

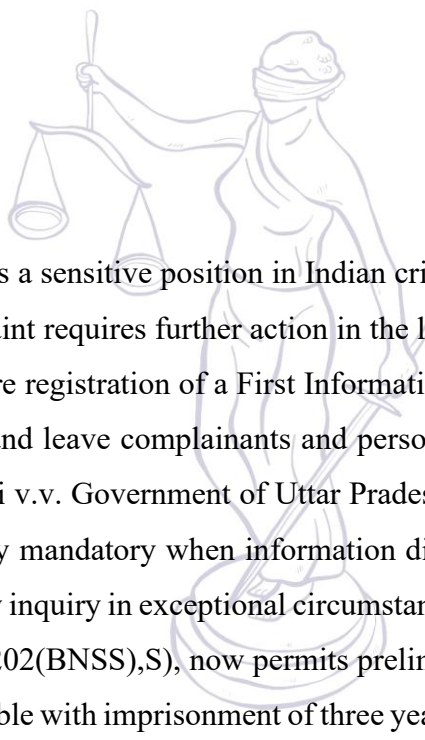
PRELIMINARY INQUIRY BEFORE INVESTIGATION AND SAFEGUARDS AGAINST DELAY IN INDIA

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ABSTRACT



Preliminary inquiry occupies a sensitive position in Indian criminal procedure. It may help police determine whether a complaint requires further action in the limited circumstances recognized by law. However, inquiry before registration of a First Information Report (FIR) can delay access to justice, weaken evidence, and leave complainants and persons named in complaints exposed to uncertainty. In *Lalita Kumari v. Government of Uttar Pradesh*, the Supreme Court affirmed that FIR registration is ordinarily mandatory when information discloses a cognizable offense, while allowing limited preliminary inquiry in exceptional circumstances. Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), now permits preliminary inquiry for a defined class of cognizable offenses punishable with imprisonment of three years or more but less than seven years, subject to prior approval by a senior police officer and completion within fourteen days. This article analyses the legal framework, the distinction between preliminary inquiry and investigation, the risks of unreasonable delay, and safeguards available to affected persons. It argues that time limits and supervisory approval are useful but insufficient without written reasons, transparent records, communication of outcomes, effective remedies, and accountability. Preliminary inquiry must remain limited, time-bound, sound, and reviewable, never a routine barrier to prompt criminal justice.

Keywords: Preliminary inquiry; FIR registration; BNSS 2023; Section 173(3); *Lalita Kumari*; police accountability; unreasonable delay.

I. INTRODUCTION

This initial reaction is crucial, as it sets the tone for the entire investigation and prosecution process. A swift and appropriate response can enhance the likelihood of a successful resolution and promote trust in the system. The First Information Report is a crucial procedural starting point for police action concerning a cognizable offense. Yet police sometimes seek to verify a complaint before registering an FIR. Limited scrutiny may prevent unnecessary criminal process where law permits it, but it can also be misused to postpone action where registration is required.

The central question is not whether every allegation should automatically result in a full investigation. It is whether police may delay registration, for what purpose, for how long, and under which safeguards. Preliminary inquiry is not a trial and should not become a detailed assessment of witness credibility or the ultimate truth of allegations. Those matters ordinarily belong to investigation and adjudication. If information discloses a cognizable offense and the law requires registration, unnecessary pre-registration scrutiny can defeat criminal procedure's purpose.

The Supreme Court addressed this tension in *Lalita Kumari v. Government of Uttar Pradesh*. The BNSS, which replaced the Code of Criminal Procedure, 1973 (CrPC), now expressly provides a limited statutory route for preliminary inquiry. This article considers the law and proposes safeguards to prevent inquiry from becoming a mechanism of delay.

II. MEANING AND PURPOSE OF PRELIMINARY INQUIRY

A preliminary inquiry is a limited process conducted before deciding whether to proceed further in circumstances authorized by law. Its purpose depends on the applicable legal framework. Under *Lalita Kumari*, the inquiry was directed at determining whether the information disclosed a cognizable offense, not at deciding whether the allegations were ultimately true or collecting evidence as though a full investigation had commenced. Section 173(3) BNSS uses a different

statutory test for the specified category of offenses: whether a prima facie case exists for proceeding.¹

Preliminary inquiry must be distinguished from formal investigation. Investigation involves statutory steps to collect evidence and establish relevant facts. An inquiry should not become an unrecorded parallel investigation, a means of pressuring a complainant to withdraw, or a method of compelling the person named in a complaint to provide incriminating statements. Doubt about the truth of an allegation is not, by itself, permission to disregard a legal duty to register an FIR.

