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Responses to Information Requests

Responses to Information Requests (RIR) respond to focused Requests for Information that are submitted to the Research Directorate in the course of the refugee protection determination process. The database contains a seven-year archive of English and French RIRs. Earlier RIRs may be found on the UNHCR's [Refworld](#) website. Please note that some RIRs have attachments which are not electronically accessible. To obtain a PDF copy of an RIR attachment, please email the [Knowledge and Information Management Unit](#).

1 May 2017

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India: First Information Reports (FIRs), including procedures and time frames followed by police to inform complainants that an investigation will not be conducted (2015-May 2017)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

1 Overview

According to the Commonwealth Human Rights Initiative (CHRI), an "independent, non-partisan, international non-governmental organization, mandated to ensure the *practical* realisation of human rights in the countries of the Commonwealth" (CHRI 30 Dec. 2016, 2, italics in original), a First Information Report (FIR) is

a written document prepared by the police when they receive information about the alleged commission of a cognizable offence. It is a report of the information that *first* reaches the police about the occurrence of a crime or crimes, and this is why it is called the First Information Report. (CHRI 23 Oct. 2015, italics in original)

According to the CHRI, cognizable offences "are serious crimes for which the police have the authority to arrest without a warrant, and start an investigation without the permission of a judicial [m]agistrate" (CHRI 23 Oct. 2015). The same source further notes in an information booklet that "[e]xamples of a 'cognisable' crime include murder, rape, rioting, and dacoity," and "[e]xamples of a 'non cognisable' crime include cheating, fraud, forgery, bigamy, and creating a public nuisance" (CHRI 30 Dec. 2016, 22). A column in *The Hindu*, an English daily newspaper, originally published in October 2013 and updated in June 2016, similarly reports that "[e]xamples of cognizable offences include murder, rape, theft, attack, etc.," while examples of "non-cognizable offences include bigamy and defamation" (*The Hindu* 22 Oct. 2013). Sources further note that for non-cognizable offences, complaints should be sent to the judicial magistrate (CHRI 30 Dec. 2016, 22; *The Hindu* 22 Oct. 2013).

The CHRI further reports that "as per procedural law, it is only after the FIR is registered in the police station that the police can start the investigation of the case" (CHRI 23 Oct. 2015). Amnesty International India similarly reports that the FIR "is the first document that needs to be prepared by the police to initiate investigations" (Amnesty International India n.d.). Vageshwari Deswal, an assistant professor (Sr. Scale) at the University of Delhi, writes in a paper in the academic *Journal of the Indian Law Institute* that the FIR "sets the criminal justice machinery in motion. It is mandatory for the police to first register a case before they start investigation in any case. The FIR forms the very basis of the case" (Deswal 2013, 362).

The website of the Uttarakhand Police notes that "[a]ny person can file an F.I.R. He need not be the aggrieved person. It may be merely hear[say] and need not be by the person who has had first[hand] knowledge of the facts" (India n.d.a). The CHRI similarly indicates that, "anyone who knows about the commission of a cognizable offence can go to the police station to file an FIR," including victims, witnesses, and police officers (CHRI 23 Oct. 2015).

Human Rights Watch reports that for deaths in police custody, the law requires "a judicial magistrate to conduct an inquiry... [and] [t]he police are expected to register a[n]...FIR" (Human Rights Watch 19 Dec. 2016, 4). The same source further reports that in 2014, the Supreme Court of India issued "further requirements" for police, stating that according to the guidelines,

[t]he police should record any intelligence or tip-offs received in connection with criminal offences. If police officers use firearms when following up on such a tip-off, and kill someone, they should immediately file [an FIR] and forward it to the court without any delay. (Human Rights Watch 19 Dec. 2016, 17)

Copies of blank First Information Reports for Hoshiarpur (Attachment 1), for Jammu (Attachment 2), and from the National Crime Records Bureau (Attachment 3) have been attached to this Response.

