**PROCEDURE TO FILE A CRIMINAL CASE**

**First Information Report**

A First Information Report (FIR) is the very first step in the criminal matter in which the facts of the commission of crime is reported to the police by the person who is a witness to the case, victim or a person who has a knowledge of the same act done by the accused. The definition of the FIR is provided in the Code of Criminal Procedure, 1973 which states 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 by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf*”.

**Complaint**

A "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report. A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;

**Who Can Lodge an FIR?**

FIRs can be registered by a victim, a witness or any other person who has knowledge of the crime. As per the provisions of Section 154 of the Cr.P.C. the Complainant can state the facts about the offence either in writing or Oral.

In the case of Hallu vs. State of M.P[[1]](#footnote-0),, it was held that the “Section 154 does not require that the Report must be given by a person who has personal knowledge of the incident reported. The section speaks of information relating to the commission of a cognizable offence given to an officer in charge of a police station”.

Once the facts about the commission of crime is stated by a person, the police thereafter read the contents of the FIR to the Complainant in case it is reported in the oral manner.

**Handing over a Copy of FIR to the Accused**

As per the provisions of the Criminal law, the complainant has a right to get a copy of the first information report which is lodged at the concerned police station. However, as per Section 207 of the Code of Criminal Procedure, 1973, the accused has a right to receive the copy of the FIR once the investigation has been completed by the police in the said case, and the charge sheet has been filed in the Court.

However, there have been many cases wherein the Court has provided the copy of the FIR to the Accused before the filing of charge sheet and on his request and payment of a requisite fee.

**Cognizable Offences**

The term Cognizable Offences are defined in Section 2 (c) of the Cr. P.C. 1973 in which the police has the power to make an arrest without a warrant in such offences which are serious in nature, and thus the aim is to prevent the culprit or accused of harming others. The offences which fall under the cognizable offences have already been mentioned in the first schedule of the Code of Criminal Procedure, 1973.

**Cognizance of Complaint**

A Magistrate can take cognizance of a complaint upon receipt of a complaint or otherwise, thereafter he examines the complaint by examining the facts and the witnesses. In case he finds that the complaint is with merits, the case is deemed committed for trial and the magistrate issues the process. If the offence is exclusively triable by Court of Session, the Magistrate commits the case to Court of Session.

In the case of a first information report, the offence involved is of cognizable nature and thus the police has the authority to initiate the investigation in the said case without prior permission from the Magistrate and then file a charge sheet. On the other hand, when a Magistrate takes cognizance of an offence on the basis of a complaint, he orders an investigation in the matter and can also direct the police to lodge an FIR if he feels that the offence is of a serious nature.

**Steps to Be Taken When the Police Refuses to Lodge the FIR**

There are cases when the police refuses to lodge the FIR and this can be either legal or illegal depending about the circumstances.

In case, the authority doesn’t have the jurisdiction to try the case or not having the legal capacity to take cognizance or the offence is of non-cognizable nature, it will be held legal. But when a police refuses to file the complaint for some deliberate reasons, without any substantial legal ground, it is contrary to law. When a police officer refuses to register the FIR on the ground that it discloses a non-cognizable offence, he must inform the informant and direct him to file a complaint to the magistrate. In case the offence committed is beyond the territorial jurisdiction of a police station, information should be recorded and forwarded to the appropriate police-station having jurisdiction, otherwise refusing to record on this ground will amount to dereliction of duty.

· If the concerned officer in charge refuses to register the FIR about commission of a cognizable offence within his territorial jurisdiction, the informant can approach the Superintendent of Police or the Commissioner of the police with a written complaint. If, upon analysis of the complaint, the S.P. of the Commissioner is satisfied that it discloses a cognizable offence, he may either investigate the case himself or direct his subordinate to register the FIR and initiate investigation in the matter.

·If the above listed remedies go in vain, the informant is legally entitled to file a complaint to the Judicial Magistrate/ Metropolitan Magistrate u/s 156(3) read with Sec. 190 of the criminal procedure thereby praying FIR to be registered by the police and investigation into the matter.

**Alternate Remedy**

The alternate remedy before a person is to file a Writ Petition in the respective High Court against the defaulting Police officers, inter alia, to Register the FIR and directing him to show cause (a) why he has not registered the FIR; (b) why disciplinary proceedings for “Misconduct” should not be initiated against him for dereliction of duty; (c) why he should not be suspended from Police service for interfering in the administration of justice and shielding the accused person. In a civil matter, a contempt petition can be filed before the High Court against the officer who refused to lodge an FIR Hon’ble Supreme Court, recently, in Lalita Kumari vs. Govt. of Uttar Pradesh[[2]](#footnote-1), case, has held that the Police must register F.I.R where the complaint discloses a cognizable offence.

1. 1974 AIR 1936 [↑](#footnote-ref-0)
2. (2014) 2 SCC 1 [↑](#footnote-ref-1)