The legitimate aim is to permit limited screening where the law expressly allows it while preserving prompt action when a cognizable offense is disclosed. Police must identify the statutory basis, stay within the permitted scope, and complete the process promptly

III. LEGAL FRAMEWORK

Section 154 CrPC governed the recording of information relating to cognizable offenses. In *Lalita Kumari v. Government of Uttar Pradesh*, (2014) 2 SCC 1, a Constitution Bench held that registration of an FIR is mandatory when information discloses a cognizable offense. It recognized preliminary inquiry in limited categories, including matrimonial or family disputes, commercial offenses, medical negligence, corruption, and cases involving abnormal delay in reporting. The categories were illustrative, not an unrestricted authority to postpone registration. The inquiry's purpose was to determine whether a cognizable offense was disclosed.²

The court stressed promptness and record-keeping. It stated that an inquiry should ordinarily be completed within seven days and that reasons for delay should be recorded. Where no cognizable offense was disclosed and the complaint was closed, brief reasons had to be recorded and communicated to the informant in accordance with the judgment. These requirements attempted to balance protection against misuse with the complainant's right to lawful action.

¹ Bharatiya Nagarik Suraksha Sanhita 2023, ss 173(1), 173(3)–173(4).

² *Lalita Kumari v Government of Uttar Pradesh* (2014) 2 SCC 1.

Section 173(3) BNSS creates a specific statutory procedure. Where information relates to a cognizable offense punishable with imprisonment of three years or more but less than seven years, the officer in charge, considering the nature and gravity of the offense, may conduct a preliminary inquiry with prior permission of an officer not below the rank of Deputy Superintendent of Police. The inquiry must be completed within fourteen days to ascertain whether a prima facie case exists. The officer may instead proceed immediately to register an FIR and investigate where appropriate.

This differs from the framework under *Lalita Kumari*. The earlier judicial approach focused on whether the information disclosed a cognizable offense and allowed inquiry in limited circumstances. Section 173(3) adopts a punishment-based category and expressly permits a prima facie assessment. It adds senior-officer approval and a fourteen-day period. These safeguards can improve consistency, but only if approval is meaningful, dates are recorded, and non-compliance has consequences.

Section 173(1) remains important to the general rule for recording information, while section 173(4) provides a route for a person aggrieved by refusal to record information to approach the Superintendent of Police and, where appropriate, the Magistrate. Preliminary inquiry cannot become an indefinite holding stage.

IV. JUDICIAL APPROACH

In *Lalita Kumari*, the Supreme Court established the mandatory FIR principle and confined preliminary inquiry to a limited purpose. It emphasized that the inquiry is not an opportunity to test the truth of allegations. The decision remains important because it prioritizes prompt registration over informal police practice and connects lawful discretion with documented reasons and accountability.³

³ *Lalita Kumari v Government of Uttar Pradesh* (2014) 2 SCC 1.

In *Priyanka Srivastava v. State of Uttar Pradesh*, (2015) 6 SCC 287, the Supreme Court considered applications seeking a magistrate's direction for investigation under section 156(3) CrPC. It emphasized procedural responsibility, including prior recourse to police authorities and the use of affidavits. The case is relevant to the broader need to prevent misuse of procedural mechanisms, although it does not create a general power to delay FIR registration.⁴

In *State of Telangana v Managipet* (2019) 19 SCC 87, the Court clarified that a preliminary inquiry is not a mandatory prerequisite in every case. Police need not conduct an additional inquiry where the information already provides a sufficient basis to proceed according to law. The principle is significant because an inquiry is not an automatic right that must be granted in all complaints.⁵

In *Imran Pratapgarhi v State of Gujarat*, 2025 INSC 410, decided on 28 March 2025, the Supreme Court analyzed section 173(3) BNSS. It explained that the provision differs from section 154 CrPC because it allows inquiry in the specified punishment category to assess whether a prima facie case exists. If such a case exists, the police should immediately register an FIR and investigate. If not, the informant should be informed promptly so that the remedy under section 173(4) may be pursued. This decision directly connects the conclusion of inquiry with prompt action and access to remedies.⁶

Together, these authorities indicate that preliminary inquiry is not routine. Police must comply with the applicable statutory framework, and inquiry cannot be used to avoid or indefinitely postpone duties imposed by law.