2. Procedure to File a First Information Report

The CHRI notes that "the procedure to register an FIR is prescribed in Section 154 of the [*Code of Criminal Procedure*]" (CHRI 23 Oct. 2015). Section 154 of the *Code of Criminal Procedure* provides the following:

154. Information in cognizable cases. (1) 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 [*sic*] 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. (India 1974)

Sections 154 through 158 of the *Code of Criminal Procedure* are attached to this Response (Attachment 4).

The CHRI further reports that an FIR "can be given in writing or orally to the police," adding that if it is done orally, "the police officer must ask [the complainant] to narrate the information" so that it can be accurately recorded by the officer (CHRI 23 Oct. 2015). The Uttarakhand Police website similarly requests that the complainant narrate the information "in an orderly sequence" to the responsible police officer (India n.d.a).

A column in *The Hindu* reports that "in an emergency, the police can register an FIR based on a phone call or email" (*The Hindu* 22 Oct. 2013). The Haryana State Legal Services Authority (HLSA) similarly notes in their Frequently Asked Questions about FIRs that "it is not necessary for the informer to be present personally before the police for registration of FIR" (India n.d.b, 2). The Maharashtra Police website indicates that if the complaint is given over the phone, the complainant "should subsequently go to the police station for registration of F.I.R." (India n.d.c).

The website of the Uttarakhand Police notes that "[a]n F.I.R. can be filed in the police station of the concerned area in whose jurisdiction the offence has occurred. It must be made to the officer-in-charge of the police station and if he is not available the Assistant Sub Inspector" (India n.d.a). The HLSA notes that the FIR can be "recorded at any police station, irrespective of where the offence took place" (India n.d.b, 4). A column in *The Hindu* specifies that "ideally, the FIR should be registered in the police station within whose geographical limits the crime took place," however, it can be registered at another police station "in case of an emergency" (*The Hindu* 7 June 2016). An editorial originally published in November 2015 and updated in February 2016 in the *Deccan Chronicle*, an English newspaper in South India (*Deccan Chronicle* n.d.), similarly notes that "[i]f you are unable to file a complaint in the right place, due to an emergency or logistical challenges, you can lodge it in any police station" (*Deccan Chronicle* 16 Nov. 2015).

The *Deccan Chronicle* further reports that if the FIR is given at a police station that is not within the correct jurisdiction, "[t]he personnel there are duty bound to transfer the complaint to the police station that has jurisdiction" (*Deccan Chronicle* 16 Nov. 2015). The CHRI similarly reports that

[n]o police officer can refuse to register an FIR if the offence(s) being reported occurred outside their police station's jurisdiction. S/he is bound to register the FIR (this is called a zero FIR), make an entry in the FIR register and the station diary, and forward the FIR to the concerned police station. The police must tell [the complainant] the police station where it has been forwarded. (CHRI 23 Oct. 2015)

The CHRI notes that there are special procedures for the recording of FIRs in the case of "rape, gang rape, stalking, voyeurism, sexual harassment, intent to outrage modesty and/or acid attack" (CHRI 30 Dec. 2016, 23). The source reports that

[t]he law now requires that... [the female victim's] FIR will be registered only by a woman police officer or any other woman officer. If the woman victim is mentally or physically disabled, she does not even have to go to the police station to record her complaint. The police instead will have to visit her at her home or any place of her choice to record the complaint. The police must also arrange for a special educator or counsellor as per the woman's needs. The statement of such a woman must also be videographed. (CHRI 30 Dec. 2016, 23)

Amnesty International India similarly reports that

[i]f the woman is mentally or physically disabled, either temporarily or permanently, the police officer must go to her home or a place convenient for her to register the complaint. If the offence registered is rape, the same procedure is applicable. (Amnesty International India n.d.)

According to the same source, "[i]n the case of offences like sexual harassment, voyeurism, stalking, rape [and] gang rape, the report must only be recorded by a woman police officer" (Amnesty International India n.d.).

Pages 1 through 16 of *The Criminal Law (Amendment) Act, 2013* are attached to this Response (Attachment 5).

