application/complaint, if the Magistrate is of the opinion that the facts mentioned in the application/complaint make out a cognizable offense, he would direct the concerned police station to register an FIR, conduct an investigation, and upon completion of the investigation, submit a report as envisaged under Section 173 of the CrPC<sup>10</sup>.

- **Direct complaint to Magistrate:**

If the complaint instead of the police is directly filed in the court as per section 200 of the CrPC<sup>11</sup>, the court will supervise and examine the witnesses. As per section 202 of the CrPC<sup>12</sup>, there shall be a duty on the court to inquire into the matter for the purpose of deciding whether there is sufficient ground for proceeding. If the court concludes that the matter is of a grave nature, only then will the proceedings or trial start. In the case of *Abhijit Pawar vs Hemant Madhukar Nimbalkar & Anr*<sup>13</sup>, it was held by the Hon'ble Supreme Court that holding an inquiry is mandatory if the complaint is directly filed in court. Therefore, it depends on the forum you are choosing for filing the complaint. If you are approaching the police to register the FIR under section 154 of the CrPC<sup>14</sup>, then the police are obliged to register it without any preliminary inquiry.

## LEGAL SERVICES AUTHORITY

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**State Legal Services Authority:** As per section 6(1) of the Legal Services Authority Act, 1987<sup>15</sup>, every State Government shall constitute a body to be called the Legal Services Authority for the State to exercise the powers and perform the functions conferred on, or assigned to, a State Authority under this Act. Clause (2) of section 6<sup>16</sup> states that the Chief Justice of the High Court of the respective state shall be the Patron-in-Chief. Section 7 (2) of the Legal Services Act, 1987<sup>17</sup> states that State Authority shall give legal service to persons who satisfy the criteria laid down under this Act and undertake preventive and strategic legal aid programs.

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<sup>10</sup> The Code Of Criminal Procedure, 1973, Section 173.

<sup>11</sup> The Code Of Criminal Procedure, 1973, Section 200.

<sup>12</sup> The Code Of Criminal Procedure, 1973, Section 202.

<sup>13</sup> *Abhijit pawar vs Hemant madhukar nimbalkar & Anr* (2017) 3 SCC 528.

<sup>14</sup> The Code Of Criminal Procedure, 1973, Section 154.

<sup>15</sup> Legal Services Authority Act, 1987, Section 6(1).

<sup>16</sup> Legal Services Authority Act, 1987, Section 6(2).

<sup>17</sup> Legal Services Authority Act, 1987, Section 7(2).

**District Legal Services Authority:** As per section 9(1) of the Legal Services Authority Act, 1987<sup>18</sup>, every State Government shall constitute a body to be called the District Services Authority for every district in the state to exercise the powers and perform the functions conferred on, or assigned to, a District Authority under this Act. Subsection (2) of section 9<sup>19</sup> states that a District Judge shall be its chairman. Legal awareness programs are taken up for the empowerment of legal knowledge to all citizens in general and to the weaker sections of society. These authorities provide legal aid by way of providing the services of able efficient services of Lawyers. Any person who fulfills the criteria is entitled to the Legal Aid. In the case of *Sugesan Transport Pvt.Ltd., Chennai v/s The Assistant Commissioner of Police, Chennai & Another*<sup>20</sup>, it was held by the Madras High Court that the legal services authorities must take immediate steps to help in the registration of an FIR in case of a cognizable offence. In para-95 of the Judgment, the Hon'ble High Court has held that under Article 144 of the Constitution of India<sup>21</sup>, it is the duty of these authorities also to act in aid of the Supreme Court and therefore, they should also ensure that the mandates of Lalita Kumari case are implemented. Any person who is aggrieved by the refusal of the police to register an FIR on his complaint can approach the local Legal Services Authority and on being approached, the Authority shall entertain the complaint and ensure the implementation of the directions of the Supreme Court in the Lalita Kumari case. The legal services authority is bound by the ruling of the Supreme Court and has to implement it.