V. HOW DELAY HARMS JUSTICE

Delay may occur when a complaint remains unregistered during informal verification without a recorded start date or legal basis. Repeated visits, questioning, or requests for documents may

⁴ *Priyanka Srivastava v State of Uttar Pradesh* (2015) 6 SCC 287.

⁵ *State of Telangana v Managipet* (2019) 19 SCC 87.

⁶ *Imran Pratapgarhi v State of Gujarat*, 2025 INSC 410.

continue without a clear deadline. An inquiry may expand into a full evaluation of disputed facts, or the complainant may not be told whether the matter has been closed or an FIR registered.

Delay can harm every participant. For complainants, digital records may be deleted, forensic traces may disappear, memories may fade, and witnesses may become difficult to locate. A victim may remain insecure and lose confidence in law enforcement. A person named in a complaint may also suffer reputational harm and uncertainty from prolonged informal scrutiny. Repeated questioning can exert pressure even without formal arrest. Safeguards against delay therefore protect fairness for complainants and persons affected by allegations.

The fourteen-day limit in section 173(3) is significant, but a deadline alone cannot ensure compliance. Without a register, reasoned approval, and communication of the outcome, a complainant may struggle to demonstrate abuse. Time limits must be supported by transparency, supervision, and accessible remedies.

VI. CONSTITUTIONAL DIMENSIONS

Article 14 protects against arbitrary state action. Police discretion is necessary, but similar complaints should be treated according to consistent and relevant criteria. Unrecorded inquiry can create unequal treatment or permit sensitive complaints to be stalled. Written reasons, objective criteria, and supervisory review reduce arbitrariness.⁷

Article 21 requires a fair procedure when life or personal liberty is at stake. In *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248, the Supreme Court held that procedure must be just, fair, and reasonable.⁸

VII. SAFEGUARDS AGAINST UNREASONABLE DELAY

⁷ Constitution of India, arts 14, 20(3) and 21.

⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248.

Police departments should adopt a uniform standard operating procedure consistent with section 173(3) BNSS and binding judicial decisions. Approval forms should require written reasons and a completion plan. Each inquiry should have an auditable record, and complainants should receive timely written notice of the outcome and available remedies. Police training should explain the mandatory FIR rule and constitutional protections.

Supervisory officers should periodically review overdue inquiries and refusals to register FIRs. Where evidence may be lost, officers should take lawful steps to preserve it. Courts should scrutinize police inaction through remedies available under the BNSS and constitutional jurisdiction. Public legal awareness programs should explain how complaints may be escalated. The law must avoid two extremes. Automatic criminal process without applying legal standards may expose people to unnecessary proceedings, while open-ended pre-registration scrutiny may deny complainants access to justice. The proper approach is limited discretion governed by clear criteria, deadlines, reasons, communication, and review.

XIII. CONCLUSION

Preliminary inquiry is a limited procedural mechanism, not a substitute for investigation or a general power to postpone criminal law. Lalita Kumari established that an FIR must ordinarily be registered when information discloses a cognizable offense, while recognizing a narrow space for inquiry. Section 173(3) BNSS now permits inquiry in a defined category of cognizable offenses punishable with imprisonment of three years or more but less than seven years, subject to prior senior-officer permission and completion within fourteen days.

The framework is useful only if implemented effectively. Unrecorded inquiries, mechanical approval, repeated questioning, and failure to communicate outcomes can transform screening into unreasonable delay. Such delay may damage evidence, frustrate complainants, and leave persons named in complaints under prolonged uncertainty. Articles 14 and 21 require non-arbitrary and fair procedure, while Article 20(3) protects against compelled self-incrimination.

Every inquiry should be authorized by law, recorded, narrowly confined, and concluded within the prescribed period. If a prima facie case exists, police must act quickly; otherwise, the informant should be informed of the decision and given a reasonable opportunity to pursue the statutory remedy. Written reasons, electronic tracking, supervision, transparent communication, and proportionate accountability can prevent delay without undermining legitimate discretion. Preliminary inquiry should assist lawful decision-making and never become a barrier to timely justice.⁹



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⁹ Nandini Satpathy v P.L. Dani (1978) 2 SCC 424.