CHRI notes that once the FIR has been prepared, the complainant must sign it to indicate that the information contained accurately represents the information they provided to, and recorded by, the police (CHRI 23 Oct. 2015). The source adds that "people who cannot read or write must put their left thumb impression on the FIR after being satisfied that it is a correct record" (CHRI 23 Oct. 2015). The Uttarakhand Police website indicates that the police officer "shall reduce the information given" by the complainant to writing, and that "the information given shall be signed by the person giving it" (India n.d.a). Amnesty International India reports that it is "mandatory" that the police officer read the FIR back to the complainant so that it can be verified by the complainant, adding that in cases of sexual violence, only the complainant must sign the FIR (if different from the survivor) and that the survivor will receive a copy within 24 hours (Amnesty International India n.d.).

Sources report that the complainant is entitled to a free copy of the FIR (CHRI 23 Oct. 2015; *The Hindu* 22 Oct. 2013; India n.d.b). Section 154(2) of the *Code of Criminal Procedure* provides that "[a] copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant" (India 1974).

3. Requirements for Registration of an FIR

The *Times of India* reports that in June 2013, the Union home ministry sent out instructions to all states that failure to register an FIR for a cognizable offence "will invite prosecution of the duty police officer under [Indian Penal Code] Section 166A (government official disobeying law) which will invite imprisonment up to one year" (*The Times of India* 10 June 2013). The CHRI reports that "it is settled law that the registration of an FIR is mandatory when the first information received discloses the commission of a cognizable offence" (CHRI 23 Oct. 2015). According to the Shillong Police, the Supreme Court, in the case of *Lalita Kumari v Government of Uttar Pradesh*, issued the following guidelines concerning registration of FIRs:

(i) Registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation ...

(iv) The police officer cannot avoid his duty of registering offence if cognizable offence is disclosed. Action must be taken against erring officers who do not register the FIR if information received by him discloses a cognizable offence ...

(viii) Since the General Diary/Station Diary/Daily Diary is the record of all information received in a police station, we direct that all information relating to cognizable offences, whether resulting in registration of FIR or leading to an inquiry, must be mandatorily and meticulously reflected in the said Diary and the decision to conduct a preliminary inquiry must also be reflected, as mentioned above. (India n.d.d)

The CHRI also notes that "the police officer who does not register an FIR of a woman complaining of any sexual offence will now, if found guilty, be punished with imprisonment of six months to two years and will also have to pay a fine" (CHRI 30 Dec. 2016, 23). According to the same source, "[i]t is a punishable offence for a police officer to refuse to register an FIR for the offences stated in Section 154(1)" of the *Indian Penal Code* and that the provision for punishment is found in Section 166A(c) of the same code (CHRI 23 Oct. 2015). Chapter IX, including Section 166, of the *Indian Penal Code* (Attachment 6), and pages 1 through 16 of *The Criminal Law (Amendment) Act, 2013* (Attachment 5) are attached to this Response.

Media sources report that in September 2016, the Supreme Court of India issued directions to all states and union territories to upload FIRs online within 24 hours, with the time requirement extended to 72 hours where internet connectivity is poor (*Free Press Journal* 8 Sept. 2016; *Express News Service* 8 Sept. 2016; *PTI* 7 Sept. 2016). The Supreme Court of India, in the case of *Youth Bar Association of India v. Union of India and Others*, issued the following specific directions:

(d) The copies of the FIRs, unless the offence is sensitive in nature, like sexual offences, offences pertaining to insurgency, terrorism and of that category, offences under POCSO [Protection of Children from Sexual Offences] Act and such other offences, should be uploaded on the police website, and if there is no such

website, on the official website of the State Government, within twenty-four hours of the registration of the First Information Report ... It may be clarified here that in case there is connectivity problems due to geographical location or there is some other unavoidable difficulty, the time can be extended up to forty-eight hours. The said 48 hours can be extended maximum up to 72 hours and it is only relatable to connectivity problems due to geographical location.