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## POLICE COMPLAINT AUTHORITY

In 2006, the Supreme Court passed a decision for the case "*Prakash Singh Vs Union of India*"<sup>22</sup> for Central and State governments to implement its seven directives for Police reforms. One of the seven directives contained the creation of the Police Complaint Authority (PCA). There should be a state-level PCA headed by a retired judge of a high court/Supreme Court and a district-level PCA within each state headed by a retired district judge. The state-level PCA will investigate only complaints against the police personnel who are of and above the rank of Superintendent of Police and the complaints would include incidents involving:-

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<sup>18</sup> Legal Services Authority Act, 1987, Section 9(1).

<sup>19</sup> Legal Services Authority Act, 1987, Section 9(2)

<sup>20</sup> *Sugesan Transport Pvt.Ltd., Chennai v/s The Assistant Commissioner of Police, Chennai & Another* (Crl O.P. Nos. 19197, 19198, 19343 and 19359 to 19363 of 2016).

<sup>21</sup> Constitution of India, 1950, Article 144.

<sup>22</sup> *Prakash Singh Vs Union of India* [Writ Petition (civil) 310 of 1996].

- Death in police custody.
- Grievous hurt in police custody.
- Rape or attempt to rape in police custody.

The district-level PCA will investigate only complaints against the police personnel who are below the rank of Superintendent of Police and the complaints would include incidents involving:

- Death in police custody.
- Grievous hurt in police custody.
- Rape or attempt to rape in police custody.
- Extortion.
- Land/house grabbing.
- Incidents involving serious abuse of authority.

### POWER OF POLICE COMPLAINT AUTHORITY

They can give directions for registering an FIR. They may recommend a departmental action against the police officer/officers. They may even frame a criminal charge against the police officer/ officers who refused to register the FIR and violated the mandate of the Supreme Court in the Prakash Singh case<sup>23</sup>. Hence, a case can be filed against the police officers under section 166A of the IPC. The aggrieved party can reveal this misconduct or abuse of police in 3 ways:

1. Refer to the Supreme Court constitution Bench ruling in *Lalita Kumari versus State of UP*<sup>24</sup> (Para- 111 (v))-Action must be taken against erring officers who don't register the FIR if information received by him discloses a cognizable offense.
2. Refer to the Guidelines of the Ministry of Home on registration of FIR in case of a cognizable offense. Warning for prosecution of such police officers under section 166 of the Indian Penal Code<sup>25</sup> who refuse to register the FIR.

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<sup>23</sup> CHRI 2009 Better Policing Series- India, YOUR GUIDE TO USING POLICE COMPLAINTS AUTHORITIES

<[https://www.humanrightsinitiative.org/publications/police/police\\_complaints\\_authorities\\_user\\_guide.pdf](https://www.humanrightsinitiative.org/publications/police/police_complaints_authorities_user_guide.pdf)>

Accessed 25 October, 2023.

<sup>24</sup> *Supra* note 2.

<sup>25</sup> Indian Penal Code, 1860, Section 166.

3. Refer to the Report of the Committee of Reforms of the Criminal Justice System which advocates that non-registration of cases (FIR) is a serious complaint against the police. If all these remedies go in vain, a Writ Petition in the respective High Court may be filed for the issuance of Writ of Mandamus against the defaulting Police officers, inter alia, to register the FIR.

4. A Writ Petition may be filed in the respective High Court for seeking damages/compensation if the inaction of the Police on the complaint/non- non-non-registration of FIR, has resulted in frustration/deprivation of life and Liberty of any person, guaranteed under Article 21 of the Constitution of India<sup>26</sup>.

### CONCLUSION

If the police have caused grave injustice to any individual by not registering the FIR for a cognizable offence, this amounts to an infringement of Article 14 of the constitution which talks about the equal protection of laws. It is also a violation of Article 21 of the constitution which talks about the right to free trial. The victim has the right to approach any of the authorities mentioned above to get a legal remedy. He can also approach the Hon'ble Supreme Court under Article 32 of the Constitution as he has the right to constitutional remedies. Further, strict action will be taken against the police officers under section 166A of the IPC who refused to register the FIR and conduct an investigation under sections 154(1) and 154(3) of the CrPC respectively.

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<sup>26</sup> Constitution of India, 1950, Article 21.