(e) The decision not to upload the copy of the FIR on the website shall not be taken by an officer below the rank of Deputy Superintendent of Police or any person holding equivalent post ... A decision taken by the concerned police officer or the District Magistrate shall be duly communicated to the concerned jurisdictional Magistrate. (India 7 Sept. 2016)

3.1 Preliminary Inquiry Before Registering FIR

According to the CHRI, which cites the Supreme Court judgment in *Lalita Kumari vs. Government of Uttar Pradesh and Others*,

[t]he police cannot say that they have to do a preliminary inquiry to verify the first information before registering an FIR (with very few exceptions of specific offences laid down by the Supreme Court). The police may do a preliminary inquiry only when, based on the first information, it is unclear whether cognizable or non-cognizable offences have been committed. This will depend on each case. The scope of the preliminary inquiry is only to determine if a cognizable offence is made out, not verify the information received. (CHRI 23 Oct. 2015)

According to the Shillong Police, the Supreme Court guidelines issued in *Lalita Kumari v Government of Uttar Pradesh* state the following:

(ii) If the information received [in an FIR] does not disclose a cognizable offence but indicates the necessity for an inquiry, a preliminary inquiry may be conducted only to ascertain whether cognizable offence is disclosed or not.

(iii) If the inquiry discloses the commission of a cognizable offence, the FIR must be registered ...

(v) The scope of preliminary inquiry is not to verify the veracity or otherwise of the information received but only to ascertain whether the information reveals any cognizable offence.

(vi) As to what type and in which cases preliminary inquiry is to be conducted will depend on the facts and circumstances of each case. The category of cases in which preliminary inquiry may be made are as under:

- a. Matrimonial disputes/ family disputes
- b. Commercial offences
- c. Medical negligence cases
- d. Corruption cases
- e. Cases where there is abnormal delay/laches in initiating criminal prosecution, for example, over 3 months delay in reporting the matter without satisfactorily explaining the reasons for delay. The aforesaid are only illustrations and not exhaustive of all conditions which may warrant preliminary inquiry.

(vii) While ensuring and protecting the rights of the accused and the complainant, a preliminary inquiry should be made time bound and in any case it should not exceed 7 days. The fact of such delay and the causes of it must be reflected in the General Diary entry. (India n.d.d)

3.2 Inability to Register FIRs

According to Freedom House, in India, complainants "frequently face substantial obstacles, including demands for bribes, in getting the police to file a First Information Report" (Freedom House 2016). In 2014, the *Times of India* reported that "[d]espite warnings from the very top, burking at police stations continue to trouble citizens" explaining that "[b]urking is a practice wherein policemen refuse to file complaints, register non-cognizable offences in place of cognizable crimes or suppress complaints to show that the crime rate under their jurisdiction is under control and also 'minimize their work'" (*Times of India* 30 Oct. 2014). CHRI notes that there is "an urgent need for police departments to address the long-standing obstructions and violations by police in registering FIRs" (CHRI 26 Apr. 2016, 23).

Vageshwari Deswal writes that the efficacy of police forces and, by extension, governments, are often measured by increases or reduction in crime rates, and as a result, there is a "tendency to fudge the figures and more commonly to manage the crime statistics by not recording them" (Deswal 2013, 361). The *Indian Express* similarly reports that "as soon as [a] crime graph of a particular region, as reflected in data, rises, the

minister responsible reprimands the concerned officer. The officer, in turn, tries his best to keep the numbers to the lowest. One of the ways this is allegedly done is by refusing FIRs" (*Indian Express* 12 Jan. 2016).

Deswal cites as an example "an alarming surge in rape cases" following the passage of *The Criminal Law (Amendment) Act, 2013*, under which, the source reports, police officers refusing to register an FIR in the case of rape could be liable to punishment (Deswal 2013, 361). Deswal explains that it "is not that suddenly incidences of rape have risen; the fact is that reporting has increased because now police officers are scared of turning away victims of rape" (Deswal 2013, 361). Similarly, the *Hindustan Times*, an English daily newspaper in India, reports that increasing numbers of rape reports have been attributed by police to "less burking - suppression or cover-up in police parlance - and better reporting of crimes against women" (*Hindustan Times* 19 Dec. 2016).

CHRI conducted a crime victimization survey in Delhi and Mumbai between July 2014 and June 2015 (CHRI 26 Apr. 2016, 7). The survey report states that the "overall sample size [was] 4,950 households in Delhi and 5,850 households in Mumbai" (CHRI 26 Apr. 2016, 3). According to the report, "[t]aking all crimes together, in both cities less than half of the cases reported to the police by the respondents had an FIR registered" (CHRI 26 Apr. 2016, 19). The *Indian Express* cites a presentation at the conference of Director Generals of Police in Gujarat, India in December 2015 by Indian Police Service officer Rajeev Krishna, who "claims that only 9-21 per cent of all crimes in India get registered by police," due to 30 percent of all crimes not being reported and over 50 percent of reported crimes being "turned away by police" (*Indian Express* 12 Jan. 2016).

With regard to registering FIRs for deaths in police custody, Human Rights Watch reports that "in several cases of custodial deaths documented by Human Rights Watch, police either resisted filing FIRs against other police or unnecessarily delayed doing so. Often, it took the intervention of courts for a proper investigation into alleged custodial deaths" (Human Rights Watch 19 Dec. 2016, 84). The US Department of State's *Country Reports on Human Rights Practices for 2016* notes that in India, NGOs reported "in many instances" that police refused to register FIRs concerning crimes committed by police officers (US, 3 Mar. 2017, 9).

3.3 Recourse Available if Police Refuse to Register an FIR

Section 154 of the *Code of Criminal Procedure* provides the following:

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. (India 1974)

The CHRI reports the following methods of recourse should an FIR not be registered by a police officer:

- Complain in person to the Superintendent of Police or other higher officers;
- Send complaints to the Superintendent in writing, by mail;
- File a private complaint before a court with appropriate jurisdiction;
- Make a complaint to either the State Human Rights Commission, or the National Human Rights Commission, if the state in question does not have one;
- Make a complaint to the Police Complaints Authority, if there is one located in the complainant's state;
- Female victims of sexual offences "can file an FIR against the police officer concerned under Section 166A(c) of the *Indian Penal Code*" (CHRI 23 Oct. 2015).

According to the Uttarakhand Police website, if police refuse to register an FIR, complainants can send the FIR information in writing and by mail to the Superintendent of Police (India n.d.a). Amnesty International India notes that in the case of a refusal to register an FIR, a complainant can "appeal to a higher authority" such as a Superintendent of Police or District Commissioner of Police and if they refuse, the complainant can subsequently go to a magistrate (Amnesty International India n.d.). Information on the results of these measures, including case outcomes and number of persons seeking such recourse, could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

4. Requirements for Notifying a Complainant that an FIR will not be Investigated

The CHRI reports that "[t]here is nothing specific in the law which requires the police officer to keep you informed about the progress of a case" (CHRI 30 Dec. 2016, 25). However, the same source, citing Section 157 of the *Code of Criminal Procedure*, notes that police

can decide not to investigate even if you file an FIR, when the police officer is of the view that 1) the case is not of a serious nature; or 2) there are not enough grounds to investigate. However, the police must record the reasons for not conducting an investigation, and inform you immediately that the investigation will not be done. (CHRI 23 Oct. 2015)

Section 157(b) of the *Code of Criminal Procedure* states that "if it appears to the officer in charge of a police station that there is no sufficient ground for entering on an investigation, he shall not investigate the case" (India 1974). Section 157(2) provides the following:

... [I]n the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated. (India 1974)

With regard to the preliminary inquiry to determine whether a cognizable offence has been committed, the CHRI notes that "[t]he inquiry must be completed within 7 days" (CHRI 23 Oct. 2015). Sources report that Supreme Court guidelines issued in *Lalita Kumari v Government of Uttar Pradesh* state the following:

(iii) ... In cases where preliminary inquiry ends in closing the complaint, a copy of the entry of such closure must be supplied to the first informant forthwith and not later than one week. It must disclose reasons in brief for closing the complaint and not proceeding further. (India n.d.d)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within the time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

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